

Justice Committee

Community Justice (Scotland) Bill

Written submission from the Joint Faith Board on Community Justice

1. Will the proposals in the Bill transform the community justice system in the way envisaged by the Commission on Women Offenders in its 2012 report, such as addressing the weaknesses identified in the current model, tackling reoffending and reducing the prison population?

1a. We welcome the Scottish Government's attempts to translate the aspirations of the Commission on Women Offenders into legislation. The Commission was born of a primary concern with the long recognised need to reduce the use of custody for women, and the creation of more, and better, community alternatives. The Commission rightly said that this specific matter could only be addressed if wider – and long overdue - reforms of the structures and processes involved in the planning and delivery of services to offenders in the community were effected. Implicitly, the Commission was continuing the debate on the more general issue of reducing the prison population overall in Scotland, stimulated by the McLeish Report in 2007, on which little progress has been made, (except recently in respect of young offenders). Within Scotland, a clearer understanding of the knowledge, skills and partnerships required to reduce offending does seem to have emerged in the last decade. There remains room for argument as to whether Scottish policymakers have yet acquired an adequate understanding of the legal, political and practical strategies necessary to reduce the adult prison population in respect of both men and women. We can see that the proposed legislation will change structures and processes but it is less clear that it will effect changes which will lead to a reduction in the prison population, without a more explicit commitment to it, in the legislation itself. We are worried that the proposed definition may amount to nothing more than renaming a set of processes and practices that in other contexts would simply be called "corrections". It would be a lost opportunity to define – and pursue - "community justice" so narrowly.

2. Are you content that the definition of 'community justice' in the Bill is appropriate?

2a. We think the definition is too limited, and does not fully capture all that "community justice" could and should be. The fourfold definition used in the legislation is purely descriptive, denoting only the administrative arrangements that will henceforth constitute "community justice" in Scotland. The clarity this provides is useful up to a point: it offers a framework of sorts for *most* of the relevant organisations which will need to be involved, and identifies *some* of the core processes that "community justice" will entail.

2b. Crucially, however, the definition contained in the legislation it neglects sentencers and sentencing. Even a procedural definition of "community justice" needs to encompass sentencers, and sentencers need to think of themselves as a component part of "community justice", not something apart from, or above, it. In a literal, practical sense, sentencers – especially local sheriff's courts - have always been an important way of administering local justice, and to a greater or lesser

degree they have seen themselves as giving expression to community sentiment in respect of offenders. They have not however, taken a particularly collaborative or dialogical approach to their work: while there have been (and are) individual exceptions, sheriffs have not engaged, systematically and consistently, with local social work agencies to decide upon and develop best practice in sentencing and offender supervision. Nor have they always been willing to engage with policymakers to develop coherent, nationwide penal strategies – and we understand that the Lord President (the most senior judge in Scotland) actively discourages such engagement, even now. Sheriffs and judges invariably defend their aloofness from practitioners and policymakers in terms of “judicial independence”. We recognize the importance of non-interference by the executive in sentencing decisions, but we are not convinced that a commitment to “judicial independence” should mean unwillingness to engage in open dialogue with other concerned parties, for the sake of the common good.

2c. A properly articulated philosophy of “community justice” would require greater dialogue with policymakers and local agencies involved in offender supervision. This is not a fanciful or unheard of idea. Such practice has already been modeled in “problem-solving courts” (for drug and/or domestic violence offenders) – or the court in Liverpool that was actually known as “a community justice centre” for the short period of its existence. It is a matter of regret that something similar was never experimented with in Scotland – such a centre was once mooted for the east end of Glasgow, but never materialized. Such a court would not be a solution the full range criminal offences which occur in Scotland and we recognise that the good and necessary work that is already done in the prevailing judicial structures, Nonetheless, some new ingredients need to be introduced if a paradigm shift towards community justice – and a significantly lower prison population - is eventually to take place.

2d. Defining “community justice” in a way that does not formally encompass sentencers reinforces and consolidates, rather than resolves, a persistent structural problem in the administration of Scottish criminal justice; the ability of sheriffs, if they so wish, to exempt themselves from debate on policy-making and their capacity to disregard policy (for example, on the reduction of short custodial sentences) if they disagree with it, or are lukewarm towards it. We accept that merely introducing new terminology does not in itself guarantee a solution to the problem of the sheriff’s aloofness towards policy-making, but we think it important to signal, by a deliberately broad use of the term “community justice”, that sentencers could and should be more involved in debate about the reduction of the prison population, without jeopardising their necessary judicial independence in court.

