

scottish justice matters

Volume 1 | Number 1 | June 2013

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

ISSN 2052-7950



9 772052 795005

scottish justice matters

Scottish Justice Matters is a publication of the Scottish Consortium of Crime and Criminal Justice (SCCCJ). The Consortium is an alliance of organisations and individuals committed to better criminal justice policies. It works to stimulate well informed debate and to promote discussion and analysis of new ideas: it seeks a rational, humane, constructive and rights-based approach to questions of justice and crime in Scotland.

Editorial Board

**Niall Campbell, Hazel Croall, Nancy Loucks,
Alan Mairs, Mary Munro, Alec Spencer,
Alan Staff, Cyrus Tata**

Managing editor:

Hazel Croall

Launch issue editor:

Mary Munro

Thematic editors for this edition:

Nancy Loucks and Alan Staff

Administrator:

Helen Rolph

If you would like to contribute to the SJM or have a proposal for content, please contact editor@scottishjusticematters.com

Website: www.scottishjusticematters.com

Twitter: @SJMJournal

Magcloud: www.magcloud.com

We hope to publish two editions a year but will gladly publish more frequently if we can find the money to do so. To make a donation please go to: www.scottishjusticematters.com

Email us at:

info@scottishjusticematters.com

comment@scottishjusticematters.com

studio@scottishjusticematters.com

advertise@scottishjusticematters.com

To register for advance email notification of publication:

register@scottishjusticematters.com

Copyright: Creative Commons Attribution-NonCommercial-NoDerivs 2.5 UK: Scotland license. Before using any of the contents, visit:

http://wiki.creativecommons.org/UK:_Scotland

Disclaimer: publication of opinion in the SJM does not imply endorsement by the SCCCJ.

ISSN 2052-7950 (Print)

ISSN 2052-7969 (Online)

Scottish Consortium on Crime and Criminal Justice is a registered charity [SC029241]

contents

Volume 1:1 June 2013

Theme: Reform in Scottish Criminal Justice

Theme editorial <i>Nancy Loucks and Alan Staff</i>	2
Why the Commission on Women Offenders recommended structural reform <i>Elish Angiolini</i>	3
Reform? Revisit? Replace? Two views on how social work with offenders should be organised in Scotland <i>Michelle Miller and Fergus McNeill</i>	5
Making sense of a radically changing landscape: the key contours of police reform in Scotland <i>Nicholas Fyfe</i>	9
Reform and the prosecution of crime <i>Catherine Dyer</i>	11
Getting a good hearing? Reform and the Children's Hearings <i>Maggie Mellon</i>	13
Eyes and ears of the community: a short history of the reform of Prison Visiting Committees in Scotland <i>Mary Munro</i>	15

Current issues

Beyond the revolving court door: is it time for Problem-Solving Courts in Scotland? <i>Cyrus Tata</i>	17
Female genital mutilation in Scotland <i>Niki Kandirikirira and John Fotheringham</i>	19
A day in the life of a criminal justice social work team manager <i>Allan Weaver</i>	24

International

Trial and error in criminal justice reform in the USA <i>Greg Berman and Aubrey Fox</i>	25
Interview: HM Chief Inspector of Prisons Hugh Monro <i>Talking to Nancy Loucks</i>	27
Scottish Justice Brief	29

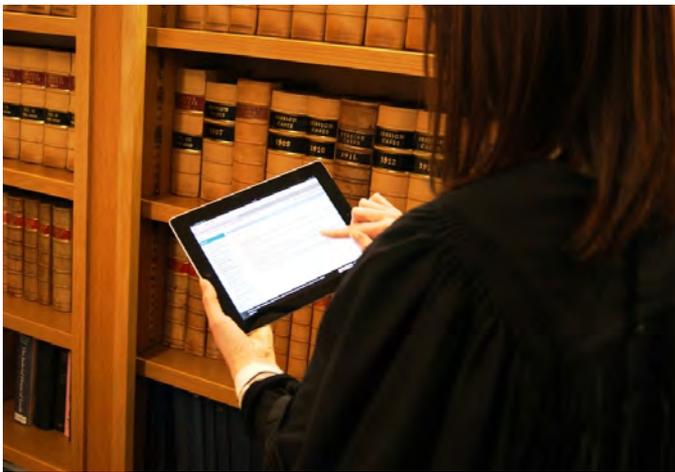


www.magcloud.com

Scottish Justice Matters is available on the HP MagCloud service. Here you can download and view for free on the MagCloud iPad or desktop apps. If you would prefer a printed copy, MagCloud offers a print-on-demand service.

PROSECUTION PERSPECTIVES

Catherine Dyer on the legal, technological and organisational changes making a difference to the work of Scotland's prosecutors.



