

Rethinking Criminal Justice in Scotland

*– summary and recommendations from a report of the
Scottish Consortium on Crime and
Criminal Justice*

APEX
SCOTLAND

HL Howard
League
Scotland

SAFEGUARDING COMMUNITIES
SACRO
REDUCING OFFENDING

Scottish
Human Rights
Centre

Victim Support Scotland

‘Rethinking Criminal Justice in Scotland’

Summary and recommendations from a report of the Scottish Consortium on Crime and Criminal Justice

Foreword

By Sir Russell Hillhouse

Chairman of the Consortium

This Report covers some of the most critical issues in the fields of crime and criminal justice. We hope it will be seen by the Scottish Executive, the Scottish Parliament and the people of Scotland as a useful stimulus to open dialogue and to the development of a comprehensive policy for crime and criminal justice based on consistency, principle and the best available factual information.

The Report draws together the experiences of the member organisations of the Consortium and of many of our associate members and is based on the studies carried out by our working groups. We are grateful to all who contributed to the groups’ work and especially to the group chairs (David Colvin, Antony Duff, Hildegard Wylezalek and Peter Young) and the researchers (Nancy Loucks, Gill McIvor and Jackie Tombs). The task of producing successive drafts of the Report and its summary fell to Jackie Tombs and we are very grateful to her for creating such a coherent and comprehensive document from a complex mass of material.

The consortium would like also to record its gratitude to its Hon Secretary and Hon Treasurer, Gillian Bishop and Drummond Hunter, for their indefatigable efforts and to the charitable trusts, including the Hilden Charitable Fund and Lloyds TSB Foundation for Scotland, without whose generous funding this Report would not have been produced.

RUSSELL HILLHOUSE

***For the full report, visit our
website at www.scccj.org***

The Scottish Consortium on Crime & Criminal Justice

Registered Charity No: SC 029421

Introduction

1. **The Scottish Consortium on Crime and Criminal Justice** was formed in 1998 to take advantage of the opportunity for enhanced public debate about crime and criminal justice provided by the creation of the Scottish Parliament and Executive. Our aim is to reduce the incidence and alleviate the impact of crime in our society as far as is reasonably possible by whatever morally acceptable means can be shown to be most effective.

2. The Consortium brings together leading organisations concerned with crime and criminal justice in Scotland, including the Howard League Scotland, APEX Scotland, SACRO (Safeguarding Communities – Reducing Offending), the Scottish Human Rights Centre and Victim Support Scotland¹. Based on a broad spectrum of experience and skills and the available factual information, our recommendations seek to promote open dialogue about the best ways to:

- reduce offending,
- increase community safety,
- ensure fair treatment for the victims of crime,
- enhance civil liberties, and
- increase the effectiveness of the juvenile and criminal justice systems.

3. A number of extremely important areas are not fully covered in this report. These include detailed consideration of victims' rights and needs, the function and operation of prisons and the health of prisoners, and the serious problems posed by the links between drugs, including alcohol, and crime. In addition, sentencing reform is, without doubt, crucial to how the criminal justice system can respond most constructively to offending. All of these issues are for future consideration.

Our Vision

4. Our main conclusion is that the key to making significant reductions in the level and impact of crime lies in changing the way potential and known offenders relate to their communities, including victims, and to the wider society. These changes require the development and implementation of social and economic policies much wider than criminal and juvenile justice. The justice systems can, nevertheless, as part of a broader integrated social policy approach, contribute to reducing levels of crime.