2e. The definition is also insufficiently clear that community justice, both philosophically and administratively, needs to bring together the spheres of “community safety/crime prevention” on the one hand, and supervisory services for offenders on the others (both community sentences and post-release supervision). In Scotland, these still tend to be thought of as separate policy areas and – with the exception of the police, whose work crosses both - to be managed in separate silos. There are legitimate divisions of labour in these spheres – the tasks of a criminal justice social worker are not the same as the task of a community warden, or a CCTV operator – but there needs to be a stronger sense of their being part of the

common enterprise of “community justice”. The common, binding element to these two spheres of activity is the reduction of offending and re-offending. The success rate of prisons, criminal justice social work (and their third sector partners) in reducing reoffending is not likely to be great if there are not also measures in place in each local community which reduce the likelihood of crime occurring. It is asking too much of traditional penal agencies to reduce offending on their own, separate from the quality of life in the communities from which offenders and victims are drawn. Communities in which no (or few) steps are taken to prevent crime and create feelings of security and safety are less likely to be hospitable to offenders being supervised in their midst. Thus the work of the police, anti-social behaviour strategies and CCTV provision must come within the purview of “community justice”, and be subject to the same quality of ethical scrutiny and public accountability as has traditionally been given to purely penal practices - imprisonment, release mechanisms and community sentences.

2f. Even this broadening of the definition of “community justice” - to one which encompasses “cops” and “courts” and well as “corrections” – is insufficient. There must also be greater involvement of citizens as well, building on practices and opportunities which already exist. So care must be taken to avoid giving the impression that “community justice” is merely the preserve of professionals (and policy-makers). It is in the context of citizen involvement that we would also place the necessary concern for crime victims. The views of crime victims matter and their needs - as vulnerable and harmed citizens must be attended to – but care must be taken to avoid “the voice of the victim” becoming determinative of what “community justice” should be. The voice of the victim can all too easily be manipulated, politically and by the media, to justify more intensive and extensive punishments. These arguments – that some crimes are under-censured, under-controlled and under-punished - must in fact be confronted and not shied away from in any serious debate on community justice. In some instances – alcohol related violence and domestic violence may be two cases in point – these may well be true. But such arguments and concerns have to be balanced and set alongside concern with the roots and causes of criminal behaviour and the desirability of desistance and rehabilitation. None is more important than the other. Moves towards community justice require attention to them all.

2g. Implicitly, the proposed legislation seems to acknowledge the importance of both health and educational services in its understanding of relevant partners in community justice arrangements. We still think their importance is underplayed, and that insufficient urgency is given to envisioning or improving existing structures of liaison and partnership. The relationship of health to supporting offenders is now critical and should be recognised structurally as well as practically at a local level. Health covers general ill-health, mental welfare, addiction services, health promotion, suicide and self harm prevention and a sense of well being for individual families and community. There is irony and regret in the longstanding aloofness of educational services from youth justice in Scotland, given that the Kilbrandon Report (1964) - arguably a precursor of “community justice” thinking - made it so central to progressive practice, and whose conclusions were taken to heart in many important respects, to Scotland’s lasting credit. The proposed new framework for community justice must include linkage with GIRFEC in general and engage with local policies relating to truancy and school exclusion in particular.

2h. The new framework also needs to encompass the needs, rights and interests of crime victims, just as surely as it addresses the needs, rights and interests of offenders and communities. It is no longer possible – and it was never ethical – to develop strategies for rehabilitation and desistance, important as they are, which do not also take account of victim’s voices. “Victim” and “offender” are not hard and fast categories – sometimes they overlap, and sometimes experiences of victimization can produce criminal behaviour. The sometimes punitive inclinations and demands of crime victims, abetted and magnified in irresponsible media, cannot be indulged – we do not think that “community justice” has to be “victim-centric” (if that implies denigrating offenders) – but they cannot be disregarded or dismissed. Their roots should be understood, and their expression engaged with. We think that new conceptions of “community justice” have much to learn from restorative justice (of which, worldwide, there are already many models of good practice) – without believing that this should be the sole way of meeting victim’s needs. Nonetheless, it would help to understand why restorative justice has so far made so little headway in Scotland, despite the best efforts of its several champions. Unless lessons are learned from this, attempts to create “community justice” might be stillborn.

3. Will the proposals for a new national body (Community Justice Scotland) lead to improvements in areas such as leadership, oversight, identification of best practice and the commissioning of services?