LORD HENRY COCKBURN'S (1779 – 1854) musings in *Circuit Journeys* always provide interesting historical insight on legal matters. One of his reflections on previous practice around jury selection makes startling reading for modern eyes:

“But nothing contributes so much as the change of the law, which took the nomination of the jury from the judge. While this power lasted, the judge took care to secure the presence of gentlemen and friends, who would grace the procession and the banquet. A good diner was sure to be paid the compliment of being summoned.” (*Circuit Journeys*, published posthumously in 1889, p.325)

Clearly historic practice did not always deliver the fair jury selection we expect today.

Naturally drawn to precedent, some in each generation of the legal profession can assume that what is current has always been and is best – but patently that is not always so.

Devolution

From the turn of the millennium, in criminal casework alone, we have seen significant changes wrought by a variety

of catalysts. Restoration of the Scottish Parliament in 1999 heralded unprecedented levels of legislation enacted at Holyrood together with several major judicial decisions. Devolution saw incorporation of the European Convention of Human Rights into Scots law causing jurisprudence of the European Court to affect Scottish cases directly and criminal appeal cases heard by the Judicial Committee of the Privy Council and its successor, the Supreme Court of the United Kingdom.

Other impacts causing rapid change are now familiar landmarks in Scotland's justice landscape: Lord Bonomy's reforms in the High Court; the introduction of vulnerable witness measures (these appeared radical in 2004 but a decade later are being refreshed in light of EU directive and victim group evidence for further reforms); and significant shifts in summary criminal justice and non-court disposals.

We are now embarking on what future generations may recall as the biggest concentrated overhaul that our criminal justice system has ever seen – the result of recommendations from recent reviews carried out by Lord Gill on civil justice, Sheriff Principal Bowen and Lord Carloway on criminal justice.

Last year, recorded crime fell to its lowest level since 1975. Historical echoes abound given that 1975 saw the introduction of significant reforms to our criminal law alongside radical restructuring of fire and police services; but despite falls in reported crime, there is no room for complacency in 2013. More than 250,000 cases are still reported to Procurators Fiscal annually.

The persistence, determination, and inventiveness of criminal activity continues to shift the metaphorical goalposts. Modern understanding of the aetiology and impact of offending behaviour, coupled with better appreciation of the corrosive effects on victims and our communities, require more sophisticated and effective responses from the legal system. Society embraces technological change, recognises validity of empirical approaches, and demands proper consideration of human rights much more rapidly than in previous decades. If our criminal justice system is to deliver justice for accused, victim, and society in the 21st Century, it needs to work in current conditions as opposed to those of previous centuries.

Cadder, Carloway and corroboration

Space and time do not permit reference to all potential changes over the coming months, but Lord Carloway's proposal of removal of the requirement for corroboration has excited significant comment.

In delivering the UK Supreme Court's decision in *Cadder v HMA* [2010] UKSC 43, Lord Rodger emphasised that our criminal justice system needs to be both "balanced" and "workable" and that this ruling, dealing with assertion of the accused's human rights, required overnight change to the course of investigations by the police and altered alignment of these essential components.

In his eloquent report addressing that imbalance, Lord Carloway argued that the requirement for corroboration developed in response to peculiar difficulties no longer present (Carloway, 2011). As our common law evolved, the concept of corroboration remained but altered significantly from its original Romano-canonical form. We have been left with extremely complicated rules which can be very difficult to apply. These impact so adversely on investigation and prosecution of many categories of serious crime that many, extremely damaging to individual victims and to the fabric of society, cannot be prosecuted: victims of domestic abuse and sexual assault are disadvantaged. This is inconsistent with the approach taken in all other Western systems and does not allow significantly for the impact of our interactions in the current age with availability of scientific evidence.

For those working in the criminal justice system, many elements of the Gill, Bowen, and Carloway recommendations will mean new rules, tests of sufficiency, and processes. There will be inevitable alterations in numbers of cases able to be raised in court and their timetabling requirements.

Delivering justice

The Making Justice Work programme, coordinated by the Scottish Government Justice Directorate, involves all organisations delivering public services within the justice system and is a major plank of the Justice Strategy for Scotland. Appropriate independence is valued and respected alongside recognition that no part of the system can operate successfully in a vacuum. Much more work is required by, and between, all involved in delivering justice to shape the system of the future over coming months as the detail of the associated legislation emerges.

For the Crown Office and Procurator Fiscal Service (COPFS), occupying a pivotal place in the system, between the police and courts, it is essential we are organised to respond to all potential changes.