5. We believe that a **whole problem approach** to crime and criminal justice is the way forward. Responses which address the whole of the problem – for victims, offenders and communities – work best because of the overwhelming evidence that:

- many offenders are also victims and that the prevention of offending must be accompanied by the prevention of victimisation particularly amongst the young,
- most offenders have the capacity to change and can improve if they are given encouragement, guidance, and help. There are, however, a small number of difficult to reach offenders who either cannot (eg violent offenders with intractable behaviour problems) or will not (eg serious fraudsters making large amounts of money) change,
- custodial sanctions tend to be disproportionately harmful, particularly to young people and women, and do not make better citizens,
- community sanctions with a rehabilitative orientation are more effective than custodial sanctions in reducing offending,
- victims have legitimate needs for protection, information, compensation, consultation and fair treatment, and
- juvenile and criminal justice responses, if integrated within a wider social policy approach committed to enhancing the life experiences of all citizens, including children and young people, can contribute to reducing offending and victimisation.

6. In order to take full advantage of their potential contribution, criminal and juvenile justice interventions must help to give people the chance to make peace with, be accepted by and included within the community. For known offenders, justice interventions can promote acceptance and inclusion through processes which encourage offenders to accept responsibility for their actions, accept the need to change, express contrition and, where possible, make amends to the victim and the community. It is essential to build upon approaches to crime reduction which seek to include potential and known offenders within the community; approaches which necessarily involve the community and, where appropriate, the victim, in the process.

7. Many of these ideas come together in the concept known as restorative justice; an approach to dealing with offending which concentrates on repairing the harm done by crime. Restorative justice approaches emphasise: consideration and security for victims within the criminal justice system and access to services which help them to recover; rehabilitation of offenders by providing opportunities for their integration within the community; and healing divisions within communities through mediation of neighbourhood disputes. These ideas underpin a number of sanctions currently available in Scotland and innovative restorative justice approaches have proved effective in other countries. There is considerable potential to further develop restorative justice within the Scottish juvenile and criminal justice systems.

Crime and the Community

8. Key indicators of social exclusion are highly related to patterns of offending and victimisation – most notably in the case of young people. We know that:

- young people under 18 years commit the majority of crimes and offences, and
- all too frequently young offenders have been victims first – before they become offenders – and this is particularly so for those young offenders who persist in criminal careers.

For many young offenders, however, offending is transitory and most adult offenders are ‘first time and only time offenders’ who never appear in the criminal statistics again. Priority must be given to:

- preventing victimisation and offending amongst young people,
- implementing crime prevention policies and practices which address the key facts about offending and victimisation,
- addressing the widespread use of illegal drugs and alcohol misuse amongst the young,
- developing a wider range of flexible juvenile and criminal justice responses which are appropriate for different kinds of offence and offenders, and
- responding in ways which take account of the needs of victims.

Criminal Justice and the Community

9. We examined how the criminal justice system responds to offending. The majority of alleged offenders are, in fact, dealt with either by the police making conditional offers for motor vehicle offences or by the procurator fiscal making non-court disposals. Non-court disposals include referring offenders to diversion schemes which can involve victim-offender mediation (where they are available) and other measures which are inspired by restorative justice ideas. While it is certainly neither appropriate nor feasible to directly involve all offenders or all victims in face to face restorative approaches, we believe that there is an urgent need to rethink the appropriateness of the range of penal sanctions for offences, offenders and victims. We also believe that there is considerable potential to make more use of restorative approaches in response to adult offending since

- if diversion can more frequently be coupled with reparation to victims, at least some of the harm done may be healed, and
- even in those cases where imprisonment will continue to be necessary to protect the public from the most serious offenders, prisoners should be encouraged to take responsibility for their actions and to make what amends they can to victims and communities.

10. The evidence is incontrovertible that, for the vast majority of offenders:

- community sanctions are the most effective in reducing re-offending and are dramatically less costly than imprisonment,
- imprisonment is by far the most expensive penal sanction in financial and human terms and is the least cost-effective option for crime reduction.

Imprisonment should, therefore, only be used where it is necessary to protect the public. We fully appreciate that moving to such a position will require taking account of the need to provide adequate protection for victims as well as securing public confidence. Nevertheless, limiting the use of imprisonment to the most serious offenders would

- cost less and
- have the potential to be more effective in protecting victims and the community.

