



The Scottish Parliament  
Pàrlamaid na h-Alba

Published 10 January 2022  
SP Paper 75  
1st Report, 2022 (Session 6)

## Criminal Justice Committee

# Judged on progress: The need for urgent delivery on Scottish justice sector reforms



**Published in Scotland by the Scottish Parliamentary Corporate Body.**

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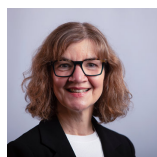
# Criminal Justice Committee

To consider and report on matters relating to criminal justice falling within the responsibility of the Cabinet Secretary for Justice and Veterans, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.



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# INTRODUCTION

1. Between September and November 2021, the Criminal Justice Committee held a series of roundtable meetings, looking at a number of key issues in the justice sector.
2. The purpose of the roundtables was to hear from external organisations and individuals and to give Members an up-to-date picture of developments in the justice sector. It was envisaged that each roundtable would also provide an idea of the short and longer-term measures that might be needed to tackle each of the issues. These would then be developed into an **Action Plan**.
3. This report contains separate chapters on the following issues:
  - The impact of COVID-19 on the justice sector;
  - Prisons and prison policy;
  - Misuse of drugs and the criminal justice system;
  - Victims' rights and victim support;
  - Violence against women and girls;
  - Reducing youth offending, offering community justice solutions and alternatives to custody, and
  - Legal aid.
4. **The summaries in each chapter are not intended to provide a comprehensive analysis as we would produce if we had conducted full inquiries into each issue.**
5. **They summarise the issues raised during a single evidence session on each subject area. Doing justice to the detail of any single issue would require a much longer inquiry. Nevertheless, the roundtables provided the Committee with a valuable overview of each subject and allowed us to identify a number of short-term and longer-term actions that are needed.**
6. **We have collated these actions into an Action Plan (Annex A). This Action Plan will be used to monitor the progress of the delivery of improvements by the Scottish Government and other bodies. Our intention is to update this Plan at regular intervals in this parliamentary session.**



# THE IMPACT OF COVID-19 ON THE JUSTICE SECTOR


## Introduction

7. On 8 September 2021, the Criminal Justice Committee held a roundtable meeting about the impact of COVID-19 on the justice sector. The Committee took oral <sup>1</sup> and written evidence <sup>2</sup> from a number of stakeholders. <sup>3</sup>
8. COVID-19 has clearly affected all aspects of the justice sector and has had, and continues to have, a major impact.
9. As well as being the subject of this roundtable meeting, the impact of the pandemic was also raised as an issue at several of our other roundtable meetings.
10. It is clear to us that COVID-19 recovery will be a major ongoing priority during this parliamentary session.

## Court backlogs and ‘digital justice’ – impact of COVID-19

11. Prior to the pandemic, the court system in Scotland already had a backlog of trials. The impact of COVID-19 led to that backlog in the court system increasing markedly. According to the Scottish Government, the current backlog of solemn trials (for the most serious crimes) is not expected to be cleared until 2025. The summary trial backlog is not expected to be cleared until 2024.
12. Before the pandemic, there were approximately 13,400 sheriff court trials outstanding. The number at the moment is over 32,400 trials. In the justice of the peace courts, there were just over 3,200 trials outstanding, and the number is now sitting at approximately 7,890. In the sheriff and jury courts, there were about 1,330 trials outstanding pre-pandemic and there are now currently in excess of 3,500 trials for the more serious offences.
13. **Conclusion: As a Committee, we recognise that each and every one of those delayed trials means justice for the victims has been put on hold and the rights of the accused to be heard in court have been curtailed. We are particularly concerned about the disproportionate impact of delays on victims of gender-based violence who are predominantly women and girls. Cases of serious sexual violence make up 80 to 85 per cent of cases that proceed to trial in the high court.**
14. In order to help address this backlog, the Scottish Parliament agreed temporary legislative powers to permit a more digitally-based justice system. These include powers allowing virtual/remote attendance in courts and tribunals, including in criminal court cases. In addition, temporary legislative measures extending various statutory time limits for progressing criminal court cases were agreed, including

ones extending the time that an accused can be held on remand.

15. The Scottish Government is currently consulting on a proposal for a longer extension of some of these temporary provisions and also whether some should be made permanent at this stage. Primary legislation on this is expected in the new year and the Committee hopes to take a role in its scrutiny.
16. The Scottish Courts and Tribunal Service (SCTS) is also significantly increasing the number of jury trials in order to address the backlog.
17. At our roundtable meeting, the Committee heard about the impact of the backlog in the court system on victims of crime. Kate Wallace of Victim Support Scotland told us that “the delays in trials are having a massive impact on the mental health of victims and witnesses”.
18. The number of remand prisoners in Scotland’s already overcrowded prisons was also discussed. The number of prisoners held on remand has increased to a total of over 1,700 in 2020-21. Delays to trials means it has been more difficult to keep periods of remand within normal statutory time limits.
19. Tony Lenehan of the Faculty of Advocates was broadly supportive of some of the proposals taken by the SCTS to address the backlog. However, he expressed concern that ‘digital justice’ can impact on the quality of communication in court. The setting of a virtual trial may also lack the gravity of a formal court room. He commented—  
  
 “...in the High Court, things have to be about justice first and foremost. When it comes to matters of convenience to do with shepherding people to court, keeping people from travelling on the roads and all that sort of thing, I understand that there are benefits there, but they do not measure up to the benefits of having the most accurate and the fairest justice. Virtual contact reduces that.”<sup>4</sup>
20. A similar view was echoed by Ken Dalling of the Law Society of Scotland. Mr Dalling also expressed concern about changes being “Trojan-horsed” in.
21. However, Mr Dalling and Mr Lenehan agreed that it would be appropriate to retain some of the temporary changes, particularly those detailing with procedural or administrative matters. These included using electronic signatures and the remote balloting of juries. Both the Law Society of Scotland and the Faculty of Advocates had reservations about some of the other proposals for a more digital justice system.
22. Eric McQueen of the SCTS raised the idea of a ‘hybrid option’ where certain participants in courts could take part remotely but the accused appeared in person. He said that “it would be unfair to categorise everything as being a step backwards”.  
  
5

## **Prisons and COVID-19**

23. The impact of COVID-19 on prisons and on purposeful activity in prisons in

particular was also discussed at the roundtable meeting.

24. Purposeful activity is generally understood to refer a range of constructive activities within prisons such as work, education and vocational training, counselling and other rehabilitative programmes.
25. Purposeful activities in prisons were suspended in March 2020. Teresa Medhurst, Interim Chief Executive of the Scottish Prison Service, told us—
 

” “We had to put down the majority of our activity, including our learning service from Fife College and our prisoner programmes. It was only when we started to step out from lockdown with the rest of the country that we were able to look at the arrangements that we could put in place in order to reinstate some of those services. I am sure you will understand that that has limitations because of the restrictions.”<sup>6</sup>
26. Ms Medhurst set out some of the mitigations being put in place to allow the return of purposeful activities.
27. There was also discussion about the wider impact of COVID-19 on prisons at the roundtable on 15 September 2021. For example, we discussed how prisoners had kept in touch with their friends and families when physical visits were not permitted due to COVID-19 restrictions.
28. Ms Medhurst was asked about reports that mobile phones provided to prisoners had been hacked and used to purchase drugs. She indicated that there were “security measures” in place to identify phones that have been tampered with.
29. We also discussed whether video contact from families could be continued after the pandemic. Ms Medhurst told us “we are working on a digital strategy to increase and enhance our technological capacity”.<sup>7</sup>
30. The Committee recently considered an SSI which extends the powers to impose various restrictions in prisons due to COVID-19. We raised a number of concerns with the Scottish Government, Scottish Prison Service and HM Inspector of Prisons Scotland about some of the proposals and have agreed to monitor how these powers are used in practice.

## Other issues

31. The Committee discussed several other issues relating to COVID-19 at the roundtable meeting including—
  - The recovery, reset and renew programme of the Scottish Fire and Rescue Service
  - How COVID-19 might impact on any reform of the regulation of the legal profession
  - The impact of COVID-19 on Police Scotland recruitment and training
  - Suggestions that individuals were falsely claiming to have COVID-19

symptoms in order to avoid attending court

- The impact of COVID-19 on justice social work, including the need to return to face-to-face contact
- The impact of COVID-19 on the legal aid system (this is discussed in a separate note of the roundtable meeting on legal aid).

## Conclusions and recommendations

32. **Conclusion:** It is clear to us that two of the key priorities in this parliamentary session, will be—

- **The progress being made in reducing the court backlog.** On this, we are deeply concerned at the impact of delays on the victims of crime, the numbers of prisoners on remand, and other participants in the judicial process. Whilst we understand why the backlog has increased, we want to avoid any further slippage in the timescales for clearing this. This is something we intend to monitor to assess what progress is being made and we set out specific proposals in the recommendation below;
- **A proper assessment of the merits of ‘digital justice’.** We understand why a number of initiatives were introduced as a result of COVID-19. These have, generally speaking, been welcomed. Indeed there appears to be support for many of them to continue. But real and substantial concerns have been raised about making some of these changes permanent. Our view is that a proper assessment has to be made of the various proposals for ‘digital justice’. They should only progress if there is genuine merit in the proposals, rather than simply being a matter of a cost saving or administrative convenience. Whilst we accept there may never be unanimity, there must be a general consensus from the main participants and we cannot make fundamental changes to how our court system functions and the rights of individuals involved without full and proper debate.

33. **Recommendation:** The Committee intends to keep both these priority issues under review this session to ensure progress is made as indicated. The Scottish Courts and Tribunals Service continues to publish regular updates on progress in reducing the court backlog. The Committee will also hold an evidence session with the Cabinet Secretary for Justice and Veterans, following the conclusion of the consultation on COVID-19 recovery. This will be a chance to question the Cabinet Secretary on the Scottish Government’s position on returning to normal operations in the court system and the merits, or otherwise, of making various ‘digital justice’ proposals permanent.

34. **Conclusion:** The Committee will also seek to be involved in the scrutiny of any forthcoming legislation brought in by the Scottish Government either to further extend temporary measures or to make certain changes to the courts system permanent.

35. **Conclusion:** An important theme this parliamentary session will be how Scotland's prisons are recovering from the impact of the pandemic. We would like to highlight two priority issues where we must see progress made in the near term-

- The reinstatement of purposeful activities in prisons;
- Progress on improving arrangements for visits and contact from families and friends, or the provision of digital alternatives where this is not possible.

36. **Conclusion:** The Committee understands the immense challenges on the Scottish Prison Service in managing the pandemic within our prisons. The Committee pays tribute to the management of the Scottish Prison Service in our prisons and also all of the prison officers and staff that work in them. Their service and dedication is not in question. Nevertheless, in our view, there are improvements that need to be made in terms of how the Scottish Prison Service is responding to COVID-19 and the regimes that are currently in place.

37. **Recommendation:** The Committee recommends that the Scottish Prison Service provides—

- A detailed plan for the reinstatement of purposeful activities in prisons, including a timetable for when particular categories of activities will resume.. At present, the law states that remand prisoners cannot be required to work but we acknowledge that some may wish to. However, such services are also prioritised for long-term convicted prisoners as a matter of statutory obligation; this limits the resources available for remand prisoners. We need to address the long-standing question of what can be done to ensure that prisoners held on remand and on shorter sentences would have the option to benefit from these activities;
- As a minimum, all prisoners including those on remand should have regular access to exercise and time outdoor for fresh air, and consideration should be given to what other activities would be suitable for prisoners on remand;
- Information on progress made in resuming in-person visits, including how arrangements may differ from pre-COVID-19.
- An update on any inquiries made by the Scottish Prison Service into the use of hacked mobile phones, downloaded e-SIM cards etc by prisoners and a commitment that any problems identified have been addressed.
- A commitment that video/mobile technology will continue to be an option for prisoners to contact friends and family members and support services, and that the use of this technology will be expanded throughout the estate in a regulated and controlled manner.

38. **Conclusion:** In summary, whilst we understand the reasons for the severe regimes within prisons that had to be put in place because of the pandemic, restrictions on meaningful activities, association, contact with families etc should only be in place where strictly necessary and all efforts made to remove them as soon as possible and alternatives put in place in the meantime.

39. **Conclusion:** The Committee will make its views on the wider issues in prisons and on prison reform known in a separate report.
40. **Conclusion:** COVID-19 has had a significant and disruptive impact on the justice sector.
41. **Conclusion:** As a Committee, we recognise that each and every one of the delayed trials caused by the backlog in the Courts system means justice for the victims has been put on hold and the rights of the accused to be heard in court have been curtailed. We are particularly concerned about the disproportionate impact of delays on victims of gender-based violence who are predominantly women and girls. Cases of serious sexual violence make up 80 to 85 per cent of cases that proceed to trial in the high court.
42. **Conclusion:** The Committee's focus in the early part of this parliamentary session will be to—
- Monitor the use of any temporary provisions, regulations, or powers given to authorities in the justice sector as a result of COVID-19 to ensure their use is necessary, proportionate and appropriately time-limited.
  - Assess what progress is being made in the justice sector to recover from the impact of COVID-19 and return to previous standards of service levels for users
  - Ensure that where administrative and technological innovations are retained, it is only after they have been assessed on their own merits as warranting retention.
43. **Recommendation:** In the section on 'Other Issues' the Committee has identified these as important issues which it plans to return to once the immediate priorities noted in this report have been addressed.

# PRISONS AND PRISON POLICY

## Introduction

44. On 15 September 2021, the Criminal Justice Committee held a roundtable meeting about prisons and prison policies. The Committee took oral<sup>8</sup> and written evidence<sup>9</sup><sup>10 11</sup> from a number of stakeholders.<sup>12</sup>
45. The roundtable identified a series of issues that need to be addressed in both the short and longer-term.
46. Many of these issues are long-standing ones which policy-makers have historically struggled to address. We want to see progress during this parliamentary session. A number of these issues were investigated by our predecessor committees and are not new. **It is our view that we cannot keep scrutinising the same issues and recommending changes without seeing signs of substantive progress.**
47. In addition to the issues highlighted in this report, our separate chapter on the impact of COVID-19 on the justice sector discusses some additional points regarding prisons and responses to the pandemic.

## Remand

48. The first priority issue we wish to highlight is the high number of prisoners on remand, and the experiences which some remand prisoners have faced in prison.
49. The Howard League Scotland noted that there has been a significant rise in the number of people held on remand in Scotland (then at approximately 24% of the prison population), particularly amongst young people. In recent weeks, the Cabinet Secretary told the Parliament that remand is now at 30 per cent of the prison population”, describing this as “too high”.
50. Wendy Sinclair-Gieben, HM Inspector of Prisons for Scotland told us in written evidence:
- ” “One of my repeated findings is the cultural acceptance of a hierarchy of entitlement in prisons where in Scotland remand prisoners and those labelled 'non-offence protection' are rarely afforded access to rehabilitative activity. For them 22 hours a day locked up in a room often not designed for one but holding two is routine.”<sup>13</sup>
51. Dr Katrina Morrison of the Howard League Scotland argued that remand prisoners should have the same opportunities for work and access to programmes as the rest of the prison population.
52. Phil Fairlie of the Prison Officers Association Scotland noted the impact of the number of remand prisoners on overcrowding in prisons.
53. Bruce Adamson, the Children and Young People’s Commissioner, expressed

concern about the number of children under 18 on remand in young offenders institutions. The issue of holding children in prison is considered further below.

## Women and children

54. A second issue which emerged from the roundtable meeting was the impact of prison on two particular groups of prisoners: women and children. There was discussion about whether and when it was appropriate for women and children to be imprisoned.

### Women

55. Wendy Sinclair-Gieben, HM Inspector of Prisons for Scotland described visiting a women's prison—

”What stands out when you walk around is the number of women who are apparently mentally unwell. It is clear to me that, if we had a presumption of liberty for women, particularly when they are doing a good job caring for their children, the number of women coming into custody would not be so high.”

56. Dr Katrina Morrison of Howard League Scotland told us that women in custody are especially vulnerable. A number of women in prison have head injuries, which are thought to be mostly as a result of domestic violence.

57. The written submission from the Scottish Centre for Crime and Justice Research noted that—

”Considerable attention has been given to the prison estate for women over recent years by the Scottish Government, Parliament, and Prison Service. Many reports have made detailed recommendations on how best to reduce the number of women in custody (latterly, the Commission on Women Offenders, 2012) with the current development of HMP Cornton Vale and plans in place for SPS Community Custody Units. However, to date, attempts to reduce the number of women in prison have had limited impact.”

### Children

58. Bruce Adamson, the Children and Young People's Commissioner, commented on the situation with respect to children—

”...children under 18 should not be deprived of their liberty in prisons or young offenders institutions. Instead, we must ensure that children receive really good-quality intensive support, perhaps in a secure setting but not in the prison system. The situation needs to change urgently.”

59. The proportion of children held on remand has increased.

60. Wendy Sinclair-Gieben, HM Inspector of Prisons for Scotland, noted in her written submission that childhood has been accorded special status in international human rights law. She noted that contact with the criminal justice system is often



detrimental to young people’s wellbeing and development. She raised the questions as to whether “perhaps now is the time to also consider being the first UK nation to remove children from prison”.

