

scottish justice matters

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CHANGING TIMES

Special features on the reforms facing Scotland's criminal justice system

Also

Problem-Solving Courts

Interview with
HM Chief Inspector of
Prisons, Hugh Monro



REFORM
IN SCOTTISH CRIMINAL JUSTICE

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All Change

Elish Angiolini QC explains why the 2012 Commission for Women Offenders recommended radical reforms to the delivery of justice in Scotland.

FOLLOWING a harrowing report from HM Inspector of Prisons for Scotland in 2011 about conditions in the national women's prison in Scotland, HMP Cornton Vale, I was invited by the Justice Secretary Kenny MacAskill to lead a Commission to look at ways of identifying better outcomes for women offenders. Together with my colleagues Sheriff Danny Scullion, and Dr Linda de Caestecker, Director of Public Health for Greater Glasgow, we started work in August 2011 and reported in April 2012.

This request came in the wake of statistics that were shocking. Although Scotland's crime rate is at a 37-year all time low, and the profile of crimes committed by women has not changed significantly, the female prison population in Scotland has more than doubled over the past ten years. This massive increase has occurred despite a general understanding from research and a swathe of some 10 authoritative reports within the UK – including the *Corston Report (2007)*, (a seminal review of women with particular vulnerabilities in the criminal justice system), concluding unequivocally that the imprisonment of women could and should, be reduced.

However, the implementation of these reports has been stuttering and piecemeal. During the Scottish Commission's review, it became clear that, while the main factors which contribute to male and female offending overlap, there are very distinctive issues around female offending that justify a distinct approach from male offenders. This is now recognised worldwide with the *United Nations Rules for the treatment of Women Offenders (The Bangkok Rules, 2010)*, setting out the first women-specific standards.

Structural reform

All of our recommendations could be implemented within the existing systems in Scotland. However, our view was that the disparate nature of the arrangements that are in place for dealing with women in the criminal justice system in Scotland would make this difficult.

Some of the issues that lead us to recommend structural reform in Scotland include:

- ❖ a lack of strategic leadership and accountability, as no single organisation is responsible for both the strategic and operational delivery of offender services in the community;
- ❖ a cluttered landscape where, according to our estimates, over 200 public, private and third sector bodies are involved in community justice services in Scotland;
- ❖ inconsistent service provision, where access to effective services can depend on the local authority in which a women lives or her personal circumstances;
- ❖ funding arrangements that favour activity over outcomes, and the short-term nature of funding that encourages unnecessary competitiveness in the third sector; and
- ❖ difficulties in measuring what works to reduce reoffending due to the lack of nationally agreed performance indicators.

These existing structural, funding and working practices in Scotland inhibit greatly the potential to reduce reoffending for women offenders. They also undermine confidence in the efficacy of non-custodial sentences for both sentencers and the public, increasing the likelihood of custodial sentences: a lack of confidence in non-custodial sentences increases the likelihood of custodial sentences being given as the default (i.e. the only, not the best) option. Given this, we were persuaded that a radical reform of existing structural, funding, and working practices was required.

We were mindful of the need for any new structures to take account of Scotland's unique cultural, social, and political make up. Change must be delivered with an understanding of how providing the best services can achieve positive outcomes such as a reduction in reoffending. Though there are currently significant barriers to the creation of a joint criminal justice social work and prison service in Scotland, we were persuaded by the clear benefits of a model where criminal justice social work operates as a single national service.

there are very distinctive issues around female offending that justify a distinct approach from male offenders

We heard arguments for and against such an approach. It was suggested that a national service would disconnect criminal justice social work from the mainstream local authority services that offenders need to access, for example housing, employment, children and families etc. However, we did not accept this argument. We heard no evidence from those countries that operate a single service, such as Northern Ireland, to suggest it had resulted in any loss of connectedness. Indeed, some practitioners we spoke to argued that bringing all 32 criminal justice social work teams into one service could potentially increase its influence with non-criminal justice providers, leading to a more integrated service. Ultimately, while it is acknowledged that any change can have a temporary disruptive effect, we are strongly of the view that the benefits of a single service significantly outweighed any disadvantages.