Prisons could then concentrate on delivering ‘personal change programmes’ aimed at reducing re-offending by serious offenders.

Juvenile Justice and the Community

11. We looked at how the Children’s Hearings System deals with the vast majority of young people aged up to 16 years (or 18 if they are already in the system) who offend. Welfare is the primary concern and social education the aim of the current system of justice for children and young people. With some adaptation, which would allow the system to explicitly take account of the needs of victims as well as offenders, there is considerable scope for:

- restorative justice approaches, including reparation to victims and family conferencing, to inform the Reporter’s use of discretion and be used as a condition of children’s hearings.

At the Interface: Formal or Social Justice

12. There are some problems surrounding the interface between the juvenile and adult justice systems; in particular, the dramatic shift in approach for most 16 year olds as they pass from the children’s hearings system to the criminal justice system. We welcome ‘It’s A Criminal Waste’ – the Report of the Advisory Group on Youth Crime² – and the Scottish Executive’s Response³ which accepts the need for a ‘bridging system for the future’ to increase the range of disposals available to the hearings thus permitting the referral of as many 16/17 year olds as possible to the hearings rather than the courts. Nevertheless, we regret that the Government has not yet released sufficient funds to implement the full report.

13. Scotland still has one of the lowest ages of criminal responsibility in the world, even though most young people under 16 years are dealt with by the hearings system. The Scottish Executive accepts the need to review the age of criminal responsibility and is committed, in the medium to longer-term, to implementing a review of the case for raising the age to 12 years⁴. We welcome the proposed review but would like to see the case considered for raising the age of criminal responsibility to the same age as that in which young people move into the adult criminal justice system which we believe should be 18 years. This does not mean that young offenders should not be held accountable for their behaviour, rather that the context within which young people should be expected to accept that responsibility is the youth justice not the adult justice system. Victim Support would, however, wish to further consider the implications in detail of what such a change would mean for victims.

14. An area for concern within youth justice, somewhat ironically, stems from an increased emphasis on young people's rights; in particular to access to formal justice and due process. We welcome the prominence given to the rights of children and young people through the incorporation of the United Nations Convention on the Rights of the Child and the European Convention on Human Rights into Scots law. Nevertheless, we believe that an over-emphasis on formal justice and an under-emphasis on social justice is in danger of obscuring the most effective ways of giving excluded young people a chance to live a decent and law-abiding life within society.

Working Towards Safe and Just Communities

15. 'Truly preventive' approaches found in early intervention and primary prevention strategies are overwhelmingly supported by the evidence – from Scotland and other countries. We considered the principles and practices guiding key examples of effective crime reduction projects with known offenders and concluded that for both young and adult offenders:

- crime reduction strategies must focus on those life experiences and circumstances which lie at the root of offending behaviour,
- justice interventions aimed at reducing re-offending must address these experiences and help to change these circumstances,
- victims should be consulted about the appropriateness of their involvement in interventions,
- where possible interventions should involve repairing the damage done to the victims of crime, offenders and communities, so that
- 'justice in the community' can properly reflect the growing policy emphasis in Scotland upon social inclusion and social justice and the recognition that crime is a social issue that requires a fully integrated policy response to be effectively addressed.

16. Strategies which have been shown to help deflect young people from persistent and increasingly serious offending and to prevent crime in the community include:

- for young children, an expansion in pre-school education and family centres to provide support and practical help to isolated parents or to families under stress,
- for the schoolchild, avoiding bullying and exclusion from school and alternative provision when exclusion has, in the last resort, to take place, and
- for young people not in school, further education or training, or work, an outreach programme in every area that attracts the most marginalised youngsters and makes links with other forms of statutory and voluntary provision.