## Substance misuse in prisons

61. A third issue we wish to highlight is the problem of substance misuse in prisons. We have also commented more widely on drug misuse in the criminal justice system elsewhere in this report.
62. In terms of prisons, Wendy Sinclair-Gieben, HM Inspector of Prisons for Scotland told us—
- ” “Drugs in prison are a major issue. I have talked about revising the prison rules, and one thing that needs to happen is a reduction in the amount of drugs coming in through the post...”
63. Wendy Sinclair-Gieben also added that—
- ” “On substance misuse, I would really like the committee to look at the evidence around diversion, depenalisation and all the issues that will help us to reduce the prison population and, I hope, make the replacement of Greenock and Dumfries prisons, and even Barlinnie, unnecessary. That would be my dream.”
64. We heard that one technique to illegally bring drugs into prisons is to soak letters in drugs which can then be posted to a prisoner.
65. Teresa Medhurst, Interim Chief Executive of the Scottish Prison Service, noted that “the methods and means by which people can traffic them are, for the most part, well known, but we are considering other measures that we can take, particularly with mail coming into prisons, to minimise those risks as much as possible”.
66. In recent weeks, the First Minister and the Cabinet Secretary for Justice have given a commitment that the Scottish Government plans to legislate (via secondary legislation) to change prison rules to permit prisoners’ mail to be photocopied and thereby reduce the smuggling of certain drugs into prisons via this route. An SSI has now been laid in the Scottish Parliament and will be considered by the Committee early in the New Year.
67. There was also discussion about the use of Buprenorphine as an Opioid Substitution Treatment in Scotland’s prisons. Teresa Medhurst noted that it “has much more potential to minimise risk to individuals and ensure that people can be better supported on their recovery journey”.

## Rehabilitation and alternatives to prison

68. At the roundtable meeting there was a wider discussion about the role of prisons.
69. One issue which was raised was how to rehabilitate someone who has committed a crime and whether prison is the best setting for that rehabilitation to take place.

70. Wendy Sinclair-Gieben, HM Inspector of Prisons for Scotland did not consider that it was—

” “We have got it wrong. We will need to undertake significant change to turn that concept around, to look at rehabilitation and support in the community and to remove the presumption of punishment as a way out.”

71. Professor Fergus McNeill of the Scottish Centre for Crime and Justice Research noted that rehabilitation in prison is “really difficult” and the evidence on rehabilitative programmes is that they work better in communities than in prisons—

” “The obvious reason for that is that you can try to learn something in an institutional environment, but the first thing that you have to do when you are released is transfer that learning to a new context.”

72. We also discussed at the roundtable meeting whether more should be done to prevent individuals being imprisoned in the first place.

73. Professor Fergus McNeill told us—

” “Any criminologist would tell you that, if you want to reduce crime, you invest way upstream of the criminal justice system and that, when you invest in criminal justice, you invest in diversion at every possible turn.”

74. Several witnesses argued that reducing the prison population would help address some of the problems faced by prisons such as capacity issues.

75. Allister Purdie of the Scottish Prison Service noted—

” “To refer to Fergus McNeill’s point, the ideal position further down the line would be for us to stop bringing people into prison and to stop building a new prison in Glasgow for 1,200 people.”

76. The issue of overcrowding has been cited as a major barrier to improving conditions in prisons in Scotland. In particular it has impacted on the rehabilitation of prisoners. Professor McNeill noted—

” “we do not rehabilitate prisoners well, we do not prepare them for release well and we do not support them on release well, because our system is chock-a-block with people who should not be in it.”

## **Prison estate**

77. This Committee has commented previously on the need for capital investment to modernise the prison estate. This includes both major investments in upgrading prisons such as HMPs Greenock and Dumfries, and shorter-term investments to improve the current conditions in the existing estate.

78. In evidence to the Committee, Wendy Sinclair, HM Inspector of Prisons Scotland expressed concerns about resources available for improvements to the prison estate. She said she saw:

” “no evidence to suggest that the SPS is sufficiently resourced to make adequate progress with these key capital projects and strategic initiatives alongside other competing pressures and important but routine maintenance projects.”

79. She added that:

” “The recent investment in HMP Glasgow and HMP Highland is welcome, but well overdue, and still leaves Scotland operating prisons with Victorian features that bear no resemblance to a modern prison system, especially in HMP Greenock, HMP Dumfries and parts of HMP Perth. These establishments are expensive to run and maintain and utterly inadequate for the care and accommodation of older and disabled prisoners, which we expect to become an increasing issue for the SPS given recent trends regarding the prosecution of historical sex crimes. There needs to be sufficient investment by the Scottish Government and SPS to support the design and planning of replacement facilities for these three prisons, while recognising that planning consent and securing a site might put back the point at which major construction costs hit. Similarly, while welcoming the structural and philosophical reforms around the women’s estate, further investment will be required to remove the current dependency on using accommodation in the male estate for women”.

80. A particular issue is how the prison estate can accommodate certain types of prisoners, such as elderly people and prisoners with disabilities or mental health issues. The issue of modernising the prison estate is also linked to the more fundamental question of overall prison numbers in Scotland.

81. We have also said that we must build on existing efforts to stop the revolving door in our prisons and look at greater funding for effective alternatives to prison where appropriate.

82. In our recent pre-budget report, the Committee concluded that “there is a case for sustained, above inflation injection of funds into the prison budget, allied to a clear, long-term strategy to address these problems.”

## Other issues

83. The issues we have identified above are, of course, not the only issues facing prisons in Scotland. There are many other important issues which were touched on during the roundtable meeting, for example—

- Reforms to the day-to-day prison regime, such as greater use of in-cell technology. There is a need to ensure that prison rules are kept up-to-date so that prisons can use in-cell technology in order to take part in purposeful activities and maintain family contacts;
- Deaths in custody and deaths following release;
- Post-release support;
- The challenges of accommodating a complex prison population (for example,

older prisoners, prisoners guilty of sexual offences, and prisoners with links to organised crime).

## Conclusions and recommendations

84. **Conclusion:** A priority issue this parliamentary session for organisations in the justice sector must be addressing the high numbers of prisoners on remand and improving the experience of those prisoners who must be held on remand. Our predecessor committee reviewed the situation back in 2018<sup>14</sup> and, over three years on, there is no discernible sign of substantive progress on the numbers being held despite the concern of many. That cannot continue.

85. **Recommendation:** The Committee recommends that the Cabinet Secretary for Justice and Veterans provides details on how the Scottish Government proposes to address the specific concerns about the use of remand highlighted in the roundtable meeting. The Committee is aware, for example, that the Scottish Government plans legislation in this area (a Bail and Release Bill). We request an update on the timing of that legislation and what it plans to cover.

86. **Conclusion:** A priority issue this parliamentary session must be to improve how women and children are treated in the prison system and whether alternatives to prison may, in some cases, be more appropriate. This is a subject on which there seems to be widespread agreement that progress needs to be made, but less success in delivering change.

87. **Recommendation:** The Committee recommends that the Cabinet Secretary for Justice and Veterans provides details on what specific policies and initiatives the Scottish Government are proposing to improve the treatment of women and children in the prison system. The Committee recommends that the Cabinet Secretary sets out his views on the specific concerns raised by the Children and Young People's Commissioner about children in the prison system and the Commissioner's proposals to address these concerns.

88. **Recommendation:** As a short-term measure, the Committee asks the Scottish Government when it will fulfil its promise that under 18s should not be held in prison and that secure care should be used instead. The Committee believes that, in principle, children under the age of 18 should be held in secure care and not in prison. Therefore, we also ask when the Scottish Government will fulfil a commitment made by the Deputy First Minister in session 5 to review why it is necessary to move someone from secure care to HMP YOI Polmont after they turn 18 years of age, even if they only have a short time left on any sentence (see also the section on secure care).

89. **Conclusion:** A priority issue this parliamentary session should be addressing the problem of substance misuse in prisons. It is clear that the misuse of drugs in

prisons is rife and more needs to be done both to prevent drugs from coming into prisons and to rehabilitate prisoners who use drugs.

90. **Recommendation:** The Committee recommends that the Scottish Prison Service provides details about what programmes are currently available in prisons to rehabilitate users of drugs and how much funding is associated with these initiatives. The Committee welcomes recent indications from the Cabinet Secretary and the First Minister that the Scottish Prison Service will, after consideration of operational and legal issues, implement a new policy in respect of photocopying prisoners' mail. The Committee proposes to scrutinise the relevant SSI and how it is implemented. It is vital that this issue is taken forward without unnecessary delay. Lastly, the Committee recommends that the Scottish Prison Service provides an update on the progress made in rolling out the use of Buvidal across the prison estate.

91. **Conclusion:** We have also called elsewhere in our budget report for further investment in recovery cafes within each prison where appropriate.

92. **Recommendation:** We have highlighted some of the key questions about the role of prisons in Scotland which have been raised at the roundtable meeting. For example, are prisons the best place to rehabilitate people? Should more be done to reduce the number of people sent to prison where this is appropriate? These are fundamental issues which reach beyond the day-to-day operation of prisons. The Committee recommends that this parliamentary session the Scottish Government and others in the justice sector should do more to directly tackle these fundamental questions in the interests of progress.

93. **Conclusion:** There are numerous challenges facing prisons in Scotland, many of which we touched on in the roundtable meeting and also in previous parliamentary sessions. We have highlighted in this note some of the issues we consider to be an immediate priority. In our inquiry and scrutiny work this parliamentary session, we will play our role in encouraging those in the justice sector to make progress in taking these issues forward. It is not acceptable to us to spend another parliamentary session commenting on the same issues and making recommendations for change. Greater action and progress are needed now

94. **Recommendation:** In the section on 'Other Issues' facing prisons and prison policy in Scotland, the Committee has identified these as important issues which it will consider in addition to the immediate priorities which have been noted in this report.

# MISUSE OF DRUGS AND THE CRIMINAL JUSTICE SYSTEM

## Introduction

95. On 27 October 2021, the Criminal Justice Committee held a roundtable meeting about the misuse of drugs and the criminal justice system. The Committee took oral<sup>15</sup> and written evidence<sup>16 17 18</sup> from a number of stakeholders.<sup>19</sup>
96. Every single death brought about by the misuse of drugs is a tragedy, not only for the victim, but also for their families, friends and loved ones. Behind the statistics, is a person and a family who have lost someone close to them.
97. Sadly, the statistics for drug deaths in Scotland are stark. In July 2021, the National Records of Scotland (NRS) published a document (*Drug-related deaths in Scotland in 2020*) which reported that there were 1,339 drug-related deaths in 2020. This is a 5 per cent increase on the previous year and the largest number ever recorded since records began in 1996. Drug-related deaths have increased substantially over the last 20 years. The NRS report shows that there were 4.6 times as many deaths in 2020 compared with 2000.
98. The NRS report states that Scotland's drug death rate was 3.5 times that for the UK as a whole, and higher than that of any European country.
99. According to a recent report<sup>20</sup> from the Scottish Government, in 2019-20, the vast majority of drug possession offenders were male (85%). The median age of an offender was 29 years old, with almost two thirds (63%) being between 20 and 39 years old
100. Drug misuse and the crimes often associated with their use then translate through to impacts in the criminal justice system. For example, in Scotland's prisons, the Scottish Prison Service's biennial Scottish Prisoners' Survey most recently reported that 41% of respondents stated that their drug use was a problem for them on the outside, 39% said that they had used illegal drugs whilst in prison, and more than one in ten (12%) stated that they only started using drugs whilst in prison.
101. Figures released to the media under FoI laws showed there were 229 recoveries of suspected psychoactive substances across the prison estate in June 2020. In June of 2021, there were 421 such seizures. The synthetic cannabinoid "Spice", and "street" benzodiazepines, such as Etizolam, are now thought to be the dominant drugs in prisons.
102. The impact of drug misuse in Scotland is also felt in terms of the time and resources required in multiple sectors, namely the police, the courts, criminal justice social work, and third sector support bodies.

## The Scottish Drug Deaths Taskforce

103. In 2019, the Scottish Government established the Scottish Drug Deaths Taskforce in an effort to tackle drugs misuse in Scotland. The Taskforce was tasked with helping to tackle Scotland's unique challenge by identifying evidence-based strategies that will make a difference to those most at risk, and using its expertise, influence and networks to put these into practice. The Taskforce membership features those with health, social services, research, police, criminal justice and emergency service backgrounds but also those who bring lived experience of drug and addiction issues.
104. Since the Taskforce was formed in 2019, it has made a number of recommendations to a range of stakeholders. This includes the Scottish Government, the Lord Advocate, Police Scotland, the Scottish Prison Service, Health Improvement Scotland and the NHS. These recommendations relate to a wide range of topics that the Taskforce believe would have a positive impact on tackling the drug problem faced in Scotland and ultimately save lives. Some of these recommendations date back to April 2020.
105. The Committee heard that the Taskforce views its role as putting a spotlight on areas where change is required. There are already Taskforce recommendations for many of the issues which were raised at the Committee evidence session. These are summarised below.
106. As such, it is not the Committee's intention in this report to try to duplicate the work of the Taskforce. It has already studied many of the issues raised by the roundtable participants and made a series of detailed recommendations in its reports.

## A person-centred approach

107. Witnesses at our roundtable described experiences of seeking help with drug issues and it not being provided for a variety of reasons. These included: being told their addiction was "not severe enough to need treatment"; no treatment being available for the drug they used (cocaine); no phone service or services provided at evenings and weekends; people referred and either not then dealt with at all, not dealt with in a timely fashion, or referred somewhere that was not appropriate, which offered no real remedy for them.
108. Written evidence from the Scottish Institute of Policing Research (SIPR) refers to a gap between policy and practice. The Committee heard that the services available did not meet demand, and that some services, such as residential rehabilitation and community day programmes are either no longer provided or have been privatised. This means that often services are targeted at the most critical end of the spectrum. As well as gaps in provision, there are overlaps in the services provided. There is a lot of work being undertaken in isolation, which needs to be co-ordinated.
109. Following the evidence session, Police Scotland confirmed that since April 2019, the number of individuals records as accepting arrest referrals, which are for people within police custody, is 2287. The total number of people recorded on the Interim Vulnerable Person's Database (iVPD) with a Drug Consumption Marker from 2018

to 2021 inclusive are 39,822<sup>i</sup>. They confirmed that there is disparity of services available across Scotland, which depends on the third sector or statutory support is available locally. They indicate that “The lack of standardised support for someone with complex needs is challenging with some areas unable to provide direct support or an appropriate referral as their needs do not meet a specific criteria set”.

110. The Committee heard that a whole-system approach should be adopted, which looks at what is provided, where funding is allocated, and how this can be improved in terms of efficiency and effectiveness.
111. Witnesses indicated that there is a need for a wider range of community services for people for whom prison should not be an option. One recommendation was the provision of access to a care manager, who is able to understand and treat the reasons for drug use, such as trauma, poverty, neglect and abuse.
112. The Taskforce has a number of recommendations which seek to address these issues. One recommendation is that a costing exercise should be undertaken, reflecting that a push to increase the number of people in services must recognise the increased pressure this will put on these services and the needs that may flow from it. This would enable costing of a long-term sustainable system of care.

## **A trauma-informed response**

113. Witnesses also spoke about the importance of interactions with police officers, social workers, drug counsellors, sheriffs and prison officers, being trauma-informed to reflect the health issues of the person and the underlying causes of their drug use.
114. The Committee heard concerns that police officers are not provided with the necessary training to assess those with mental health issues to assess whether they should be taken to a police cell or require medical treatment. Police Scotland and the Crown Office told the Committee that they were looking to introduce a trauma-informed package for officers and criminal justice practitioners respectively.
115. Police Scotland indicated that their officers are now more trauma-informed and more aware of individual needs. However, they confirmed that there are no ‘rigid guidelines’ for officers, who need to make decisions based on their professional judgment. The Committee also heard that more solicitors and sheriffs are trauma-informed.
116. The Taskforce recommends that the Scottish Government works with justice partners to support the adoption of the Stigma Strategy, trauma informed and family inclusive practice and the adoption of distress-based interventions.

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<sup>i</sup> Please note that the drug consumption marker covers all arrests where drugs are a factor, which includes recreational use and drug supply.



## **Diversion from prosecution**

117. The Committee heard that prosecutors in Scotland have a wide range of disposals which range from a warning, a fine, a diversion, a fiscal work order or, in some cases, prosecution. They are able to select the option that will achieve the most appropriate outcome for the individual offence and the individual offender. It is then for the local authority to provide a support programme for that person.
118. Following the evidence session, the COPFS confirmed that in relation to the 1,000 accused persons offered diversion in 2020-21, 605 were completed or remain ongoing. They explained that there can be a number of reasons why a diversion is not completed. This might be the local authority's assessment that the individual is unsuitable, the person may be unwilling to engage with diversion and fail to participate or they may reject it as an option. The COPFS indicated that, as a prosecution service, it does not and cannot undertake continued monitoring of accused persons who have completed a diversion programme.
119. Witnesses indicated that there is influential evidence to suggest that public money is better spent on community-based remedies rather than reverting to prison sentences.
120. One issue is whether local authorities have sufficient resources to provide the diversion programmes that they would wish to in relation to offenders who are referred to them. Another issue raised is the removal of people who do not attend regularly and the unnecessary inflexibility of the programmes.
121. In her written evidence, Liz Aston of SIPR and Edinburgh Napier University, refers to the role of police officers in diverting people to drug services. At present, this can only be done at the point of arrest. In other parts of the UK there are examples of police-led diversion schemes, such as Thames Valley Police's Drug Diversion scheme, which provides direct access to drug services without admission of guilt and can be used for possession of any category of drug.
122. The Taskforce's Criminal Justice and the Law Subgroup is working on recommendations around diversion from prosecution and will report between July 2022 and December 2022.