To help us do that, we have restructured so that specialisation is now at the core of COPFS. Specialist prosecutors were already established in units covering particular areas of work including, among others, Health and Safety (HSD), Sexual Crime (NSCU), Wildlife and Environmental Crime (WECU), and International Cooperation (ICU). More recently created specialisms deal with criminal allegations against police officers (CAAP) and Scottish fatalities investigations (SFIU). All of these work with a national brief.

This restructuring has also introduced specialism across the full remit of our work. Within the three geographical COPFS Federations (West, East and North), staff are organised into teams to deal with core work in the initial processing of cases, summary proceedings, Sheriff and jury, or High Court.

Specialising promotes a consistency of approach and delivers higher quality service to victims and witnesses and to those we interact with across the justice system. It has enabled

strong links with the new policing units and provided better capacity to accommodate changes arising from the proposed court restructuring announced by the Scottish Court Service (SCS).

Another high priority is the ability to exchange sensitive information securely. For several years, all Scottish public service criminal justice organisations have exchanged information electronically. More effective use of technology improves presentation of evidence in court but also has potential to improve support to witnesses and victims of crime and speed up communications and resolution between defence and Crown. Our well established electronic links with police and courts, together with our history of ground-breaking use of IT to support all aspects of our in house case management and trial preparation, have allowed us to lead on further innovation.

First, the roll-out of our secure disclosure website has dramatically improved the efficiency and security of disclosure of evidence in the case to the defence. The electronic audit report generated by the website provides detailed, accurate information, timed to the second, confirming the fact of disclosure and reduces churn (the repeated listing of cases in court) by preventing unnecessary adjournments to ascertain the disclosure position.

Second, in 2012, COPFS also introduced defence agents to criminal justice secure mail (CJSM). This private email exchange allows instant delivery of mail with receipts, bringing certainty about correspondence sent and received.

Third, we introduced text messaging to civilian witnesses reminding them to attend court; and we collaborated with the Scottish Prison Service and the SCS on an electronic system to identify accused persons expected at court but currently in prison. Both are examples of simple but effective use of technology that have reduced the numbers of trials delayed as a result of accused or witness non-attendance.

Finally, we are piloting use of electronic tablet devices by prosecutors to present cases in court. This will enable faster assembly of court bundles and quicker, easier access to individual documents in case folders than traditional bulky paper files.

There is no doubt that the changes we expect to see over the coming months are going to be extensive. It will be interesting to see how they are viewed in hindsight. In such a context, few would disagree that the maxim "the only constant is change" is trite – or deny that irrefutable evidence of its truth has been provided by our justice system over recent years.

The Carloway Review (2011) *Reforming Scots Law and Practice*. Scottish Government web site
www.scotland.gov.uk/About/Review/CarlowayReview

Integration of Scottish Criminal Justice Information Systems (ISCJIS) programme. Scottish Government web site
www.scotland.gov.uk/Topics/Justice/legal/criminalprocedure/iscjis

Catherine Dyer is Crown Agent and Chief Executive of the Crown Office and Procurator Fiscal Service (COPFS)

School of Law

The University of Strathclyde offers you the opportunity to gain a competitive qualification at the UK University of the Year (THE).

As one of the UK's top law schools, we provide a vibrant, dynamic, supportive and friendly place for students to study. As the first of its kind in Scotland, our award winning Law Clinic is the largest in the country and enables students to develop their legal skills, experience law in operation and reflect on the ethics and justice of legal practice. Our strategic research centres improve the accessibility of internationally recognised and interdisciplinary research by further enabling our staff and PhD students to engage in a range of collaborative business and government initiatives.

We provide a range of flexible study options at Masters level (LLM/ MSc) to help continuing students and professionals gain the skills they need to succeed.

- Advocacy
- Climate Change Law & Policy
- Criminal Justice and Penal Change
- Construction Law
- Employment & Labour Law
- Human Rights
- Internet Law & Policy
- International Economic Law
- International & Sustainable Development
- Mediation & Conflict Resolution

To find out more about our courses, call us on
0141 548 3738 or visit www.strath.ac.uk



THE UNIVERSITY *of* EDINBURGH
Edinburgh Law School

Enhance your career development with a stimulating, expert-led postgraduate qualification in Criminology, Criminal Law or Criminal Justice, at one of the world's leading Law Schools.

MSc in Criminology and Criminal Justice

MSc in Global Crime, Justice and Security

LLM in Criminal Law

LLM in Criminal Law and Criminal Justice

PhD (in Criminology or Criminal Law)

You can study any of these highly regarded qualifications either full-time or part-time.* These degree programmes are suitable for those with or without a prior qualification in law.

For further information or
to apply please visit
www.law.ed.ac.uk/pg

* Due to current UKBA regulations, part-time study is available to UK students only

© 2013 University of Edinburgh

The University of Edinburgh is a charitable body, registered in Scotland, with registration number SC005336.