3a. This question seems to overlap with the more general concerns of q6, please see the comments below

4. Taking into account the reforms set out in the Community Empowerment (Scotland) Bill relating to Community Planning Partnerships, will Community Justice Partners have the powers, duties and structures required to effectively perform their proposed role in relation to community justice?

4a. There are no guarantees that this will work effectively or consistently. The Christie Commission was not particularly complementary about the operation of Community Planning Partnerships, however sound the principle. We fear that community justice issues may be lost sight of amidst the more general concerns of Community Planning Partnerships. Past experience of the way local authorities work suggests that some local Community Planning Partnerships will prioritise “community justice” while others will not, and no amount of central direction from Community Justice Scotland will be able to effect the local determination of priorities. The legislation may well bestow upon the Community Justice Partners the necessary “powers, duties and structures” but in the absence of a compelling vision of what is being aimed for the end result may be no more than an administrative re-arrangement rather than a desired transformation of practice.

5. Does the Bill achieve the right balance between national and local responsibility?

5a. We think “central” is a more apt term than “national” to characterize the relationship in question here. “Local and national” are not formally opposite terms in the way that “local and central” are. “Local” institutions can have national loyalties,

and national significance, and feel like integral parts of the nation as a whole, but by definition “the local” cannot be, “central”. So, notwithstanding the JFBCJ belief that the soon-to-be-terminated Community Justice Authorities had an important part to play as regional mediators of relationship between *the central* and the local, we think that the Bill at least attempts to create the right balance, in principle. In practice, the post-devolution history of relationships between the central and the local in Scotland has been a fraught one – local government has been resistance to central influence and there is no guarantee that the structural arrangements being created here to administer “community justice” will resolve endemic and enduring tensions.

5b. In any case, to think of “community justice” simply in terms of the relationship between the central and local aspects of the executive is misleading. As we have indicated above, the relationship between the executive and the judiciary is all important to a proper understanding of “community justice”. There is a “right balance” to be struck there too, which itself has local and central aspects.

6. Will the proposed reforms support improvement in terms of: (a) leadership, strategic direction and planning? (b) consultation and accountability? (c) partnership and collaboration? (d) commissioning of services and achieving best value for money?

6a. We can discern a certain rationality in the reforms, which may well bring about improvements to the procedures and processes listed above. Our difficulty is with the overweening emphasis on “proceduralism” in the Bill, as if devoting time to energy to getting this right will automatically and inexorably lead to transformations in practice. Right ordering of procedures undoubtedly matters, but a clear and coherent vision of what is being aimed at needs to be infused into the legislation.

7. Are the resources, as set out in the Financial Memorandum, sufficient to transform the community justice system in the way envisaged by the Commission on Women Offenders in its 2012 report?

7a. We cannot comment on this

8. Is the timetable for moving to the new arrangements by 1 April 2017 achievable?

8a. We cannot comment on this in the sense intended, but we are mindful that whatever happens by April 2017, it is only the first step. Community justice cannot be achieved by legislative fiat – the law can signal and enable what is required but cannot bring it about on its own. It may be helpful to identify other milestones, down the line from 2017, by which the substantive success or otherwise of the legislation can be judged. The danger of major re-organisations precipitated by legislation of this kind is that the managers tasked with accomplishing it may become so focused on processes and procedures that they lose sight of outcomes – dwelling on ways and means rather than on “what works” and “what matters”. The likelihood of this happening, we think, is so much greater in the absence of a clear vision of community justice – and the goal of reduced prison use – that is one of its key outcomes.

9. Could the proposals in the Bill be improved and, if so, how?

9a. We understand what the Bill is seeking to achieve and recognize that the kind of structural and administrative changes it is proposing may well be necessary - but not sufficient - steps to bring about the kind of “community justice” which, over time, can effect a sustained reduction in the use of imprisonment. This we think, is the test that it should be judged by. The crime rate has ostensibly been falling in Scotland for several decades. While no authority is certain why this is so – a range of factors, interacting in complex ways are likely to be involved - but it suggests that something is being “done right” to prevent and reduce crime, even if no single agency or policy can be given credit for it. It is the imprisonment rate which has been the persistent sticking point in Scotland’s efforts to develop progressive penal policies. Other mainland European countries have comparably falling crime rates, but significantly lower prison rates. To the extent that this legislation seeks to address this, and to take up the challenge posed by the Commission on Women Offenders (and the Scottish Prison Commission before it), it is welcome. We think, however that cultural change, premised on a deeper intellectual understanding of what “community justice” can be, communicated to all involved agencies, must be a necessary accompaniment to structural and administrative change if there is to be real chance of overcoming the obstacles to reduced

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