## **Access to treatment**

123. The Committee heard that currently, only 35 per cent of the 60,000 people with drug problems are in treatment, whereas in England, more than 60 per cent of people with drug problems are in treatment.
124. Witnesses told the Committee that the implementation of the Medication-Assisted Treatments [MAT] standards<sup>21</sup>, which includes same-day prescription is key. These are evidence-based standards to enable the consistent delivery of safe, accessible, high-quality drug treatment across Scotland. The Scottish Government has set a deadline of next April (2022) to deliver the MAT standards. The Committee heard that these standards should also be implemented in prisons, as this is not currently available.

125. The Taskforce recommends that the implementation of MAT Standards must be scaled up at pace. To enable this the Taskforce recommends that formal standards and indicators are developed by Health Improvement Scotland by the end of 2021. The Scottish Government will have a vital role in supporting this roll out by ensuring that Chief Officers take accountability for delivery of the standards at local level. The Taskforce also supports the devolution of licensing for Heroin Assisted Treatment (HAT) premises to allow the single-office co-ordination of premises and prescriber licensing and the Scottish Government should support and promote a national roll out for HAT.

## **The prison service**

126. A key issue raised during our roundtable was the lack of support for those before, during and after their prison sentences, including putting in place the necessary support prior to the release of prisoners.
127. Witnesses described the impact on people of being imprisoned, the ease in which drugs can be accessed within the prison estate, the use of drugs as a coping mechanism, and the lack of provision in place to help people succeed upon release which can result in them returning to drug use.
128. In April 2020, the Taskforce recommended that adequate throughcare provision be made available to prisoners on liberation, including: access to a GP and continuity of Opiate Substitution Therapy (OST) provision, and that a Take-Home Naloxone (THN) supply be provided for all prisoners with a history of substance use on liberation, and their families.
129. More recently, the Taskforce recommended the reintroduction of throughcare support officers and consideration of funding of this service, an end to Friday liberations or in advance of a public holiday,<sup>ii</sup> and that alternatives to remand and imprisonment should be considered, which should include bail supervision and residential rehabilitation.

## **Law reform**

130. During our roundtable, the Committee heard views that the Misuse of Drugs Act 1971 should be reformed by the UK Government to reflect the different drugs now available and how they are consumed, and to improve practice in Scotland.
131. The Committee also heard views that it is not necessary to change the Act to enable the use of safe injection facilities. Some witnesses recommended that the

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ii Under the Prisoners (Control of Release) (Scotland) Bill reforms, where there is compelling evidence that suitable arrangements are required to address their reintegration needs and these cannot be addressed immediately upon release, the Scottish Ministers will have the discretion to release an offender up to two days in advance of their release date. In cases where a prisoner's release date falls on either a weekend or a public holiday, they will be released on the previous working day. If this is a Friday, the Scottish Prison Service has discretion to decide whether to bring forward release to either Wednesday or Thursday.

Scottish Government and others find ways to facilitate the use of safe consumption spaces as a drug death prevention intervention.

132. Other regulatory changes suggested include the regulation of pill presses, introducing a more informed way to test for the drugs that people are using, ensuring that diamorphine-assisted treatment is made available in the prison system, and looking to expand the use of drug treatment and testing orders<sup>22</sup> (DTTOs). There were conflicting views from witnesses on whether the regulation of pill presses would work, with a suggestion that alternatives to street drugs should be regulated and provided to avoid people seeking out illicit supplies.
133. The Taskforce recommends reform of the 1971 Act, as well as asking the Scottish Government to do more to maximise flexibility under the current legislation. It also recommends a review of the use of DTTOs. In September 2021, it published a report on drug law reform<sup>23</sup>, which covers this issue in detail.
134. Following the evidence session, the Lord Advocate told the Committee that she would consider a “precise” and “specific” proposal for a drugs consumption room in Scotland if this was presented to her.

## Use of Naloxone

135. The Committee heard a lot of support for the use of Naloxone nasal spray by those in the criminal justice sector, and more widely, to revive people who have overdosed on drugs. Police Scotland indicated that there was little concern about the police use of Naloxone, with the exception of the Scottish Police Federation’s (SPF) views.
136. Following the evidence session, the SPF provided a written submission on this point. It states that “The SPF considers that Scotland’s drugs death crisis is a tragedy that deserves much more focus, effort and attention than “sticking plaster” approaches such as issuing police with Naloxone Spray”. The SPF believes that “the solution to tackling the drugs deaths crisis is not this”. The SPF believes that police officers have a “role in the response to drugs misuse but that role is not a medical one”
137. The pilot of police officers volunteering to carry and administer Naloxone is currently subject to academic evaluation. Following the evidence session, Police Scotland confirmed that the Naloxone Test of Change programme has concluded, and an independent evaluation of the process is being undertaken by the Public Health Surveillance Sub-Group of the Drugs Death Task Force (DDTF) and the Scottish Institute of Policing Research. It is expected to be completed in early 2022. Anonymised data from the project will be available for use in academic papers, conference presentations and presentations to policy makers.
138. Police Scotland’s drug harm reduction team will consider any learning from the evaluation and make recommendations to the Chief Constable.

## Effectiveness of the Proceeds of Crime Act 2002

139. Prosecutors can proceed to recover criminal profits only where a prosecution results in a successful conviction and where there are assets to be recovered.
140. There is a civil recovery system, dealt with by the Civil Recovery Unit (CRU), which acts on behalf of the Scottish Government. The aim of the CRU is to use civil proceedings to disrupt crime and to make Scotland a hostile environment for criminals. It pursues that aim by investigating and seeking to recover cash and assets which have been obtained through crime. The CRU is a multi-disciplinary team of around 24 members comprising financial investigators, forensic accountants and lawyers. It is part of the Crown Office and Procurator Fiscal Service (COPFS) but exercises its functions separately and independently. Operational responsibility for the CRU lies with the Lord Advocate and Solicitor General in their capacity as Scottish Ministers.

## Serious crime prevention orders

141. The Committee also heard that consideration should be given to changing the regulations on how drugs are dealt with, such as drug trafficking and supply, as the current approach is not working.
142. Following the evidence session, Police Scotland provided further information on whether it has sufficient resources to effectively monitor people who are released under a serious crime prevention order (SCPO).<sup>iii</sup>
143. Police Scotland confirmed that there are currently 71 SCPOs within the scope of its responsibility, The SCPO Subjects are managed by Local Policing Divisions. They are supported by the National Specialist Crime Division, SCPO Unit at the Scottish Crime Campus, which co-ordinates the application for new Orders as well as the process for SCPO subjects entering the community.

## Conclusions and Recommendations

144. As stated above, this short summary report from our roundtable of 27 October 2021 is not intended to replace what would have been produced by an exhaustive and detailed inquiry. Neither is this report intended to be an alternative for the detailed work of the Scottish Drug Deaths Taskforce and the recommendations it has made to date, as well as those made by academics and other experts.

145. **Recommendation:** We do believe, however, that faster progress is needed in this area, which reflects the seriousness of the situation. Some of the recommendations made by the Taskforce date back to April 2020 and it is not

<sup>iii</sup> An SCPO is a civil order which is made in order to disrupt criminal activity. It does so by imposing binding conditions on individuals or organisations, in the hope of preventing them from facilitating serious crime.

obvious to this Committee that these are being implemented quickly or at all. **We would like to see much faster progress being made on implementing the recommendations of the Taskforce.**

146. **Conclusion:** The record level of drug deaths in Scotland, the personal tragedy behind each death and the huge impact of drug misuse on the criminal justice system is one of *the* defining challenges in this parliamentary session.
147. **Conclusion:** In addition to wanting to see rapid progress with the recommendations already made by the Taskforce and the completion of other parts of its work, the Committee believes that certain other measures are needed to be taken forward in the short and longer-term. These are outlined below.

148. **Recommendation:** In our view, from the evidence heard, there appears to be a service gap between what is currently being provided to help those with a drug problem and what is needed. This gap needs to be addressed. As such, we believe that rapid progress needs to be made with:
- The recommendation of the Taskforce that there should be same day access to Opiate Substitution Therapy alongside the provision of Take-Home Naloxone supply.
  - A further roll out of trauma-informed training across the criminal justice sector where this has not already been provided.
  - Consideration given to providing additional resources for local authority schemes aimed at diversion from prosecution and greater flexibility and understanding shown to the participants, in the administration of those schemes.
  - Consideration of whether there is scope to replicate the kinds of schemes in Scotland that are in place elsewhere in the UK which provide for diversion of prosecution not only at the point of arrest. The concept of diversion will only work if there are appropriate schemes to divert people to and the Committee would like to see evidence of what these schemes are. Therefore, the Committee invites local authorities and others to confirm the resources in place to provide these schemes.

149. **Recommendation:** In terms of our prisons, a separate report by the Committee has made a series of recommendations on how we can tackle drug misuse in these institutions. We would add the following to these recommendations:
- Throughcare officers and the throughcare system has to be reinstated as soon as possible.
  - Consideration needs to be given to improving support prior to release in terms of access to suitable housing, health care, and addiction support if required.

- Consideration needs to be given to changing legislation governing Friday liberations as these have shown to be situations where an ex-offender stands a much greater risk of reoffending due to the lack of support available over a weekend.
- Consideration given to a greater use of alternatives to custody, such as bail supervision and residential rehabilitation, with adequate funds in place for these to work.

150. **Recommendation:** In terms of reform of the laws that underpin the misuse of drugs and the criminal justice system, we note the views of the Taskforce that changes are needed. We do believe that consideration needs to be given to making changes to the law in the following areas:

- The regulation of pill presses;
- The expansion of the use of Drug Treatment and Testing Orders.

151. **Recommendation:** We also note the views of the current Lord Advocate that she would give consideration if a detailed case was made to her on the use of safe consumption rooms. We would like to understand what a 'detailed case' would contain and would urge the Scottish Government and the Taskforce to look into this as a matter of urgency and provide us with the details of how this might work in practice. This would be with a view to the establishment of a pilot safe consumption room.

152. **Conclusion:** The Committee notes the views of the Scottish Police Federation about the use of Naloxone by police officers but considers that, with appropriate safeguards and training, it should be possible for this to continue to be used by officers on a voluntary basis who may often be the first person called to an incident. We look forward to the speedy completion of the external evaluation of the pilot and would be minded to support the administration of Naloxone by those across the criminal justice system (police, prison and fire and rescue officers), and its use more widely.

153. **Recommendation:** The Committee would also appreciate further information and details on the work of the Civil Recovery Unit to determine what success it is having in seizing assets relative to the value of the sums of money that can be made by criminals, particularly serious and organised crime groups through the supply of drugs.

154. **Recommendation:** Finally, this Committee recognises that reform of the criminal justice system is just one component of the efforts to tackle Scotland's record drug deaths. Health measures and wider social justice and anti-poverty efforts

are equally required. As this Committee is recommending that faster progress is required to tackle the misuse of drugs, we intend to approach the members of the Health, Social Care and Sport Committee and the Social Justice and Social Security Committee with a view to holding a joint, public meeting in early 2022 with the relevant Ministers and the senior members of the Taskforce to scrutinise the progress being made in delivering the Taskforce recommendations and the remainder of its work.

# VIOLENCE AGAINST WOMEN AND GIRLS

## Introduction

155. On 22 September 2021, the Committee held a roundtable evidence session on domestic abuse, gendered-violence and sexual offences. The Committee took oral <sup>24</sup> and written evidence <sup>25</sup> from a number of stakeholders. <sup>26</sup>
156. Following that evidence session, the Committee held informal meetings <sup>27</sup> on 24 November to hear from survivors of these crimes about their personal experiences of the criminal justice system, as well as practitioners. **We are immensely grateful to all who took the time to speak with us. A note of the issues discussed with them is available online.**
157. There has been much work done by the Scottish Government and others to try to improve the experience of survivors of domestic abuse, gendered-violence and sexual offences in the criminal justice system, particularly for crimes of violence against women and girls.
158. In 2014, the Scottish Government and the Convention of Scottish Local Authorities (COSLA) published Equally Safe: Scotland's Strategy to Eradicate Violence against Women <sup>28</sup>. Additionally, the Victims and Witnesses (Scotland) Act 2014 <sup>29</sup>, the Domestic Abuse (Scotland) Act 2018 <sup>30</sup>, and the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 <sup>31</sup> were introduced. In March 2021, the Final Report from the Lord Justice Clerk's Review Group: Improving the Management of Sexual Offence Cases <sup>32</sup>, was published, setting out detailed proposals to improve the system.
159. The Committee considered whether these measures have improved the experience of victims and witnesses, whether there are any unintended consequences, and what more can be done to improve the criminal justice system for victims of these crimes.
160. What is clear is that despite the best efforts of all concerned and no end of reports and reviews, these crimes are on the increase. According to the Scottish Government, sexual crimes were 12% higher in October 2021 compared to October 2020 (increasing from 1,093 to 1,221 crimes), and 8% higher compared to October 2019 (increasing from 1,134 to 1,221 crimes).
161. Sexual assaults increased by 29% compared to October 2020 (from 336 to 434 crimes). Rape and attempted rape decreased by 4% compared to October 2020 (from 215 to 207 crimes), and increased by 2% compared to October 2019 (from 202 to 207 crimes).
162. The rise in "other sexual crimes" since 2019 (up 6%) was driven by crimes including communicating indecently, coercing a person into being present/looking at sexual activity, disclosure of intimate images and voyeurism.
163. **These summary reports are not intended to be a replacement for an exhaustive and detailed inquiry. They present some of the issues that were**



**identified during our roundtables as key, and outline some actions that are needed in the short and longer-terms.**

## Tackling the causes of violence against women and girls

164. The Committee considered the causes of violence against women and girls, why it has increased, and what can be done to address the causes.
165. Dr Marsha Scott, Scottish Women’s Aid, told the Committee that women’s inequality is the cause and consequence of all the forms of gender-based violence against women and girls. Dr Scott stated that, although there have been some important process changes and various measures introduced, there has been little impact on outcomes for women. Dr Scott said that to prevent violence against women and girls, we need to enable them to leave abusive relationships, explaining that:
- ” “However, unless we get serious about dealing with unpaid work, the lack of childcare, the pay gap, women’s homelessness as a result of domestic abuse and all the things that enable violence against women and girls, the fact remains that, although we will continue to be better at responding to it when we see it, we will have done nothing about preventing it. .”
166. These issues were also raised during the informal meetings we held with survivors and frontline support workers. The Committee heard that women and girls must be supported to leave abusive relationships. They can face financial hardship, especially if they become single parents. They want to be able to keep working to support their children and there needs to be support measures put in place to enable them to do so.
167. Rabia Roshan of Amina—the Muslim Women’s Resource Centre, told the Committee that these are the same causes for violence against women and girls in black and minority ethnic communities, but there are also cultural and religious reasons, which make it difficult to tackle. Ms Roshan explained that the provision of sex education and understanding consent need to be improved, and described some of the work Amina does, telling the Committee that:
- ” “A lot of our work is about breaking down barriers, separating the two and challenging the misconceptions. As with prevention work in schools and challenging young people’s misconceptions.”
168. Detective Chief Superintendent Sam Faulds, explained the collaborative work between Police Scotland and others regarding the policing response to reports of rape and serious sexual crime. DCS Faulds welcomed the increase in the reporting of both recent and non-recent sexual crimes, as well as the increase in detection rates for the police. However, she added that there is still room for improvement, saying that:
- ” “On the policing response, it is really frustrating for us that we are never getting to the prevention stage. We need much earlier intervention through education and so on before reaching that stage.”

169. Ronnie Renucci QC, Faculty of Advocates, echoed this view, telling the Committee that:

” “There has been a sea change in the way that such cases are prosecuted when they get to court, as well as in the way that the police approach them proactively, certainly in relation to historical domestic violence and domestic sexual crimes.”

170. During the informal meetings, the Committee heard that there is a need to educate young people about domestic violence and to tackle intergenerational violence. A multi-agency approach, with robust oversight, was recommended.

## **Court delays**

171. A key issue raised by a number of witnesses is the impact of COVID restrictions in further delaying criminal trials for sexual offences and domestic abuse.

172. Moira Price, Crown Office and Procurator Fiscal Service, told the Committee that the ability of the criminal justice system to progress criminal trials was significantly affected due to restrictions. Ms Price confirmed that there are currently 40,543 cases awaiting trial in the summary courts, which is a 132 per cent increase on the position immediately prior to the pandemic. This is despite priority being given to those cases involving domestic abuse, sexual offending and child witnesses.

173. Sandy Brindley, Rape Crisis Scotland, explained that survivors of sexual crimes were unable to safely access support during the pandemic, describing people phoning for help from cupboards or their cars. Ms Brindley confirmed that the biggest impact of COVID restrictions had been the uncertainty caused by court delays. However, she stressed that this only exacerbated an existing situation. Ms Brindley said that:

” “Even before Covid, we had people waiting for two years or more for their case to come to court, which caused huge distress. The delays are much worse now because of Covid.”