17. For those who have already become persistent or serious offenders, Annex 1 provides examples of promising work with offenders in Scotland. While evaluation of ongoing work is incomplete in some cases, the examples illustrate the potential which already exists to develop policies and practices which would significantly reduce the level of crime in the community. The Government's Social Inclusion Strategy promotes some of the initiatives that we endorse but it does not cover them all and we conclude that there is an urgent need for:

- a whole problem approach which develops integrated policies and practices to take account of the main risk factors for offending and effective ways of reducing these risks within communities, and
- a redistribution of public spending to place greater emphasis on preventive and restorative work, including improved services for victims. The scarcity of funding for existing preventive work contrasts sharply with the funding available for custodial institutions and limits the sentencing options available to courts.

Justice In A Human Rights Context

18. We believe that change in our present systems is inevitable, particularly in light of devolution and the assimilation of human rights into Scots law. For example, it has become quite clear, in the relatively short period since the European Convention on Human Rights (ECHR) was incorporated into domestic law, that rights claims will continue to challenge and change aspects of the existing juvenile and criminal justice systems. While the direction of the change is as yet unclear, there is little doubt that human rights considerations will affect the way victims and offenders are treated and the extent to which the criminal and juvenile justice systems can be part of a co-ordinated policy to promote crime prevention and community safety through broader policies on social inclusion.

Recommendations

19. We recommend that the Parliament and Executive should promote a redirection of thinking, resources and sentencing policies in order to develop a whole problem approach to crime and criminal justice.

Measures which challenge offenders with the consequences of their offending – for victims, for themselves and for communities – are the most promising way to prevent repeat offending. A key objective would be to repair the harm done to victims, rehabilitate and integrate offenders and heal divisions in communities.

20. We recommend that the objectives of the Executive’s social inclusion policies should be extended to include an assessment of their likely impact on crime.

Policies on the family, education, housing, health, youth and employment have profound consequences for the level of crime in communities, yet such policies seldom refer to the reduction of crime as an explicit objective. Given that the roots of persistent criminality begin early in life, a particular focus should be on child care policies, reducing exclusions from school and tackling the structural problems of high crime areas. Concentration of effort in these areas would pay disproportionate benefits to the wider community and would reduce victimisation and offending.

21. We recommend that systems of evaluation should be developed for and applied to every service in the system, including courts and prisons, and that the results of these evaluations should inform future decisions on the development of the juvenile and criminal justice systems.

Public discussion of criminal justice issues is too often based on emotion rather than understanding. To develop useful responses, we must understand which sanctions and interventions are effective in reducing crime and re-offending. We firmly believe that improvements in the system should be based on rigorous evaluations of the effectiveness of policies and practices in creating safer communities for all and that our services and initiatives should be judged on the extent to which they work towards these ends.

22. We recommend the development of an integrated programme of research to assess existing and new initiatives and to contribute to the ongoing need to monitor and evaluate the findings from research conducted in Scotland and elsewhere.

23. We recommend a rapid increase in use of penal sanctions which offer the possibility of restoration to victims, offenders and communities.

With suitable safeguards for victims, sanctions should, where feasible, be based in the community to maximise their impact. Although progress has been made, no area in Scotland has a full range of community sanctions available to the courts. Court decisions all too often have to be made in the light of what is available rather than what is the most effective or desirable. The success of the approach we recommend will depend on the rapid development of effective community projects so that a full range of community based options is made available to every Sheriff Court.

24. We recommend the development of a comprehensive strategy to address the problem of fine default and that serious reconsideration is given to the introduction of a ‘unit fine’ system.

The current over reliance on custody for fine-defaulters, remand and short term prisoners must be tackled as a matter of urgency. We believe that a dramatic reduction in the use of imprisonment is necessary but that this should be pursued in parallel with increased information and protection for victims. The percentage of prison receptions due to fine default remains unacceptably high and, while the introduction of supervised attendance orders to address this problem has had some impact, people who breach supervised attendance orders can now end up in prison for longer.