New Community Justice service

There have been 10 previous reports across the UK on the issue of women offenders, yet none have been implemented in full. Urgent and radical action is required in Scotland to stop the female prison population doubling yet again in the next ten years. That is why we recommend that a new national service, called the Community Justice Service, be established in Scotland to commission, provide, and manage adult offender services in the community.

A single service would result in:

- ❖ better and more coherent opportunities for achieving desistance across the whole offender pathway to reduce the number of victims and make communities safer;
- ❖ clearer lines of accountability for performance;
- ❖ consistency of access to, and quality of, services – avoiding fragmentation and temporariness;
- ❖ capacity to deploy resources and expertise flexibly according to need and enhance resilience of services;
- ❖ better information and data management systems to assess impact of services; and
- ❖ a united and strong professional cohort to represent criminal justice social work.

The new Community Justice Service would be designed in such a way to ensure local liaison and delivery.

The professional skills of social work are critical to the success of the service and therefore they have a key role to play. We also envisage that other agencies, such as the Prosecution Service, police, health, and third sector would second staff to the Service, which would improve cross agency working and collaboration and help provide a seamless and integrated service to offenders.

Although our work only considered the issue of women offenders, it makes economic and practical sense for the new Service to cover the whole offending population in Scotland. This is clearly a time of significant financial constraint in the public sector. The creation of a new Service and the other recommendations in our report could be achieved largely through reconfiguration of the significant resources (money, staff, and buildings) that are already invested in this area.

Next steps

The Prison Reform Trust's Women's Justice Taskforce observed how it is all too easy for vulnerable women to slide off the political agenda and return to being a neglected minority.

For those who may be willing and ready to pounce with the accusation that prison is too soft, I can assure you that it is a demoralising and sobering experience to go there and to spend some time in a cell with women whose broken teeth and scarred inner arms are often symbolic of a more profound broken spirit and self-loathing. It is difficult to punish someone who punishes herself so readily.

Anticipating scepticism from the media in Scotland, BBC journalists and editors of all of the main newspapers were invited to come to Cornton Vale before they wrote about it. The contrast between the chirpy conversation entering and the sullen silence leaving the prison was eloquent of the impact. No one should sentence anyone to imprisonment until they have been there themselves and understand what can and cannot be achieved there. Neither should politicians pontificate confidently before acquiring such detailed knowledge and understanding.



Prison should not be the default route for support for damaged women committing lower level crimes, but as the Chief Inspector of Prisons in England and Wales, Dame Anne Owers, said in her valedictory lecture to the Prison Reform Trust (2010):

“As the closure of the large mental hospitals showed, it is not enough simply to shut down or reduce places that provide inappropriate responses to problematic human behaviour. It is also necessary to invest sufficiently and appropriately in the alternative.”

In a system that has been built around the needs of male offenders and their behavioural patterns, there must be immediate and radical action to address the correct approach for women. If we are to break the damaging cycle of deprivation, alcohol, drug abuse, and crime, that action must be now.

For the children of such women, the crushing impact of a mother's imprisonment will also be life-long in its effect. Too many of the prisoners in Cornton Vale saw their own mothers there before them.

It is incumbent on all in the criminal justice system and those who work with it to strive to prevent these sad legacies being passed on to yet another generation of children. It is for government to abandon short-term political expediency and set to work on reforming women's justice.

Bangkok Rules (2010) *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* Economic and Social Council Resolution 2010/16
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The Rt. Hon Professor Dame Elish Angiolini QC was Chair of the Commission on Women Offenders, and is the former Lord Advocate for Scotland. She is Visiting Professor at Strathclyde Law School and the Principal of St Hugh's College Oxford.

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