174. Dr Marsha Scott told the Committee that the lockdown period was a difficult and dangerous time for victims of domestic abuse and that the significant delays to court proceedings caused women and girls to feel there was nowhere to turn for justice.

175. The work of the Scottish Government, court service, Faculty of Advocates and the Crown Office and Procurator Fiscal Service to address the backlog of cases was commended by Ms Brindley. However, she stated that the impact of the uncertainty is causing huge distress and anxiety to survivors who “wake up every day thinking about what will happen”.

## **Improving the Management of Sexual Offence Cases**

176. In March 2021, the Lord Justice Clerk, Lady Dorrian, published the findings of her

review to develop proposals for an improved system to deal with serious sexual offence cases.[1] It focussed on those issues most relevant to the process of managing these cases within the Scottish Court system. Many of the areas recommended for improvement could be applied to both the prosecution of sexual offences and domestic abuse cases[1] Improving the Management of Sexual Offence Cases report.

## Pre-recording of the Evidence and Case Management

177. Lady Dorrian concluded that the presentation of evidence by a complainer attending court many months, even years, after an alleged incident, is not conducive to the presentation of best evidence. Her report states that:

” “Police interviews, written statements, attending court and giving live evidence in chief and in cross-examination were labour and time intensive, contributing to delay and the negative experience of complainers.”

178. Lady Dorrian recommends the increased use of commissions for taking evidence, with Ground Rules Hearings and improved judicial management, be implemented “as soon as possible”.

179. Sandy Brindley told the Committee that taking evidence on commission could have been a way to “mitigate some of the distress caused by the uncertainty of the pandemic”. However, this was not done due to a lack of availability of commissions. Ms Brindley said that:

” “... some of the complainers we are supporting are being told that it would be quicker for them to give evidence in a live trial than to hold off for a commission. That is entirely unsatisfactory.”

180. During the informal meetings, the Committee heard about police statements about serious sexual assaults were taken from women who were in a traumatised state, that some women were not made aware of their entitlement to representation or support, and from some women that they were questioned for hours at a time without being offered a break. In some cases, the women were not allowed to see their statements to verify their accuracy until the day of the trial, which could be a number of years later. It was then too late to amend any errors.

181. The women survivors who spoke to the Committee supported the provision of evidence by commission, which they recommended should be offered to all survivors of sexual offences.

182. The provision of evidence by commission is issue is covered in greater detail in the section of this report on victims’ rights and victim support.

## Providing a trauma-informed service

183. Lady Dorrian recommends that a number of steps be taken to ensure that the adoption of trauma-informed practices is a central way in which the experience of complainers can be improved. This includes one consistent trauma-informed source of contact from the outset and at relevant key stages of the process, revised procedures, trauma-informed training for all personnel in dealing with vulnerable

witnesses, which includes examination techniques, and accredited courses approved by the Lord Justice General.

184. Lady Dorrian also recommends that practical arrangements for the making of statements or the giving of evidence should also be approved in the interest of the comfort and safety of complainers.
185. Moira Price explained to the Committee that the Crown Office takes a trauma-informed approach and seeks anonymous feedback from victims and witnesses, to learn lessons and improve the service they provide.
186. Rabia Roshan told the Committee that the criminal justice system needs to improve as it is letting down victims of violence and abuse, saying that:
- ” “We see that when we speak to survivors on the front line and hear of the horrible experiences that they go through. After having had abuse perpetrated against them, they think that they can have full faith in the system, but they are really let down. In the aftermath of abuse, that is a retraumatising experience for them.”
187. Sandy Brindley described the current criminal justice system’s management of serious sexual assault cases as, “the antithesis of a trauma-informed `approach”.
188. During the informal meetings the Committee heard experiences where poor practice, a lack of communication, empathy, consideration and any explanation of the criminal justice process, made for an extremely distressing and retraumatising experience for survivors of sexual assaults and domestic abuse.
189. Some examples of poor practice include:
- a statement being taken by a sole male, senior officer for a complaint of serious sexual assault;
  - lack of protection provided for victims and witnesses attending court,
  - no challenge to unacceptable behaviour and language by legal representatives within courts,
  - no throughcare or aftercare throughout the trial and beyond, and;
  - being told the verdict over the phone at which time they were not given any information about where to access support.

## **Independent legal representation**

190. Lady Dorrian recommends that independent legal representation (ILR) should be made available to complainers, with appropriate public funding, in connection with section 275 applications<sup>33</sup> and any appeals therefrom. Complainers should have a right to appeal the decision in terms of section 74(2A)(b) of the Criminal Procedure (Scotland) Act 1995. Representation at any review further to limit the permissible evidence under section 275(9), should be at the judge’s discretion.

191. Dr Marsha Scott referred to a lack of “appropriate, affordable and geographically accessible legal services” for domestic abuse cases. Dr Scott told the Committee that:
- ” ... victims tell us that some of their negative experiences after a conviction had to do with the fact that they had poor or non-existent legal representation or could not afford good legal services”.
192. During the informal meetings, the Committee heard about the lack of fairness in the criminal justice system. There is a defence lawyer appointed to represent the accused, there is an advocate appointed to put the case for the Crown, but there is no-one appointed to provide legal advice to victims. We heard that this gap in the system needs to be rectified.

## Safety and wellbeing

193. The Committee heard concerns about the lack of consideration given to the safety and wellbeing of victims of sexual assaults and domestic abuse in the prosecution of these crimes.
194. Dr Marsha Scott raised a concern about “the extent to which convicted domestic abuse perpetrators are given community sentences”, and recommended more use of electronic monitoring to ensure the safety of women and children.
195. During the informal meetings, the Committee heard of practices which put victims in danger and made the criminal justice process a terrifying experience. This included coming face-to-face with the accused and their family in the court building, agreed special measures not being in place at their arrival at court, and not being informed when the perpetrator was released from prison.
196. The Committee also heard that the police service does not take stalking and harassing behaviour seriously enough, despite it being known to lead to worse behaviour, with the onus being incorrectly put on the victim to try to avoid the person.

## A national, specialist sexual offences court

197. Lady Dorrian recommends that a national, specialist sexual offences court be created. Its procedures should be based on current High Court practice and revised to meet appropriate standards of trauma-informed practice. It would have sentencing powers of up to 10 years imprisonment.
198. Ronnie Renucci QC cautioned the Committee that the creation of a specialist court could have the unintended consequence of downgrading serious sexual offences by creating a two-tier system. Mr Renucci reasoned that if all cases of rape are prosecuted in the High Court, “they are all regarded with the same degree of seriousness”. However, if some cases are prosecuted in a lower court with inferior sentencing powers, “it cannot be anything other than a downgrading”.
199. Mr Renucci agreed that specialism is required in the prosecution of these crimes,

but suggested that could be achieved through, “judges and from practitioners in the Crown and the defence being properly trained”. Mr Renucci said:

” “However, that specialism can come from I think that a ticketing system is used in England, under which people must be trained and must have passed a test or met criteria to take such cases. That can be done, but the proper forum for any serious sexual offence is the High Court.”

200. Sandy Brindley agreed with Mr Renucci’s view that a hierarchical approach was not appropriate for the prosecution of serious sexual assaults but stated that the “way to address such concerns is to remove the 10-year sentencing limit that is proposed for the new court”. Ms Brindley added that much could be learned from the domestic abuse courts, in terms of approach.
201. Professor James Chalmers, regius professor of law at the University of Glasgow, agreed that the 10-year limit sentencing powers of the specialist court was not necessary. Professor Chalmers advised that to resolve this issue, “The [specialist] court would be presided over by High Court judges or by sheriffs who were considered appropriately qualified to sit in that court”.
202. Dr Marsha Scott spoke about the success of domestic abuse courts where, prior to the COVID pandemic, cases came to court in “about eight to ten weeks”. Dr Scott indicated that in the domestic abuse court legal professionals “had special training to prosecute domestic abuse cases and the sheriffs and judges had special training to understand the dynamics of domestic abuse”. She recommended this model, stating that it might also be a way to stop perpetrators from using the criminal justice system to prevent justice.

## **Judge only trials**

203. In her report, Lady Dorrian referred to evidence from some judges where they found it difficult to understand the rationale for the acquittal verdict returned. This was particularly acute in the case of single complainer indictments, and even in cases with ample evidence of high quality. Lady Dorrian recommends that:

” “Consideration should be given to developing a time-limited pilot of single judge rape trials to ascertain their effectiveness and how they are perceived by complainers, accused and lawyers, and to enable the issues to be assessed in a practical rather than a theoretical way. How such a pilot would be implemented, the cases and circumstances to which it would apply to and such other important matters should form part of that further consideration.”
204. The Committee heard conflicting views on whether judge only trials should be introduced for the prosecution of sexual offence cases. However, there was a consensus that criminal justice system personnel should receive trauma-informed training.
205. Sandy Brindley told the Committee that she was concerned about jury attitudes influencing their decisions in rape cases and that decisions are not based on evidence. Ms Brindley stated that one of the main reasons for low conviction rates is that no matter how much evidence there is: “Juries simply will not convict.” She stated that there needs to be meaningful engagement with the question of why

juries are so reluctant to convict in rape cases.

206. Ms Brindley recommended that the Scottish Government and the Scottish Parliament consider models used in Europe where there are judge only trials in operation. This should include systems where there is a judge with lay assessors. This might provide an alternative system as:
- ” “That means still having some form of citizen participation but ensuring that those citizens have had some training in how to assess evidence.”
207. Professor Michele Burman, University of Glasgow, described the use of judge only trials in South Africa to prosecute cases of rape and serious sexual assault. Professor Burman indicated that these trials have two community representatives present to provide informal advice to the judge.
208. Ronnie Renucci QC told the Committee he is not in favour of judge only trials. Mr Renucci questioned why entrusting all such important decisions to a very small group of judges is viewed as a preferable system. In relation to low conviction rates, he stated that he was “unaware of any research that has been conducted that shows that that would change the figures”.
209. Professor Chalmers referred to the anecdotal evidence from some of the judges who gave evidence to Lady Dorrian’s review, where they found it difficult to understand the rationale for some verdicts returned by juries.
210. During the informal meetings with survivors of sexual offences, the Committee heard about the experiences some women had of a jury trial and the impact it had had on them. Concerns were raised about the inbuilt prejudices and lack of knowledge of jury members, as well as the robustness of the screening process. For example, a juror may have been acquitted of a sexual crime.
211. There was support for judge led trials, and also some support for specialist juries, who are experts that can understand the evidence and come to an informed view. The Committee heard an example of a jury decision, where the Moorov doctrine<sup>iv</sup> was applied where there were two complainers, which meant that despite the jury delivering a verdict of guilty for rape for one case, the person was acquitted of all charges, as he was found not guilty for the other case. Concerns were expressed to the Committee that someone can be found guilty of a crime as serious as rape, and then acquitted. It was also unclear whether the jury were made aware of the consequences of returning these verdicts.
212. Another issue raised is the use of inappropriate language and unprofessional actions by defence solicitors and advocates, which the women felt were designed to intimidate or upset them. Another issue was the use of false statements used for the sole purpose of influencing the jury, that were left unchallenged. The process appeared to some to be ‘a game’ for some legal representatives.

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<sup>iv</sup> Scottish Law Commission - “The Moorov doctrine is a mechanism which applies where a person is accused of two or more separate offences, connected in time and circumstances. In such a case, where each of the offences charged is spoken to by a single credible witness, that evidence may corroborate, and be corroborated by, the other single witnesses, so as to enable the conviction of the accused on all the charges. In order for the doctrine to operate, each of the offences must be competently charged.”

213. We also heard that civil cases allow the survivor to choose whether to have a sheriff or a jury trial. Some of the evidence we heard stated that this is something that should be provided for criminal cases.

## **Cultural issues**

214. The Committee heard evidence that suggests there are cultural issues which need to be addressed within the criminal justice system. During the informal meetings, we heard of instances where women reported cases of domestic abuse multiple times before any action was taken by the police service, and that women still face difficulties in being believed by officers.
215. One of the reasons given for this was misogyny within the police service, which prevents action being taken and people being held to account for their actions. We heard there is an issue with under-reporting and under-recording incidents of rape and sexual assault within the police service. We also heard of a lack of oversight by the Scottish Police Authority and the Police Investigations and Review Commissioner in addressing these issues, as well as the need for confidential process for whistle-blowers. Another reason given is that domestic abuse incidents are still treated as a dispute between two people, rather than an abusive relationship.
216. There is an issue with the treatment of victims in the courtroom by the defence solicitors and advocates. The use of inappropriate language was so damaging in one case that it triggered the person and hindered their recovery. In another case the behaviour of the defence team was so traumatising that the person told the Committee that they would not report an assault in the future. The Committee heard that when these behaviours are not challenged, it points to a cultural issue within the criminal justice system.

## **Not proven verdict**

217. The Committee heard conflicting views on whether the not proven verdict should be abolished.
218. In its written evidence, the Faculty of Advocates states that it, “opposes the removal of the not proven verdict”. In evidence to the Committee, Ronnie Renucci QC explained that one of the main reasons for this opposition is that Scotland has a unique jury system where there are 15 jurors, but all that is required is a majority of one. Mr Renucci stated that if the not proven verdict were to be removed that, “some form of safeguard must put in place—some change must be made”. The question would then be what the change in the majority should be.
219. Professor James Chalmers told the Committee that the not proven verdict should be abolished. He agreed with Mr Renucci’s assessment that this would require a change to the majority structure of juries. However, he said he “would not necessarily suggest adopting the English approach”.<sup>v</sup> He told the Committee that:

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<sup>v</sup> In England, the verdict must be unanimous unless the judge directs that they will accept a



” “A system that convicts people of very serious criminal offences by a vote of one—a majority of 8:7—is not easily justifiable”.

220. Sandy Brindley also recommends the abolition of the not proven verdict. However, Ms Brindley did not agree that the removal of the not proven verdict would mean there is a need for a change to the jury majority. She stated that she would be “very concerned about such a change”, as people “almost never see unanimous jury verdicts in rape cases, even when there is overwhelming evidence”.

## Accessing support

221. Section 2 of the Victims and Witnesses (Scotland) Act 2014<sup>34</sup> requires the Scottish Ministers, Police Scotland, the Crown Office and Procurator Fiscal Service, the Scottish Courts and Tribunals Service, the Scottish Prison Service and the Parole Board for Scotland to set and publish standards of service for victims and witnesses.
222. The Act outlines the following general principles that these organisations must have regard to when dealing with victims and witnesses:
- (a) that a victim or witness should be able to obtain information about what is happening in the investigation or proceedings;
  - (b) that the safety of a victim or witness should be ensured during and after the investigation and proceedings
  - (c) that a victim or witness should have access to appropriate support during and after the investigation and proceedings, and
  - (d) that, in so far as it would be appropriate to do so, a victim or witness should be able to participate effectively in the investigation and proceedings.
223. The Committee heard numerous examples during the informal meetings where these general principles had not been applied. This included police statements being taken without the person being made aware of their statutory right to appropriate support, lack of contact, engagement and information from police officers and advocates which meant they did not understand the criminal justice process, and no measures being put in place to ensure their safety before, during and after trials.

## Conclusions and recommendations

224. As stated above, this short summary report from our roundtable of 22 September and our informal meeting with survivors of sexual assault, domestic abuse and bullying on 24 November, is not intended to replace what would have been produced by an exhaustive and detailed inquiry.

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10:2 majority, for a verdict of guilty or not guilty.

225. **Conclusion:** We do believe, however, that swifter consideration of longer-term reforms is needed in this area and that change is needed now to some aspects of how the criminal justice system engages with survivors of these heinous crimes.
226. **Conclusion:** It is not acceptable to us that we currently have a criminal justice system that is able to re-traumatise women and girls. Lady Dorrian's comprehensive report contains recommendations on a number of key issues, all of which we accept cannot be implemented right away. We appreciate that certain issues will require legislative changes, which take some time to implement.
227. **Conclusion:** However, those recommendations aimed at improving the procedures, practices and culture of criminal justice organisations can and, should be implemented without delay. Many of these recommendations can be applied to the prosecution of domestic abuse, as well as sexual assault cases. The report was published ten months ago. We do not yet see any sense of urgency for the implementation of these particular recommendations.

228. **Recommendation:** The Committee recommends that the Scottish Government and the organisations within the criminal justice sector <sup>vi</sup>progress implementing Lady Dorrian's the recommendations that are aimed at improving procedure, practice and culture as a matter of urgency.

229. **Recommendation:** Some of the areas where we would like to see faster progress include, but are not restricted to, the following:
- Improved communication with complainers, including the provision of a single trauma-informed source of contact from the reporting of an alleged sexual offence until the conclusion of proceedings.
  - The expansion of advocacy support services, in so far as possible, to ensure greater support is provided to complainers throughout the process.
  - Trauma-informed training implemented for all personnel who deal with traumatised and vulnerable people.
  - The provision of visual recording of police interviews with complainers in sexual offence cases and used as evidence in court.
  - The provision of evidence on commission to all complainers of sexual offences.
  - Ground Rules Hearings (GRHs) introduced for any occasion when a complainer is to give evidence on commission or at trial. These should ensure that witnesses are questioned in a calm, measured and respectful way to avoid re-traumatisation.

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<sup>vi</sup> Police Scotland, the Scottish Courts and Tribunal Service, the Crown Office and Procurator Fiscal Service, the Parole Board for Scotland and the Scottish Prison Service.