25. We recommend that targets should be set for:

- **the abolition of imprisonment for fine default,**
- **the expansion of bail services to all courts,**
- **the provision of alternatives to remand, and**
- **the reduction of short term imprisonment.**

For those who must go to prison to protect the public, we are encouraged by the rapid development of ‘personal change’ programmes in the Scottish Prison Service but we believe that their effectiveness in dealing with the most serious offenders must be severely limited by prison numbers. The majority of prisoners could be dealt with more effectively and economically by the expansion of personal change programmes in the community.

Victim Support would wish victims' rights to be fully taken account of in pursuing such a policy.

26. We recommend that a substantial part of the resources saved through reductions in the prison population be redirected to community sanctions including reparation and services which support victims.

Custodial sanctions are not only ineffective; they are also extremely expensive. In 1998-99, the costs of various penal sanctions⁵ were:

- 6 months in prison: £13,456
- average cost of a probation order: £1,450
- average cost of a community service order: £1,325
- average cost of a bail supervision scheme: £1,100
- average cost of diversion to a mediation and reparation scheme: £350.

27. We recommend that victims' rights be fully taken account of in the expansion of the restorative justice approaches we propose for the adult and juvenile justice systems.

The interests of victims in the criminal justice system have been severely neglected. Information on the progress of cases has improved but much remains to be done to provide victims with rights to: respect and recognition, be heard, supply and receive information, participate in legal proceedings, protection, compensation, mediation, victim support, and legal aid.

28. We recommend the development of a more equitable and coherent policy for the state payment of compensation to victims where reparation by the offender to the victim is not possible and where it is not feasible for victims to be involved with their offenders.

Our proposals for extending reparation and mediation schemes – as a condition of a Children's Hearings Order and as options available to the Procurator Fiscal or the Reporter – will only be possible in cases where it is appropriate for both victims and offenders.

29. We recommend action to secure a significant increase in the use of compensation orders in appropriate cases.

The only sentence courts can impose where the offender is required to make any kind of reparation to the victim is a compensation order, yet these orders currently account for less than one per cent of all sentences.

In Conclusion

30. We believe that the Scottish Parliament and Executive, in making decisions about future policies on crime and the juvenile and criminal justice systems, should adopt a whole problem approach based on the evidence about what works best in reducing offending and preventing victimisation. In practical terms, and with proper recognition of the needs and rights of victims, this should involve immediate action to:

- increase rapidly the use of the most effective community sanctions presently available,
- substantially reduce the use of custody, and
- initiate action research projects designed to test the practical application of a wide range of restorative justice approaches for young and adult offenders.

Notes

1. A number of other organisations and individuals have also been associated with the work of the Consortium, for example, by participating in working groups. The Consortium is funded by grants from Charitable Trusts.
2. Report of the Advisory Group on Youth Crime, 2000, *It's A Criminal Waste*, Edinburgh, Scottish Executive.
3. Scottish Executive Response, 2000, *It's A Criminal Waste*, Edinburgh, Scottish Executive.
4. *Ibid.*
5. Most of these costs are published in Scottish Executive, 2000, *Costs, Sentencing Profiles and the Scottish Criminal Justice System*, 1998, Edinburgh, Scottish Executive. The bail supervision and reparation and mediation schemes are run by SACRO.

The Consortium can be contacted through the following organisations:

Apex Scotland
9 Great Stuart Street
Edinburgh EH3 7TP
tel: 0131 220 0130
0131 538 7790

SACRO National Office
1 Broughton Market
Edinburgh EH3 6NU
tel: 0131 624 7270

Scottish Human Rights Centre
c/o Gilfedder & McInnes
34 Leith Walk
Edinburgh EH6 5AA
tel: 553 4333

Victim Support Scotland
15/23 Hardwell Close
Edinburgh EH8 9RX
tel: 0131 668 4486

For the full report, visit our website at www.scccj.org

The Scottish Consortium on
Crime & Criminal Justice

Registered Charity No: SC 029421

APEX
SCOTLAND

HL Howard
League
Scotland

SAFEGUARDING COMMUNITIES
SACRO
REDUCING OFFENDING

Scottish
Human Rights
Centre

Victim Support Scotland