- Consideration of the right of complainers to independent legal representation. This is a gap in the system which needs urgently addressed.
- Court measures adopted to ensure the comfort and safety of victims and witnesses.
- Steps taken to enhance the quality of jury involvement.

230. **Recommendation:** The Committee asks the Scottish Government, Police Scotland, the Crown Office and Procurator Fiscal Service, the Scottish Courts and Tribunals Service, the Faculty of Advocates, and the Scottish Courts and Tribunals Service to provide details of the progress made to date on implementing Lady Dorrian's recommendations.

231. **Recommendation:** The Committee will then seek a further progress update from these organisations in six months' time and will want to see significant progress being made during that time.

232. **Recommendation:** The Committee asks the Scottish Government for an update on how it is co-ordinating measures across relevant portfolios to identify and address the causes of violence against women and girls.

233. **Conclusion:** The Committee appreciates the collaborative work undertaken by the criminal justice sector to address court delays. Delays were experienced prior to COVID restrictions, which have exacerbated the situation.

234. **Recommendation:** The Committee asks the Scottish Government, the Crown Office and Procurator Fiscal Service and the Scottish Courts and Tribunal Service for an update on the actions being taken to tackle the delays to prosecution of sexual offences and domestic abuse cases.

235. **Recommendation:** The Committee asks the Scottish Government to review the implementation of the standards of service for victims and witnesses by Police Scotland, the Crown Office and Procurator Fiscal Service, the Scottish Courts and Tribunals Service, the Scottish Prison Service and the Parole Board for Scotland. This is to determine whether these organisations are meeting their statutory obligations outlined in Section 2 of the Victims and Witnesses (Scotland) Act 2014<sup>35</sup>. The review should be informed by survivors of sexual assault and domestic abuse, as well as practitioners who provide support.

236. **Recommendation:** The Committee agrees that there should not be a two-tier system for the prosecution of sexual offences. The Committee does not want the crime of rape or other sexual offences to be seen as somehow downgraded. The Committee asks the Scottish Government to consider whether a specialist sexual offences court, if one were to be established, could have unlimited sentencing powers and what legislative changes would be required.

237. **Conclusion:** There are clearly strong and conflicting views on the proposals to abolish the not proven verdict and to introduce judge-only trials for the prosecution of sexual assault cases. These issues require greater consideration before the Committee can come to a view.

238. **Recommendation:** The Committee asks the Scottish Government to confirm what its plans are to progress both of these issues and to provide a timescale for doing so.

239. **Conclusion:** We heard views that the application of the Moorov doctrine<sup>vii</sup> in cases of rape and sexual assault may, in some circumstances, result in an overall acquittal where the accused was found guilty of rape or sexual assault on some, but not all, of the charges faced

240. **Recommendation:** The Committee believes that it is important that all involved, particular the accuser, are informed about the use of the Moorov doctrine when this occurs and, as a minimum requirement, we recommend that sheriffs and judges should ensure that juries understand the consequences of applying the doctrine and should explain to complainers why a jury and judge reached a particular outcome in these situations.

241. **Recommendation:** The Committee asks Police Scotland, the Crown Office and Procurator Fiscal Service, the Scottish Courts and Tribunals Service, and the Lord President, Lord Carloway, for details of how they address unacceptable behaviour and language and ensure that their workforces are meeting the needs of vulnerable and traumatised people. This should include: details of any codes of practice and ethics and how these are enforced; transparent complaints processes; and how recruitment processes have been adapted to attract a more diverse workforce that meets the culture, skills and principles of the organisations.

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vii Scottish Law Commission - "The Moorov doctrine is a mechanism which applies where a person is accused of two or more separate offences, connected in time and circumstances. In such a case, where each of the offences charged is spoken to by a single credible witness, that evidence may corroborate, and be corroborated by, the other single witnesses, so as to enable the conviction of the accused on all the charges. In order for the doctrine to operate, each of the offences must be competently charged."

# VICTIMS' RIGHTS AND VICTIM SUPPORT

## Introduction

242. On 22 September 2021, the Committee held a roundtable evidence session on the issue of victim's rights and victim support schemes. The Committee took oral<sup>36</sup> and written evidence<sup>37</sup> from a number of stakeholders.<sup>38</sup>
243. The Scottish Government has introduced legislation<sup>39</sup> to improve the experience of victims and witnesses in the civil and criminal justice systems, to support them to participate fully and in the most appropriate way for them and to keep them informed throughout the process.
244. The Committee considered the impact of these measures and how they were being implemented, whether there were any unintended consequences, and what more could be done to improve the service provided to victims and witnesses of crimes.

## The Victim Notification Scheme

245. The Crown Office and Procurator Fiscal Service (COPFS) issues the application packs and confirms whether a victim qualifies to be part of the Victim Notification Scheme (VNS), the Scottish Prison Service manages the Scheme, and Parole Scotland is responsible for any cases involving parole.
246. Victims have a right, in certain circumstances, to request information under the Victim Notification Scheme.<sup>40</sup> If an offender has been sentenced to 18 months or more in prison, individuals can choose whether or not to register with the Victim Notification Scheme. The scheme allows victims to receive information from the Scottish Prison Service about an offender's release, date of death within prison, transfer outwith Scotland, eligibility for temporary release, and escape and return to prison. If the offender has been sentenced to less than 18 months in prison, victims can write to the Scottish Prison Service to ask for information about when the offender is to be released, or in the event that the offender escapes.
247. Through the Victim Notification Scheme, victims can also provide views to the Scottish Prison Service, the Parole Board for Scotland or Scottish Ministers when the offender is being considered for temporary release, release on licence or on Home Detention Curfew. Where a convicted person is serving a sentence of life imprisonment and becomes eligible for release on licence, victims also have the right to make oral and written representations to the Parole Board. All other representations through the Victim Notification Scheme to the Parole Board for Scotland, the Scottish Prison Service or Scottish Ministers must be in written form.
248. Victim Support Scotland (VSS) described the scheme as "not fit for purpose", as it does not deal with victims in a trauma-informed way. It recommended that the Scottish Government prioritise a review of the Scheme. Witnesses described the current processes and highlighted improvements that could be made to the following administrative aspects of the Scheme.

## Registration

249. The Committee heard that victims of crimes are currently only provided one opportunity to sign up to the Scheme. This is often at the time when they are experiencing trauma, for example, at court immediately after the sentence has been handed down. Witnesses stated that there needs to be more flexibility in when people can register for the Scheme and they need to be provided with more information about what signing up to the Scheme entails.

## Updates on prisoners

250. When they sign up to the Scheme, people should be able to choose how they are to be kept updated. For example, by email or phone call. They should receive regular communication, especially about prisoners who are serving long sentences. More regular communication from the Scottish Prison Service will avoid the person receiving an unexpected letter about the parole or release of a prisoner and will also ensure that address details are kept up to date.

## Notification of a prisoner's release

251. Kate Wallace, from Victim Support Scotland, told the Committee that, "All that people are entitled to is to know that the perpetrator has been released". She added that notifications are sent by letter which can arrive without prior warning or the offer of support. When a person receives a letter on a Friday afternoon there is often no-one available for them to speak to until the following Monday. This process causes unnecessary stress and anxiety to victims.

252. In its written evidence, the Parole Board for Scotland said that, "Sudden notification that a prisoner is being considered for release, often many years after any previous contact from the Victim Notification Scheme (VNS), can result in significant re-traumatisation." They added that victims do not receive any information about how the prisoner has conducted themselves in prison, what rehabilitation activity they have undertaken or where they are being held.

## Parole Board hearings

253. The amendments to the statutory Parole Board Rules 2021<sup>41</sup> came into force on 1 March 2021. The Board is currently working with third sector partners to implement them. The amendments set out an explicit procedure for a victim (or family member of a victim), who is registered with the Victim Notification Scheme to request to attend a parole hearing in certain cases, as an observer. John Watt from the Parole Board for Scotland told the Committee that the system could be improved by Parole Scotland, the Board's administrative arm, playing "a role as a single point of contact right from the earliest stage through to parole hearings and all that goes with parole hearings".

## Taking evidence by commission

254. The Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 provides that witnesses who are categorised as ‘vulnerable’ have the right to give evidence remotely via a CCTV link or pre-recorded evidence in advance of a trial, rather than giving their evidence in court. Vulnerable witnesses include victims of sexual assault, domestic abuse, trafficking and stalking, and those under the age of 18.
255. Victim Support Scotland told the Committee that many victims describe appearing in court as more traumatic than the experience of the crime itself. In its written evidence, Victim Support Scotland states that “...providing evidence remotely or pre-recorded via evidence on commission allows victims to provide evidence in a more comfortable setting and completely avoids the risk of contact with the accused increasing the likelihood of victims giving their best evidence”.
256. Sandy Brindley, Chief Executive of Rape Crisis Scotland (RCS), told the Committee that there are frustrations around giving of evidence on commission. She indicated that this could have been a good way to mitigate some of the distress caused by the uncertainty of the pandemic, as it would have enabled complainers to give their evidence on a set day, in advance of the trial and closer to the time when the incident took place. However, this is not happening due to the poor availability of commissions. Ms Brindley stated that some of the complainers that RCS is supporting are being told that it would be quicker for them to give evidence in a live trial than to hold off and wait to give evidence by commission.
257. Tim Barraclough of the Scottish Courts and Tribunals Service told the Committee that the pandemic has caused difficulties in using court facilities, principally because of physical distancing requirements. He explained that, “In order to hold commission hearings, the judge and the legal practitioners have to be involved, and that takes them away from the conduct of trials. We need to think about how to resource that increase in the number of hearings within the criminal procedure process”.
258. Mary Glasgow, Chief Executive of Children 1st, told the Committee that it has supported the Crown Office in taking evidence by commission, by providing access to some of their premises.

## Barnahus

259. Children 1st has formed a partnership with Victim Support Scotland and the University of Edinburgh to develop and practice a ‘test, learn and develop’ model for a Barnahus, or Children’s House, in Scotland. They have accessed a grant from the Postcode Dream Trust of the People’s Postcode Lottery to develop in practice the first house.
260. They have identified the buildings to be developed. Children 1st are working in partnership with social work and police colleagues, as well as other partners, to develop a model of practice that can be researched, evidenced and scaled up across Scotland. The House will be based in East Renfrewshire, working closely with the North Strathclyde Partnership which is piloting the new National Joint Investigative Interview (JII) model of practice.

261. One of the issues raised during the roundtable evidence session was that of eligibility. For example, whether the facility will be available to children who are victims of crimes as well as children who are under the current age of criminal responsibility, but who may have caused significant harm to others.
262. Mary Glasgow indicated that Children 1st are considering how the needs of both ‘child accused’ and a ‘child victim or witness’ can be met safely. Ms Glasgow also invited the Committee to visit the Barnahus once it is established.
263. **Conclusion:** This Committee is very supportive of the development of the Barnahus model in Scotland. We intend to keep this issue under review to see how it develops and arrange a visit once the Barnahus being developed by Children 1st is fully operational.

## Victim Centred Approach Fund

264. Following the Committee’s roundtable evidence session, the Scottish Government announced a victim centred approach fund. The aim of the fund is to simplify funding for organisations in one easy-to-access place, providing support for victims across Scotland. The fund is worth at least £30 million over the next three years.

## Conclusions and Recommendations

265. **Recommendation:** The Committee asks the Crown Office and Procurator Fiscal Service to review its administrative processes for those registering for the Victim Notification Scheme as a matter of priority to avoid retraumatising victims. This should include updating the registration process to enable people to understand the implications of signing up to the Scheme, providing people with support, being flexible about when they can register and providing options for methods to keep people updated. An option might be for the COPFS to seek feedback from those who have previously registered to see how the system might be improved.

266. **Recommendation:** The Committee asks the Scottish Prison Service to review how it manages the Victim Notification Scheme. This should include: a review of how often it communicates with victims and by what means; the type of information provided about the prisoner’s activities, rehabilitation, release, and where they are being held.

267. **Recommendation:** The Committee asks the Scottish Prison Service to review its communication processes in the run up to a prisoner’s release and its administrative process to ensure that victims are not informed on a Friday about a prisoner’s release.



268. **Recommendation:** The Committee has overarching concerns about the Victim Notification Scheme in its current form. The Committee requests an update from the Cabinet Secretary for Justice and Veterans on plans, and a timetable, for reforming the support provided to victims and a review of the Victim Notification Scheme.

269. **Recommendation:** The Committee asks the Parole Board for Scotland for an update on the timetable for implementing the amendments to the Parole Board Rules and details of the work it is doing to improve Parole Scotland's communication with victims to ensure they understand the parole process.

270. **Recommendation:** The Committee asks the Crown Office and Procurator Fiscal Service, the Scottish Courts and Tribunal Service, Police Scotland and Social Work Scotland for their views on how the scheme for vulnerable witnesses is working. In particular, whether there are delays in offering this service to victims.

271. **Recommendation:** The Committee requests an update from the Scottish Government on its plans for the introduction of Barnahus facilities in Scotland and looks forward to an early roll-out of these facilities. Critically, for the Committee, a Barnahus is more than just the relevant services (justice, health, social work etc.) being co-located, it is also one which fully incorporates the Joint Investigative Interview in its working. That will require officers fully trained in that skill and integration into court procedures.

272. **Recommendation:** The Committee asks the Scottish Government to provide details on how this fund is helping the victims of crimes and their families prior to summer recess.

# REDUCING YOUTH OFFENDING, OFFERING COMMUNITY JUSTICE SOLUTIONS AND ALTERNATIVES TO CUSTODY

## Introduction

273. On 15 September 2021, the Committee held a roundtable on the issue of reducing youth offending, offering community justice solutions and alternatives to custody. The Committee took oral<sup>42</sup> and written evidence<sup>43 44</sup> from a number of stakeholders.<sup>45</sup>

## Prevention work

274. The Committee heard that work to prevent young people from coming into contact with the criminal justice system is key. Witnesses provided examples of work being done to prevent young people from becoming involved in crime, as well as initiatives to support those who have come into contact with the criminal justice system to move on from crime.

275. The Violence Reduction Unit (VRU) cited its project working with young people that looks at harmful sexual behaviour in schools, and a ‘mentors in violence prevention’ programme that is delivered by Education Scotland.

276. Police Scotland highlighted that it has a police officer deployed at HMP YO1 Polmont who works with young men to help create positive opportunities and offer them positive lifestyle choices.

277. Police Scotland have also deployed ‘campus cops’ in secondary schools. An example of this is the placement of eight police officers embedded within secondary schools across North Ayrshire. According to Police Scotland, they can provide positive role models and support, and they can identify the underlying factors and the pattern of behaviour, that may lead to a young person becoming involved with the justice system.

278. Another example highlighted to the Committee is the structured deferred sentencing (SDS) pilot run in South Lanarkshire between April and December 2018. This follows Scottish Government implemented SDS pilot schemes from 2005 to 2008 in three local authorities and five Sheriff Courts: Ayrshire (Ayr and Kilmarnock Sheriff Courts); Angus (Arbroath and Forfar Sheriff Courts); and Highland (Inverness Sheriff Court). These schemes provided an alternative to custody that were tailored to meet the needs of young people. The South Lanarkshire pilot provided support to young people from their journey after leaving court. It addressed issues such as poverty, whether young people are registered with a GP and have stable housing. It also supported young people in their relationships with their families. According to

the evidence the Committee received, over 80% were admonished at the end of their order.

## Scottish Sentencing Council guideline on sentencing young people

279. On the day of the Committee's evidence session, the Scottish Sentencing Council published a report on the public consultation exercise on its draft sentencing young people guideline<sup>46</sup>. The sentencing guideline was approved by the High Court of Justiciary on 9 November 2021.
280. The guideline addresses many of the issues that were raised in evidence to the Committee. It will apply to the sentencing of all young people under the age of 25. This age reflects research on brain development and maturity.
281. The guideline states that the following factors must be taken into account when sentencing a young person:
- Their maturity. This includes consideration of how vulnerable they are to negative influences, such as peer pressure and exploitative relationships, and any lack of realisation of the consequences of their actions;
  - Their capacity for change. The character of a young person is not as fixed as the character of an older person and they may have greater potential to change and move away from offending;
  - The best interests of the young person. This requires the judge to take into account: the young person's living environment; any adverse childhood experiences; and any physical and mental health issues. This reflects the evidence the Committee heard that dealing with young people should be proportionate, trauma informed, child-centred, flexible and supportive
282. The guideline requires the courts to consider rehabilitation and non-custodial sentences as primary options when sentencing a young person. Young people should be provided with the opportunity to change, and to move away from past offending. The judge should therefore seek to reduce the risk of reoffending through rehabilitation, and identify the features which are likely to make the sentence particularly effective.
283. The guidance states that judges should ensure that they have sufficient information to identify and impose the most appropriate sentence. This may include, for example, information and reports about:
- addiction or accommodation issues;
  - the physical and mental health of the young person;
  - whether the young person is, or has been, in care; and
  - whether any proposed sentence is likely to be effectively implemented, and what steps can be taken to increase the likelihood of effective implementation.

284. An appropriate sentence should:

- increase the likelihood of aiding the reintegration of the young person into society;
- reduce the likelihood of the young person being stigmatised unnecessarily, and/or failing to comply with the sentence;
- benefit society by reducing the possibility of further offending;
- give the young person the opportunity to understand the consequences of their offending behaviour;
- address the underlying causes of that behaviour; and
- assist in developing or maintaining positive connections between the young person and society.

285. The full range of sentencing options remains open to judges. A custodial sentence should only be imposed on a young person when the judge is satisfied that no other sentence is appropriate. This reflects the evidence to the Committee that adult justice systems are not appropriate for young people and they do not fare well within them.

286. Witnesses told the Committee that there should be early effective intervention to divert young people from custody and provide a child-centred support service. Secure care rather than custody in a prison should be considered, where possible, for those who pose a significant or imminent risk of harm. Although, there are legal barriers to the use of secure care for some young people. Those aged 18 years of age are automatically transferred to HMP YOI Polmont, even if they have only a short amount of time left on any sentence.

287. Witnesses from the Children's and Young People's Centre [CYPC] for Justice and Community Justice Scotland welcomed the Scottish Sentencing Council guideline. They told the Committee that the approach of taking into account the individual needs of young people would enable them to access the correct support services at the right time. Community Justice Scotland (CJS) stressed the importance of communication between the community justice providers and those experiencing community sentences, to analyse the benefits. CJS are supporting an information project with that aim.

## **Secure care**

288. There are currently five secure care centres registered in Scotland. Four of these are run by independent charitable organisations. They provide 78 placements. The Committee heard that, as the charities need to generate their own income and only break-even cost-wise when occupancies are in excess of 90%, half of the secure care places are currently provided to young people from outwith Scotland. This means there are times when there is lack of availability of secure care places for young people in Scotland.

289. Following the Committee's evidence session, the Cabinet Secretary for Justice and

Veterans told the Committee during the pre-budget evidence session that the Scottish Government is looking at the funding model and how to improve accessibility of secure care. The Cabinet Secretary agreed to provide an update on these issues early in the new year.

290. The Committee heard that the legislation requires the provision of a secure place for a young person to be rehabilitated. However, some young people report that it is similar to being in prison. Evidence suggests also that there is also a lack of necessary mental health support to help children and young people to understand, accept and move on from trauma. The challenge is to ensure that a rehabilitative service is provided consistently across all secure care facilities. The Committee is unclear about whether demand for secure care places is met and, if not, how many people are denied a secure care place each year.
291. The secure care pathway and standards<sup>47</sup> were introduced by the Scottish Government in October 2020 to bring some consistency and improvement to the journey into and out of secure care. They provide a framework for ensuring the rights of children and young people are respected and lead to improved experiences and outcomes.
292. In 2019, the Session 5 Justice Committee undertook a short inquiry into the provision of secure care. The Committee concluded<sup>48</sup> that, unless there is strong evidence to the contrary, no young person under the age of 18 should be placed in HMP YOI Polmont when a place in a secure care unit would be more suitable. The Committee also heard that, even when a young person only had a short period of time left in secure care, the current legislative framework required them to be sent to HMP YOI Polmont after they turned 18. The Committee understands<sup>49</sup> for this to be achieved there will need to be an overhaul of the current system and funding model.
293. In its report<sup>50</sup>, the then Committee made a number of recommendations about the provision of services for young people in secure care as well as in the prison system. These included: assessing in the first days the mental health and wellbeing needs of the young person; timely access to any mental health services, wider health services, trauma counselling and educational services; and addressing social isolation. The Justice Committee also asked the Scottish Government and COSLA to look at alternative funding models.
294. Currently, the statutory rules on the sentencing of persons under the age of 18 years are to be found primarily, but not exclusively, in sections 207 and 208 of the Criminal Procedure (Scotland) Act 1995. The Sheriff's Association has told us that "the question of the options that arise after a person under the age of 18 years has been sentenced to detention by the court are primarily questions for the authorities who are responsible for those persons after sentence has been imposed".
295. Section 207(5) of the 1995 Act states that, for the detention of a young offender, "a sentence of detention imposed under this section shall be a sentence of detention in a young offenders institution" and section 208(1) states that, subject to certain conditions:

” “where a child is convicted on indictment and the court is of the opinion that no other method of dealing with him is appropriate, it may sentence him to be detained for a period which it shall specify in the sentence; and the child shall during that period be liable to be detained in such place and on such conditions as the Secretary of State may direct.”

296. In respect to the above, the Scottish Children’s Reporters Association confirmed that “Reporters cannot make that decision, and nor can children’s hearings, so being placed in a YOI is not an option through the Children’s Hearings System.”

## **Review of deaths in custody and post release**

297. In their written evidence to the Committee for the prisons’ roundtable, Her Majesty’s Inspectorate of Prisons for Scotland recommend a review into deaths in custody and following release, which should include parole and non-parole licences.

298. The Committee heard that there is a need for such a review, as recent research shows that over a seven-year period, 1,178 community payback orders were listed as finished because of a death. The deaths were mostly young people who were unemployed.

299. In November, the Independent Review of the Response to Deaths in Prison Custody was published. This review was undertaken by Wendy Sinclair-Gieben, Chief Inspector of Her Majesty’s Prisons in Scotland, Professor Nancy Loucks, Chief Executive of Families Outside, and Judith Robertson, Chair of the Scottish Human Rights Commission.

300. It is a powerful report, which contains a number of recommendations, including:

” “that a separate independent investigation should be undertaken into each death in prison custody. This should be carried out by a body wholly independent of the Scottish Ministers, the SPS or the private prison operator, and the NHS.”

301. The Cabinet Secretary for Justice and Veterans told Parliament on 30 November, that he accepted the recommendations in principle. He said:

” “Although I have not yet had the opportunity to fully consider the detail and implications of all the findings and recommendations made by the review, I want to be clear to Parliament that I accept the recommendations in principle.”

302. He added:

” “I will hold a round table at the beginning of next year [2022] to map out what needs to be done to deliver on the review’s recommendations and make the necessary changes to operations.”

## Legislative changes

303. Fiona Dyer, Children’s and Young People’s Centre for Justice, told the Committee that current legislation is contradictory about who is a child and where their needs can be best met. She said:
- ” “We need to examine our legislation. There are so many contradictions in Scottish legislation about who is a child and where their needs can be best met, which is why we have so many children in the adult courts system.”
304. As a result of this, Ms Dyer said that those aged 12 to 17 years old can end up in the adult courts system, which is not compliant with the United Nation’s Convention on the Rights of the Child (UNCRC).
305. The Committee heard that under current legislation,[1] if someone is in court, they need to be classed as a child in order to be remanded or given a sentence in secure care. They need to be under the age of 16, or a 16 or 17-year-old on compulsory supervision through the children’s hearings system. Otherwise, the sheriff is unable to make that placement and remand or sentence a young person in that way. Even in the circumstances where an assessment shows that a young person’s needs would be better met in secure care, a sheriff or judge would have no option but to use a young offender’s institution[1] Part V of the Criminal Procedure (Scotland) Act 1995.

## Conclusions and Recommendations

306. **Conclusion:** The Committee welcomes the compelling evidence we heard at our roundtable and agrees that preventative work is key to keeping young people from coming into contact with the criminal justice system and, to support those that have, to move on from crime.

307. **Recommendation:** The Committee asks the Crown Office and Procurator Fiscal Service and the Scottish Courts and Tribunal Service for details of their plans to implement and monitor the sentencing guideline to ensure it is applied consistently, whilst maintaining judicial discretion. The Committee would also appreciate details of the training and support that will be provided to prosecutors and sheriffs, and details of how outcomes, such as reducing re-offending rates, are to be captured.

308. **Recommendation:** The Committee asks the Scottish Government to provide a progress update on the implementation and impact of the secure care pathway and standards.

309. **Recommendation:** The Committee requests an update from the Scottish Government, COSLA and the secure care providers on the implementation of the

Session 5 Justice Committee's recommendations, and for an update on the progress of discussions about changing the funding model.

310. **Recommendation:** The Committee also requests details of the timescale for the Scottish Government's plans to ensure that no child aged under 18 years of age is sent to HMP YOI Polmont and should instead be in secure care.

311. **Recommendation:** The Committee is of the view that, in principle, no child should be sent to a young offenders institute who should ordinarily be in secure care. The Committee recommends that the Scottish Government works with us to see how this can be achieved and whether legislative change is necessary.

312. **Recommendation:** Furthermore, the Committee asks the Scottish Government to confirm whether data is collected which details the number of requests for secure care places each year and the number provided and, if so, if that data is publicly available.

313. **Recommendation:** The Committee also requests a formal and detailed response from the Scottish Government to all of the issues/recommendations in the report of the Independent Review of the Response to Deaths in Prison Custody. The Committee requests the Government be clear as to whether each recommendation is accepted and the timescales for delivery. We also recommend the creation of an online centralised, transparent system that would allow the public to follow delivery of the recommendations. In any case, the Committee will keep this issue under review.

314. **Recommendation:** The Committee asks the Scottish Government whether it will commission a review of the post-release deaths of those who were previously in custody and, whilst undertaking non-custodial sentences and diversion schemes.

315. **Recommendation:** The Committee recommends that the Scottish Government undertakes a review of the relevant provisions in Part V of the Criminal Procedure (Scotland) Act 1995 with regard to a court's powers to place a child in secure accommodation where appropriate.



# LEGAL AID

## Introduction

316. On 29 September 2021, the Criminal Justice Committee held a roundtable meeting about legal aid. The Committee took oral<sup>51</sup> and written evidence<sup>52 53</sup> from a number of stakeholders.<sup>54</sup>
317. At the meeting we heard that many in the legal profession (primarily representing the defence) are unhappy and disillusioned with how the legal aid system is working. They consider that change is needed. We also heard concerns from organisations representing the users of legal aid about access to representation.
318. We are aware that, subsequent to the roundtable meeting, various bar associations opted out of a duty solicitor scheme for the COP26 conference in protest about the treatment of defence lawyers. This dispute is not specifically the subject of this report. However many of the concerns raised by the bar associations were also highlighted at the meeting and are reflected in this report. The Committee has also been clear, in correspondence with the Minister for Community Safety, that a satisfactory resolution must be reached to these disagreements. It is our previously expressed view that the failure to address the problems with fee levels has caused a loss of confidence of many.
319. Finally, the remit of our Committee covers criminal justice and not the civil justice system. However there is clearly both a civil and criminal dimension to legal aid, which is reflected in this report.

## Background

320. There have been various initiatives in the last few years seeking to reform legal aid.
321. The Independent Review of Legal Aid, chaired by Martyn Evans, reported in February 2018. As well as a number of recommendations for legal aid reform, it recommended that a working group was set up to establish an evidence-based process for setting and reviewing fees.
322. The Legal Aid Payment Advisory Panel was subsequently established in 2019. The Panel published its final report in July 2021. This concluded that more research was needed before an effective fee-setting process could be established.
323. In September 2021, the Scottish Government responded to the report of the Legal Aid Payment Advisory Panel. The Scottish Government accepted the recommendation that more research was needed and indicated that it will now begin the process of commissioning that research.
324. The Programme for Government also stated that the Scottish Government intends to bring forward a legal aid reform bill at some time in the future—

- ” “We will engage with both legal professionals and victim support organisations to review the Legal Aid system, and will introduce a Legal Aid Reform Bill in this Parliament, ensuring that the system is flexible, easy to access and meets the needs of those who use it.”

## Challenges for Legal Aid

### Users of legal aid

325. At the roundtable meeting we heard about the challenges experienced by some users of legal aid, some of whom require access to legal representation at particularly difficult moments in their lives.
326. Marsha Scott of Scottish Women’s Aid expressed concern that the legal aid model is “just not fit for purpose” for women and children experiencing domestic abuse. She noted—
- ” “...It is described as needs led, but it also means tested. As anybody who knows anything about domestic abuse will know, in more than 94 per cent of such cases, access to family assets and finances is restricted by the abuser, so there is no logical sense to the system.”
327. Colin Lancaster of the Scottish Legal Aid Board commented—
- ” “It is difficult to design a system around the needs of users in particular cases, given the specific circumstances that they experience. Taking all those things into account is very difficult in a judicare system that is overwhelmingly directed towards reacting to clients who seek help, pass the test and are granted legal aid, after which a service is delivered in respect of the individual case.”
328. Marsha Scott explained that there were examples of good practice (such as a project between the Scottish Legal Aid Board and the citizens advice bureau in Stirling), and she felt these should be rolled out more widely.
329. Gillian Fyfe of Citizens Advice Scotland mentioned the issue of a lack of legal aid practitioners in rural and Highland areas of Scotland.
330. Professor Alan Paterson of the University of Strathclyde felt that there should be a ‘one stop shop’ in which legal aid could be provided along with other support. He noted that—
- ” “The current system of judicare—paying case by case—does not lend itself to delivering a holistic service to members of the population. Although we know that individuals who come to criminal defence solicitors might have a raft of social, economic and legal problems, the criminal legal aid system is set up only to deal with their legal problems. What they need is a one-stop shop, as in New York, Australia and England.”
331. Gillian Fyfe made the general point that—

” “...the user must be put at the heart of the legal aid system. By “user”, we mean the recipient of the service, but we appreciate that the profession is also a user of the system.”

332. Several participants also mentioned the importance of the principle of access to justice and commented on the complexity of the system. Colin Lancaster of the Scottish Legal Aid Board told us—

” “...the complexity of the judicare system can be a barrier to access. We have heard about potential confusion around eligibility. The system is complex, and there are people who are eligible but might not think that they are. Those sorts of things may create barriers to access in some circumstances.”

## Impact of COVID-19

333. Solicitors told us that COVID-19 has had a negative impact on their work. Many legal aid solicitors reported a significant drop in income as a result of reduced court activity due to the pandemic.
334. Solicitors argue that they played an important role in allowing court business to continue during the pandemic, which regularly involved in-person appearances at court with the risks this entailed.
335. The recovery from the pandemic will require the backlog of court cases to be addressed. Solicitors argue this is likely to necessitate attending court outside normal working hours.

## Legal aid profession

336. The Committee also heard from representatives of the legal profession about what they considered to be the challenges associated with the legal aid system.

## Legal aid fee rates

337. We heard that a major concern of solicitors is that the current rates of legal aid fees means that it is not sustainable to take on legal aid work. Their view is that since 1999 increases in fees – including the most recent increases announced by the Scottish Government – have not even kept pace with inflation. They argued that further increases were necessary to take account of the long-term underfunding of the system.
338. In addition, we heard some specific comments about fee levels—
- There should be increases in fees for holiday courts, weekend courts and other business scheduled at anti-social hours. This type of working is likely to become increasingly required to address backlogs in work caused by COVID-19, given the lack of capacity of legal aid practitioners. Other justice

system staff (such as courts staff) were paid more for this work;

- “Section 76 fees” should be increased and should not be funded by a reduction in a general level of fees. A section 76 fee is a fee for the work involved in negotiating a guilty plea for a case heard under solemn procedure (for the most serious criminal cases). Julia McPartlin of the Scottish Solicitors Bar Association told us “while we want to see increased fees for section 76 pleas and so on, we do not want that to be at the expense of work further down the line”;
- A framework should be put in place so that in the future fees should take account of inflation and other additional costs incurred by the sector;
- There should be reversal of cuts to fees introduced in 2011, such as half duty fees and half fees for travel, which have impacted on access to justice in rural areas;
- The Scottish Government should make a commitment to review fees in the event of any structural changes relating to ‘digital justice’ which are retained on a permanent basis

## **Working conditions**

339. We heard broader concerns about the work/life balance of criminal defence solicitors. They are often called to provide advice to individuals in police custody at antisocial hours. We heard that this could make a career as a criminal defence solicitor an unattractive choice to individuals joining the profession, particularly younger women.

340. In a subsequent evidence session on pre-budget scrutiny on 6 October 2021, Colin Lancaster of the Scottish Legal Aid Board raised the idea of ‘consortium-style’ working as a potential solution—

” “A consortium-type approach might enable solicitors in the private sector to work collectively so that every individual solicitor did not need to be on call all the time. It could be agreed between a group of firms who was on call and that those clients would still be the clients of the other firms that were part of the consortium”.

341. He noted, however, that when this idea had been raised 10 years ago it had been rejected by the legal profession.

## **Recruitment difficulties**

342. According to the profession, concerns about fee levels and a lack of work/life balance has led to difficulties in recruiting and retaining legal aid solicitors.

343. The Law Society of Scotland noted that one problem was the wage disparity with Crown Office and Scottish Government solicitors. Ian Moir commented “their

starting salary is around £50,000, and there is simply no way that legal aid firms can offer such a salary”, though in evidence to the Committee the Crown Agent noted that “the vast majority of recruits do not come directly from defence practice”.

344. Tony Lenehen of the Faculty of Advocates summarised the view of some in the profession when he told us “people are leaving simply because more attractive pastures are being created around them”. He noted that this has meant that less experienced solicitors were involved in instructing advocates to present cases in the High Court. In his view “that has a real effect on my ability, and that of my colleagues, whether they are advocates or solicitor advocates, to provide the best service to those who are in the greatest need of it”.

## Demand for legal aid

345. We heard about the challenges caused by changing levels of demand for legal aid. In evidence on pre-budget scrutiny, Colin Lancaster of the Scottish Legal Aid Board commented that over a 10 year period—

” “... the amount of business available to be done by firms, particularly those that specialise in criminal work and that might find it harder to divert capacity into other areas of business, will have fallen fairly significantly. There has been a 35 per cent reduction in prosecutions and a 32 per cent reduction in criminal legal aid expenditure over the 10-year period. Those things will not be without their impacts on those who deliver the service.”

346. However, he noted in the roundtable discussion that the requirement to clear the backlog caused by COVID-19 has recently led to a significant increase in demand for legal aid. It has been challenging to find this capacity among the firms who provide legal aid services. This is partly because the firms in the sector are predominantly small. Forty per cent of firms providing criminal legal assistance have only two or fewer criminal lawyers.

## Key issues

347. The Committee has received clear evidence at the roundtable meeting about the challenges facing the legal aid system in Scotland.
348. The purpose of the one-off roundtable meeting was not to recommend a detailed blueprint for reform of legal aid in Scotland. This would require a full inquiry, rather than a single session of evidence.
349. Nevertheless, there was discussion at the meeting of some of the ideas for reform, such as whether the Public Defence Solicitors Office should have an enhanced role, and the need to create a more joined up system which assists users with their wider needs.
350. We would wish to highlight key priorities for action based on the views we heard at the roundtable meeting.

## Accelerating reform

351. The first priority is for the pace of work on reforms to legal aid to be significantly increased.
352. We note that the problems with the legal aid system are not new. Our predecessor committee stated in its legacy report which covered the last parliamentary session 2016-21—
- ” “Throughout the session... we heard of the ongoing pressures on legal aid and the negative impact that this is having for both legal professionals and people trying to access the justice system.”

## Short term action

353. The second priority we have identified is the need for short term action. We note the view of some in the legal profession that the system legal aid is in “crisis”.
354. A particular concern from the legal profession has been fee levels.
355. The Scottish Government announced in September 2021 that it will “begin the process” of commissioning research into an appropriate methodology for assessing fees, following the report of the Legal Aid Payment Advisory Panel. It is not clear how long this process will take. It is also not clear whether, at the time of publication of this report, whether the research has begun.
356. We note that in the meantime the Scottish Government has announced several across the board fee increases recently. For example fees were increased by 3% in April 2019, 5% in March 2021 and a further 5% increase is due in March 2022. It should be noted though that many in the profession, whilst welcoming these increases, note that they do not begin to compensate for the impact on costs of inflation given these are the first substantial increases for many years.
357. There has also been £9 million to support legal aid firms deal with the impact of the pandemic and £1 million to support trainee solicitors in legal aid firms.
358. However, the view of solicitors is that more needs to be done to address the concerns of the profession and address what they see as an immediate short term crisis.

## Conclusions and recommendations

359. **Conclusion:** It has almost been four years since the publication of the report of the Independent Review of Legal Aid chaired by Martyn Evans. **We are disappointed that since then only limited progress appears to have been made in reforming legal aid.** The Scottish Government’s position, as set out in the Programme for Government, is that it will conduct further engagement in order “to review the legal aid system”. A legal aid bill is due to be brought forward this parliamentary session. However a date for the introduction of the bill has not yet been announced. It seems

likely that it will not be introduced until after the engagement planned by the Scottish Government has concluded.

360. **Recommendation:** Our view is that progress in reforming legal aid has not been fast enough. We believe that a priority this parliamentary session should be to accelerate the rate of progress. We are concerned that prolonged further engagement and reviews might unnecessarily delay progress and simply defer the point at which decisions regarding the future arrangements for legal aid need to be taken. Instead the focus should be on solutions being brought forward to address the key concerns identified in our roundtable. These concerns are well-known and, in some cases, long-standing. If further consultation is required, this should take place as quickly as possible.

361. **Recommendation:** In our view, there now appears to be a noticeable gap in the pay and conditions of the defence sector compared to lawyers working for the prosecution. If this continues, there are going to be implications for equality of arms between defence and prosecution lawyers and therefore in the delivery of justice. The Committee reiterates its call that there needs to be swift reform of the system with this principle in mind.

362. **Recommendation:** The Committee requests information from the Minister for Community Safety on the following points—

- The nature of the proposed engagement with the legal profession and users of legal aid; its timescales; its purpose; and whether a general consultation is planned;
- Whether the Scottish Government has in mind any specific reform proposals on which it is consulting and whether it will publish these;
- The planned timescale for introducing the legal aid reform bill.

363. **Conclusion:** The Committee has said previously that if fee rates do not allow for acceptable working conditions for defence solicitors then there are going to be implications for equality of arms between defence and prosecution lawyers and therefore in the delivery of justice. The Committee believes this should be resolved with this principle in mind.

364. **Recommendation:** The Committee is supportive of the objective of developing a new methodology to the setting of legal aid fees. The Committee requires the Minister for Community Safety to provide further information on when the research on fee-related issues commissioned following the report of the Legal Aid Payment Advisory Panel is due to be completed. The Committee also requires details on when the Scottish Government anticipates that revisions to the current fee regime are likely to be implemented.

365. **Recommendation:** However, we are concerned that the finalisation and implementation of such a methodology for the setting of fees is likely to be some months or even years away. Our view is that short term action is necessary to address the concerns expressed by many in the legal profession. While there may be a debate as to the use of the word “crisis” to describe the current situation, it is clear that concerns and dissatisfaction with the current legal aid arrangements is widespread. The specific areas of concern are noted in this report. We recommend that the Scottish Government should do more in the short term to address these concerns while awaiting a new methodology on fees. Immediate action on fee rates must form part of the solution.
366. **Conclusion:** The Committee has also said that there is a role for the Public Defence Solicitors Office (PDSO) and the Committee would like the Scottish Government to assess the effectiveness of it, including asking users, and also to explore what additional roles the PDSO can play.
367. **Conclusion:** We have identified the issue of legal aid reform as being a priority for this parliamentary session. We note that progress in this area has been slow over the last few years, and has been characterised, to some extent, by the commissioning of research and reviews. While these initiatives have value, we have highlighted our view is that the pace of progress needs to accelerate markedly. In addition, action is needed in the short term to address the immediate concerns of the legal profession. We intend to play our part in monitoring and progressing these issues during this parliamentary session. In addition, we stand ready to scrutinise any legislation on legal aid reform when it is introduced to the Parliament.



# ANNEX A: An Action Plan for the Scottish justice sector during Session 6 of the Scottish Parliament

368. The following table (Action Plan) is based on the recommendations we have made in this report. It sets out a series of measures for the short and longer-terms in each of the subject areas. These actions represent measures that we believe need to be taken to make progress in this parliamentary session. As such, we will regularly monitor the progress being made.
369. The Action Plan will be published on our webpage so that the public can track progress. The Committee will check the progress of delivery for the short term actions called for within 6 months of the publication of this report. We will check progress against delivery for other recommendations on a yearly basis throughout the remainder of this parliamentary session.

## Monitoring delivery of the action plan

### Key

	Being considered or underway
	On track
	Completed
	Behind schedule/Not delivered

Source: Criminal Justice Committee 2022

## The impact of COVID-19 and recovery

### Table of key issues

Key issue	Did the Scottish Government agree to the recommendation?	Progress against delivery	Notes and additional information
<b>The impact of COVID-19 and recovery</b>			
<i>Short-term actions (within 6 to 12 months)</i>			
COVID Recovery - Hold an evidence session with the Cabinet Secretary for Justice and Veterans, following the conclusion of the consultation on COVID-19 recovery	Not applicable	To be decided	
COVID Recovery and Prisons - Provision by Scottish Prisons Service (SPS) of a detailed plan for the reinstatement of purposeful activities in prisons, including a timetable for when particular categories of activities will resume	Yes/No/In Part	To be decided	
COVID Recovery and Prisons - Commitment by SPS to regular access to exercise and time outdoor for fresh air, and consideration given to what other activities would be suitable for prisoners on remand	Yes/No/In Part	To be decided	
COVID Recovery and Prisons - Information from SPS on progress made in resuming in-person visits, including how arrangements may differ from pre-COVID-19	Yes/No/In Part	To be decided	
COVID Recovery and Prisons - An update on any inquiries made by the SPS into the use of hacked mobile phones, downloaded e-SIM cards etc by prisoners and a commitment that any problems identified have been addressed.	Yes/No/In Part	To be decided	
COVID Recovery and Prisons - A commitment from SPS that video/mobile technology will continue to be an option for prisoners to contact friends and family members and support services, and that the use of this technology will be expanded throughout the estate in a regulated and controlled manner	Yes/No/In Part	To be decided	

Source: Criminal Justice Committee 2022

## Prisons and prison reform (Short Term)

### Table of key issues

Key issue	Did the Scottish Government agree to the recommendation?	Progress against delivery	Notes and additional information
<b>Prisons and prison reform</b>			
<i>Short-term actions (within 6 to 12 months)</i>			
<b>Remand</b> – details from the Cabinet Secretary on how he plans to tackle remand numbers	Yes/No/In Part	To be decided	
<b>Women and children</b> - details from the Cabinet Secretary on how he plans to tackle numbers held and improve the care of these prisoners	Yes/No/In Part	To be decided	
<b>Buvidal</b> – provision of a progress note on rolling out the use of Buvidal across the prison estate	Yes/No/In Part	To be decided	
<b>Photocopying of prisoner mail</b> – introduction of an SSI to change prison rules to help prevent drug smuggling	Yes		
<b>Recovery cafes</b> – funding for a café in each institution where appropriate	Yes/No/In Part	To be decided	
<b>Residential rehabilitation</b> - funding for improved provision	Yes/No/In Part	To be decided	
<b>Throughcare</b> – reintroduction of the service in the prison estate	Yes/No/In Part	To be decided	

Source: Criminal Justice Committee 2022

## Prisons and prison reform (Long Term)

### Table of key issues

Key issue	Did the Scottish Government agree to the recommendation?	Progress against delivery	Notes and additional information
<b>Prisons and prison reform</b>			
<i>Long-term actions (within this parliamentary session)</i>			
<b>Under 18s</b> – delivery of the manifesto commitment not to hold under 18s in HMP YOI Polmont	Yes/No/In Part	To be decided	
<b>Under 18s/Secure care</b> – change to prison rules to permit over 18s to remain in secure care if they do not have long left on any sentence imposed i.e. not immediately transfer from secure care to HMP YOI Polmont	Yes/No/In Part	To be decided	
<b>Tackling drug use in prisons</b> – report from the SPS on its plans and reduction in the statistics for the prevalence in prisons	Yes/No/In Part	To be decided	
<b>Remand</b> – reduction in the overall numbers held on remand in prisons	Yes/No/In Part	To be decided	
<b>Estate</b> – incorporation of HMPs Greenock and Dumfries in SPS's 5-year investment plans	Yes/No/In Part	To be decided	
<b>In-cell telephony/technology</b> – further role out of suitable systems across the estate where appropriate	Yes/No/In Part	To be decided	
<b>Violence and serious organised crime groups</b> – detailed plans to tackle the issue and a reduction in the influence of such groups in prisons achieved	Yes/No/In Part	To be decided	
<b>Purposeful activity</b> – re-introduction of this to previous levels as we recovery from the pandemic and consideration of the extension of appropriate elements of this activity to shorter term or remand prisoners	Yes/No/In Part	To be decided	

Source: Criminal Justice Committee 2022

## Misuse of drugs and the criminal justice system (short term)

### Table of key issues

Key issue	Did the Scottish Government agree to the recommendation?	Progress against delivery	Notes and additional information
<b>Misuse of drugs and the criminal justice system</b>			
<i>Short-term actions (within 6 to 12 months)</i>			
<b>Friday releases</b> - consideration needs to be given to changing legislation governing Friday releases	Yes/No/In Part	To be decided	
<b>Civil recovery</b> - further information and details on the work of the Civil Recovery Unit to determine what success it is having in seizing assets relative to the value of the sums of money that can be made by criminals	Yes/No/In Part	To be decided	
<b>Joint working</b> – hold a meeting with other committees (e.g. Health and Social Justice) to hear an update from the Chair of the Drugs Deaths Taskforce	Not applicable		

Source: Criminal Justice Committee 2022

## Misuse of drugs and the criminal justice system (long term)

### Table of key issues

Key issue	Did the Scottish Government agree to the recommendation?	Progress against delivery	Notes and additional information
<i>Long-term actions (within this parliamentary session)</i>			
<b>Drugs Taskforce recommendations</b> - faster progress being made on implementing the recommendations of the Taskforce	Yes/No/In Part	To be decided	
<b>OPT and Naloxone</b> - same day access to Opiate Substitution Therapy alongside the provision of Take-Home Naloxone supply	Yes/No/In Part	To be decided	
<b>Trauma training</b> - further roll out of trauma-informed training across the criminal justice sector where this has not already been provided	Yes/No/In Part	To be decided	
<b>Diversion funding</b> - consideration given to providing additional resources for local authority schemes aimed at diversion from prosecution and greater flexibility and understanding shown to the participants	Yes/No/In Part	To be decided	
<b>Alternatives to custody</b> - consideration given to a greater use of alternatives to custody, such as bail supervision and residential rehabilitation, with adequate funds in place for these to work	Yes/No/In Part	To be decided	
<b>Pill presses</b> - regulation of pill presses	Yes/No/In Part	To be decided	
<b>DTTOs</b> - expansion of the use of Drug Treatment and Testing Orders	Yes/No/In Part	To be decided	
<b>Safe consumption rooms</b> – provision of a detailed case proposing a pilot scheme and a means for evaluation	Yes/No/In Part	To be decided	

Source: Criminal Justice Committee 2022

## Violence Against Women and Girls (Short Term Part 1)

### Table of key issues

Key issue	Did the Scottish Government agree to the recommendation?	Progress against delivery	Notes and additional information
<b>Violence against women and girls</b>			
<i>Short-term actions (within 6 to 12 months)</i>			
<p>Lady Dorrian's report - the recommendations that were aimed at improving procedure, practice and culture should be progressed as a matter of urgency. Some of the areas where we would like to see faster progress include, but are not restricted to, the following:</p> <ul style="list-style-type: none"> <li>• Improved communication with complainers, including the provision of a single trauma-informed source of contact.</li> <li>• The expansion of advocacy support services.</li> <li>• Trauma-informed training implemented for all personnel who deal with traumatised and vulnerable people.</li> <li>• The provision of visual recording of police interviews with complainers in sexual offence cases and used as evidence in court.</li> <li>• The provision of evidence on commission to all complainers of sexual offences.</li> <li>• Ground Rules Hearings (GRHs).</li> <li>• Consideration of the right of complainers to independent legal representation.</li> <li>• Court measures adopted to ensure the comfort and safety of victims and witnesses.</li> <li>• Steps taken to enhance the quality of jury involvement.</li> </ul>	Yes/No/In Part	To be decided	

Source: Criminal Justice Committee 2022

## Violence Against Women and Girls (Short Term Part 2)

### Table of key issues

Key issue	Did the Scottish Government agree to the recommendation?	Progress against delivery	Notes and additional information
<b>Violence against women and girls</b>			
<i>Short-term actions (within 6 to 12 months)</i>			
<p><b>Lady Dorrian's report</b> - the Scottish Government, Police Scotland, the Crown Office and Procurator Fiscal Service, the Scottish Courts and Tribunals Service, the Faculty of Advocates, and the Scottish Courts and Tribunals Service to provide details of the progress made to date on implementing Lady Dorrian's recommendations.</p>	Yes/No/In Part	To be decided	
<p><b>Co-ordination in government</b> - the Scottish Government should send an update on how it is co-ordinating measures across relevant portfolios to identify and address the causes of violence against women and girls</p>	Yes/No/In Part	To be decided	
<p><b>Efforts to improve prosecution</b> - update from the Scottish Government, the Crown Office and Procurator Fiscal Service and the Scottish Courts and Tribunal Service on the actions being taken to tackle the delays to prosecution of sexual offences and domestic abuse cases.</p>	Yes/No/In Part	To be decided	
<p><b>Specialist courts</b> - view from the Scottish Government on whether a specialist sexual offences court, if one were to be established, could have unlimited sentencing powers and what legislative changes would be required.</p>	Yes/No/In Part	To be decided	
<p><b>Not proven and judge-only trials</b> - confirmation from the Scottish Government on its plans to progress both of these issues and a timescale for doing so if it is going ahead.</p>	Yes/No/In Part	To be decided	

Source: Criminal Justice Committee 2022

## Violence Against Women and Girls (Long Term Part 1)

### Table of key issues

Key Issue	Did the Scottish Government agree to the recommendation?	Progress against delivery	Notes and additional information
<b>Violence against women and girls</b>			
<i>Long-term actions (within this parliamentary session)</i>			
Review of service standards - review the implementation of the standards of service for victims and witnesses by Police Scotland, the Crown Office and Procurator Fiscal Service, the Scottish Courts and Tribunals Service, the Scottish Prison Service and the Parole Board for Scotland. This is to determine whether these organisations are meeting their statutory obligations outlined in Section 2 of the Victims and Witnesses (Scotland) Act 2014	Yes/No/In Part	To be decided	
Use of Moorov doctrine - sheriffs and judges should ensure that juries understand the consequences of applying the doctrine and should explain to complainers why a jury and judge reached a particular outcome in these situations	Yes/No/In Part	To be decided	

Source: Criminal Justice Committee 2022

## Violence Against Women and Girls (Long Term Part 2)

### Table of key issues

Key Issue	Did the Scottish Government agree to the recommendation?	Progress against delivery	Notes and additional information
<b>Violence against women and girls</b>			
Codes of practice - Police Scotland, the Crown Office and Procurator Fiscal Service, the Scottish Courts and Tribunals Service, and the Lord President, Lord Carloway, to provide details of how they address unacceptable behaviour and language and ensure that their workforces are meeting the needs of vulnerable and traumatised people. This should include: details of any codes of practice and ethics and how these are enforced; transparent complaints processes; and how recruitment processes have been adapted to attract a more diverse workforce that meets the culture, skills and principles of the organisations	Yes/No/In Part	To be decided	

Source: Criminal Justice Committee 2022

## Victims' rights and victim support (short term)

### Table of key issues

Key issue	Did the Scottish Government agree to the recommendation?	Progress against delivery	Notes and additional information
<b>Victims' rights and victim support</b>			
<i>Short-term actions (within 6 to 12 months)</i>			
<b>VNS</b> - Crown Office and Procurator Fiscal Service to review its administrative processes for those registering for the Victim Notification Scheme (VNS) as a matter of priority to avoid retraumatising victims. This should include updating the registration process.	Yes/No/In Part	To be decided	
<b>VNS</b> - Scottish Prison Service to review how it manages the Victim Notification Scheme	Yes/No/In Part	To be decided	
<b>VNS</b> - update from the Cabinet Secretary for Justice and Veterans on plans, and a timetable, for reforming the support provided to victims and a review of the Victim Notification Scheme	Yes/No/In Part	To be decided	
<b>Friday releases</b> - Scottish Prison Service to review its communication processes in the run up to a prisoner's release and its administrative process to ensure that victims are not informed on a Friday about a prisoner's release	Yes/No/In Part	To be decided	
<b>Parole Board for Scotland</b> - update on the timetable for implementing the amendments to the Parole Board Rules and details of the work it is doing to improve Parole Scotland's communication with victims to ensure they understand the parole process	Yes/No/In Part	To be decided	
<b>Vulnerable witnesses</b> – views from the Crown Office and Procurator Fiscal Service, the Scottish Courts and Tribunal Service, Police Scotland and Social Work Scotland on how the scheme for vulnerable witnesses is working	Yes/No/In Part	To be decided	
<b>Victim centred approach fund</b> - details from the Scottish Government on how this fund is helping the victims of crimes and their families	Yes/No/In Part	To be decided	

Source: Criminal Justice Committee 2022

## Victims' rights and victim support (long term)

### Table of key issues

Key issue	Did the Scottish Government agree to the recommendation?	Progress against delivery	Notes and additional information
<b>Victims' rights and victim support</b>			
<i>Long-term actions (within this parliamentary session)</i>			
<b>Barnahus</b> - update from the Scottish Government on its plans for the introduction of Barnahus facilities in Scotland and roll-out of these facilities, including incorporating the Joint Investigative Interview in its working	Yes/No/In Part	To be decided	

Source: Criminal Justice Committee 2022

## Reducing youth offending, offering community justice solutions and alternatives to custody (short term)

Table of key issues

Key issue	Did the Scottish Government agree to the recommendation?	Progress against delivery	Notes and additional information
<b>Reducing youth offending, offering community justice solutions and alternatives to custody</b>			
<i>Short-term actions (within 6 to 12 months)</i>			
<b>Sentencing of young people</b> – update from the Crown Office and Procurator Fiscal Service and the Scottish Courts and Tribunal Service of their plans to implement and monitor the sentencing guideline to ensure it is applied consistently, whilst maintaining judicial discretion.	Yes/No/In Part	To be decided	
<b>Sentencing guideline and judicial training</b> - details of the training and support that will be provided to prosecutors and sheriffs, and details of how outcomes, such as reducing reoffending rates, are to be captured	Yes/No/In Part	To be decided	
<b>Secure care</b> – progress update from the Scottish Government on the implementation and impact of the secure care pathway and standards	Yes/No/In Part	To be decided	
<b>Secure care</b> - update from the Scottish Government, COSLA and the secure care providers on changing the funding model	Yes/No/In Part	To be decided	
<b>Secure care</b> - details of the timescale for the Scottish Government's plans to ensure that no child aged under 18 years of age is sent to HMP YOI Polmont and should instead be in secure care	Yes/No/In Part	To be decided	
<b>Secure care</b> – confirmation from the Scottish Government whether data is collected which details the number of requests for secure care places each year and the number provided and, if so, if that data is publicly available	Yes/No/In Part	To be decided	
<b>Deaths in custody</b> - formal and detailed response from the Scottish Government to all of the issues/recommendations in the Review report	Yes/No/In Part	To be decided	

Source: Criminal Justice Committee 2022



## Reducing youth offending, offering community justice solutions and alternatives to custody (long term)

### Table of key issues

Key issue	Did the Scottish Government agree to the recommendation?	Progress against delivery	Notes and additional information
<b>Reducing youth offending, offering community justice solutions and alternatives to custody</b>			
<i>Long-term actions (within this parliamentary session)</i>			
<b>Deaths in custody</b> - creation of an online centralised, transparent system that would allow the public to follow delivery of the recommendations	Yes/No/In Part	To be decided	
<b>Deaths post-custody</b> – view from the Scottish Government whether it will commission a review of the post-release deaths of those who were previously in custody and, whilst undertaking non-custodial sentences and diversion schemes	Yes/No/In Part	To be decided	
<b>Legislative review</b> - Scottish Government review of the relevant provisions in Part V of the Criminal Procedure (Scotland) Act 1995 with regard to a court's powers to place a child in secure accommodation where appropriate	Yes/No/In Part	To be decided	

Source: Criminal Justice Committee 2022

## Legal Aid (short term)

### Table of key issues

Key issue	Did the Scottish Government agree to the recommendation?	Progress against delivery	Notes and additional information
<b>Legal Aid</b>			
<i>Short-term actions (within 6 to 12 months)</i>			
<b>Information from the Scottish Government</b> - nature of the proposed engagement with the legal profession and users of legal aid; its timescales; its purpose; and whether a general consultation is planned; whether the Scottish Government has in mind any specific reform proposals on which it is consulting and whether will it publish these; and the planned timescale for introducing the legal aid reform bill	Yes/No/In Part		
<b>Methodology for setting fee rates</b> - Minister for Community Safety to provide further information on when the research on fee-related issues commissioned following the report of the Legal Aid Payment Advisory Panel is due to be completed. The Committee also requires details on when the Scottish Government anticipates that revisions to the current fee regime are likely to be implemented	Yes/No/In Part		
<b>Fee rates</b> - immediate action on fee rates	Yes/No/In Part		

Source: Criminal Justice Committee 2022

## Legal Aid (long term)

### Table of key issues

Key issue	Did the Scottish Government agree to the recommendation?	Progress against delivery	Notes and additional information
<b>Legal Aid</b>			
<i>Long-term actions (within this parliamentary session)</i>			
<b>PDSO</b> – review of the role for the Public Defence Solicitors Office (PDSO), assessment of the effectiveness of it, including asking users, and also to explore what additional roles the PDSO can play	Yes/No/In Part		
<b>Legislation</b> – introduction of a Bill to reform legal aid	Yes/No/In Part		

Source: Criminal Justice Committee 2022

- 1 Criminal Justice Committee, *Official Report*, Wednesday 8 September 2021: <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13287>
- 2 Criminal Justice Committee, Wednesday 8 September 2021: (Committee Paper CJ/S6/21/3/2: Written submissions): <https://www.parliament.scot/~media/committ/518>
- 3 Criminal Justice Committee, Wednesday 8 September 2021: (Committee Paper CJ/S6/21/3/1: Participants): <https://www.parliament.scot/~media/committ/517>
- 4 Criminal Justice Committee (Session 6), *Official Report* Wednesday 8 September 2021, Col 16: <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13287>
- 5 Criminal Justice Committee (Session 6), *Official Report* Wednesday 8 September 2021, Col 18: <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13287>
- 6 Criminal Justice Committee (Session 6), *Official Report* Wednesday 8 September 2021, Col 13: <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13287>
- 7 Criminal Justice Committee (Session 6), *Official Report* Wednesday 15 September 2021, Col 24: <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13306>
- 8 Criminal Justice Committee, *Official Report*, Wednesday 15 September 2021: <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13306>
- 9 Criminal Justice Committee, Wednesday 15 September 2021: (Committee Paper CJ/S6/21/4/3: Written submissions): <https://www.parliament.scot/~media/committ/660>
- 10 Additional written evidence (15 September 2021): <https://www.parliament.scot/~media/files/committees/criminal-justice-committee/additional-written-evidence-15-september-2021.pdf>
- 11 Follow up written submission from the Children and Young People's Commissioner Scotland (13 October 2021): <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-criminal-justice-committee/correspondence/2021/prisons-and-prison-policy-roundtable-follow-up>
- 12 Criminal Justice Committee, Wednesday 15 September 2021: (Committee Paper CJ/S6/21/4/2: Participants): <https://www.parliament.scot/~media/committ/645>
- 13 Written submission from HM Inspector of Prisons for Scotland (Committee Paper CJ/S6/21/4/3, page 3): <https://www.parliament.scot/~media/committ/660>
- 14 Justice Committee (Session 5), 7th Report, 2018 (SP Paper 363): *An Inquiry into the Use of Remand in Scotland* (24 June 2018): <https://digitalpublications.parliament.scot/Committees/Report/J/2018/6/24/An-Inquiry-into-the-Use-of-Remand-in-Scotland>

- 15 Criminal Justice Committee, *Official Report*, Wednesday 27 October 2021: <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13375>
- 16 Criminal Justice Committee, Wednesday 27 October 2021: (Committee Paper CJ/S6/21/8/2: Written submissions): <https://www.parliament.scot/~media/committ/1208>
- 17 Additional written evidence from COPFS (9 November 2021): <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-criminal-justice-committee/correspondence/2021/roundtable-on-misuse-of-drugs-follow-up-evidence>
- 18 Additional written evidence from Scottish Police Federation (4 November 2021): <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-criminal-justice-committee/correspondence/2021/the-role-of-the-scottish-criminal-justice-sector-in-tackling-the-misuse-of-drugs>
- 19 Criminal Justice Committee, Wednesday 27 October 2021: (Committee Paper CJ/S6/21/8/1: Participants): <https://www.parliament.scot/~media/committ/1207>
- 20 Scottish Government, Crime and Justice Statistics: *Drug Seizures and Offender Characteristics, 2018-19 and 2019-20*: <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2021/11/drug-seizures-offender-characteristics-2018-2019-2019-20/documents/drug-seizures-offender-characteristics-2018-19-2019-20/drug-seizures-offender-characteristics-2018-19-2019-20/govscot%3Adocument/drug-seizures-offender-characteristics-2018-19-2019-20.pdf>
- 21 Scottish Government (31 May 2021: *Medication Assisted Treatment (MAT) standards: access, choice, support*: <https://www.gov.scot/publications/medication-assisted-treatment-mat-standards-scotland-access-choice-support/>
- 22 Scottish Government (July 2011): *Drug Treatment and Testing Orders Guidance for Schemes*: <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2011/07/drug-treatment-and-testing-orders-guidance/documents/drug-treatment-and-testing-orders-guidance-for-schemes/drug-treatment-and-testing-orders-guidance-for-schemes/govscot%3Adocument/Drug%2BTreatment%2Band%2BTesting%2BOrders.pdf>
- 23 Scottish Drugs Death Taskforce (September 2021): *Report on Drug Law Reform*: <https://drugdeathstaskforce.scot/media/1259/drug-law-reform-report-sept-6th-21.pdf>
- 24 Criminal Justice Committee, *Official Report*, Wednesday 22 September 2021: <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13320>
- 25 Criminal Justice Committee, Wednesday 22 September 2021: (Committee Paper CJ/S6/21/5/2: Written submissions): <https://www.parliament.scot/~media/committ/744>
- 26 Criminal Justice Committee, Wednesday 22 September 2021: (Committee Paper CJ/S6/21/5/1: Participants): <https://www.parliament.scot/~media/committ/785>

- 27 Clerks note of informal meetings with the survivors of domestic abuse, gendered-violence and sexual offences, 24 November 2021, (CJ/S6/21/13/3) (8 December 2021): <https://www.parliament.scot/~media/committ/1768>
- 28 Scottish Government and the Convention of Scottish Local Authorities (COSLA): *Equally Safe: Scotland's Strategy to Eradicate Violence against Women*: <https://www.gov.scot/publications/equally-safe-scotlands-strategy-prevent-eradicate-violence-against-women-girls/>
- 29 *Victims and Witnesses (Scotland) Act 2014*: <https://www.legislation.gov.uk/asp/2014/1/contents>
- 30 *Domestic Abuse (Scotland) Act 2018*: <https://www.legislation.gov.uk/asp/2018/5/contents/enacted>
- 31 *Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019*: <https://www.legislation.gov.uk/asp/2019/8/contents/2020-01-20>
- 32 SCTS News (18 March 2021): *Improving the Management of Sexual Offence Cases*: <https://scotcourts.gov.uk/about-the-scottish-court-service/scs-news/2021/03/18/improving-the-management-of-sexual-offence-cases>
- 33 Criminal Procedure (Scotland) Act 1995: <https://www.legislation.gov.uk/ukpga/1995/46/section/275>
- 34 *Victims and Witnesses (Scotland) Act 2014*: <https://www.legislation.gov.uk/asp/2014/1/contents>
- 35 *Victims and Witnesses (Scotland) Act 2014, Section 2*: <https://www.legislation.gov.uk/asp/2014/1/section/2>
- 36 Criminal Justice Committee, *Official Report*, Wednesday 22 September 2021: <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13320>
- 37 Criminal Justice Committee, Wednesday 22 September 2021: (Committee Paper CJ/S6/21/5/4: Written submissions): <https://www.parliament.scot/~media/committ/756>
- 38 Criminal Justice Committee, Wednesday 22 September 2021: (Committee Paper CJ/S6/21/5/1: Participants): <https://www.parliament.scot/~media/committ/785>
- 39 Vulnerable Witnesses (Scotland) Act 2004, Victims and Witnesses (Scotland) Act 2014, and Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019.
- 40 Scottish Government Victim Notification Schemes: <https://www.mygov.scot/after-the-verdict/victim-notification-schemes>
- 41 The Parole Board (Scotland) Amendment Rules 2021: [https://www.legislation.gov.uk/ssi/2021/4/pdfs/ssipn\\_20210004\\_en.pdf](https://www.legislation.gov.uk/ssi/2021/4/pdfs/ssipn_20210004_en.pdf)
- 42 Criminal Justice Committee, *Official Report*, Wednesday 15 September 2021: <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13306>

## Criminal Justice Committee

Judged on progress: The need for urgent delivery on Scottish justice sector reforms, 1st Report, 2022 (Session 6)

- 43 Criminal Justice Committee, Wednesday 15 September 2021: (Committee Paper CJ/S6/21/4/5: Written submissions): <https://www.parliament.scot/~media/committ/654>
- 44 Additional written evidence (21 September 2021): <https://www.parliament.scot/~media/files/committees/criminal-justice-committee/additional-written-evidence-15-september-2021.pdf>
- 45 Criminal Justice Committee, Wednesday 15 September 2021: (Committee Paper CJ/S6/21/4/2: Participants): <https://www.parliament.scot/~media/committ/645>
- 46 The Scottish Sentencing Council: *Sentencing young people - Draft sentencing guideline*: <https://www.scottishsentencingcouncil.org.uk/media/2045/sentencing-young-people-draft-guideline.pdf>
- 47 Scottish Government (5 Oct 2020): *Secure care: pathway and standards*: <https://www.gov.scot/publications/secure-care-pathway-standards-scotland/>
- 48 Scottish Parliament Justice Committee (Session 5) - 22nd Report, 2019: Secure Care and Prison Places for Children and Young People in Scotland (SP Paper 628), 26 November 2019: <https://digitalpublications.parliament.scot/Committees/Report/J/2019/11/26/Secure-care-and-prison-places-for-children-and-young-people-in-Scotland>
- 49 Response from the Scottish Government to 22nd Report, 2019: Secure Care and Prison Places for Children and Young People in Scotland (28 Jan 2020): [https://archive2021.parliament.scot/S5\\_JusticeCommittee/Inquiries/20200128\\_SGReportResponse.pdf](https://archive2021.parliament.scot/S5_JusticeCommittee/Inquiries/20200128_SGReportResponse.pdf)
- 50 Scottish Parliament Justice Committee (Session 5) - 22nd Report, 2019: Secure Care and Prison Places for Children and Young People in Scotland (SP Paper 628), 26 November 2019: <https://digitalpublications.parliament.scot/Committees/Report/J/2019/11/26/Secure-care-and-prison-places-for-children-and-young-people-in-Scotland>
- 51 Criminal Justice Committee, *Official Report*, Wednesday 29 September 2021: <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=13343>
- 52 Criminal Justice Committee, Wednesday 29 September 2021: (Committee Paper CJ/S6/21/6/2: Written submissions): <https://www.parliament.scot/~media/committ/891>
- 53 Additional Evidence from Citizens Advice Scotland: <https://www.parliament.scot/~media/files/committees/criminal-justice-committee/citizens-advice-scotland-additional-evidence-29-september-2021.pdf>
- 54 Criminal Justice Committee, Wednesday 29 September 2021: (Committee Paper CJ/S6/21/6/1: Participants): <https://www.parliament.scot/~media/committ/890>

