
Mental Health and Scotland's Prison Population



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Contents

About the Scotland Institute.....	4
1. Summary and Recommendations.....	8
1.1 Summary	8
1.2 Recommendations.....	9
1.2.1 <i>Guidance</i>	9
1.2.2 <i>Integration</i>	10
1.2.3 <i>Provision of Mental Health Services</i>	11
2. Introduction.....	12
3. Context	14
3.1 Overall Prison Population	14
3.2 Mental health	14
3.2.1 <i>Level of Incidence</i>	14
3.2.2 <i>Consequences</i>	15
3.3 Substance abuse and other problems.....	16
3.4 Failures of criminal justice	17
4. Where the problem lies?.....	19
4.1 Introduction.....	19
4.2 Sentencing Practices.....	20
1.3 Available Resources	21
References	23

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About the Scotland Institute

The Scotland Institute is a progressive and independent think tank set up to deal with the changing face of Scotland. It aims to investigate the implications of devolution while finding innovative solutions to the old problems of social exclusion, and to encourage Scotland's competitiveness in the global market. Through high-quality comprehensive research and policy making it hopes to put Scotland on a path towards a more competitive, progressive, and optimistic future.

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‘We look to Scotland for all
our ideas of civilisation.’

Voltaire

Chairman's Statement



Scotland's prisons may not be the most grim in the world, but they are not a good place to be either. Not least, if you have serious mental health issues which contributed towards your incarceration. We found considerable evidence which confirms our findings, for example Graham's 2007 report on Prison Health in Scotland. Putting people with mental illnesses in prison is, in part, further victimising people who are vulnerable and need help on the one hand, and on the other, it is clearly not the way to help rehabilitate these people and prevent

reoffending. We argue that where criminal behaviour has been at least in part prompted by mental health issues, the best approach would be to tackle that first, rather than go directly to imprisoning these individuals.

Yet we find that, by some measures, 80% of all prisoners in Scotland have some kind of mental disorder, 80% of women prisoners certainly, and at least 4.5% have very serious and enduring psychiatric problems. By comparison, only 1-1.5% of the general population have serious and enduring mental health problems, and around 25% have some kind of mental problem at any one time. The correlation between incarceration and mental health problems is clear. And even if the direction of the causation cannot always be assumed, it cannot be denied that we are frequently imprisoning people whom we should not.

What can we do about this situation? In our report, we argue that there are some categories of offenders who should not be sent to prison in most circumstances, and instead the justice system should focus on giving them the necessary treatment to enable these individuals to be reintegrated into society over the medium and long term.

Scotland has already made some progress in this direction. Up to 2011, we had the highest rates of incarceration in the European Union. Since then, the Criminal Justice and Licensing (Scotland) Act 2010, which has actively sought to reduce short-term sentences proven to not produce the desired outcomes, has also had a positive effect on the categories of prisoners we have looked at in our report. Often, the misdemeanours prompted by mental health issues and related issues (such as substance abuse) have been the kind which would have received short sentences. And by avoiding sending such people to prison, we can avoid sending vulnerable people in an environment in which they might internalise the idea that they are "criminals", and we can avoid putting them in close contact with actual, hardened criminals which might lead them to further, even aggravated reoffending.

But more can be done, and we suggest concrete steps. There is currently an ongoing effort to create systematic sentencing guidelines in Scotland, which would create a clear and consistent framework for judges in applying the law across our country. The committee in charge of this is due to start meeting in October, and they are expected to produce proposals for the sentencing framework by early next year. It is with this process that we wish to engage with our report, and we also urge the general public to engage with this issue based on the evidence about mental health, imprisonment and reoffending that we survey in our report. We want them to be clear that where offenders have a history of mental illness which can be addressed before sending them to prison, that should always take priority – especially when it comes to sentencing women, where the evidence shows that imprisonment does not only affect the individual concerned, but also create problems for others around them, such as their children.

That is one side of what is required. The other side is actually providing the necessary mental health services to these individuals. The 2010 Act has moved the responsibility for the mental and physical health of prisoners away from the Scottish Prison Service, and has moved it to the NHS Health Boards. But in practice, very few NHS Boards have had much success in picking these issues up and successfully dealing with the challenges raised by mental health in the case of offenders. We need them to pick up the challenge, and start engaging with it seriously. We would ask that the Boards be required to report on an annual basis how they are discharging their duties under the 2010 Act – which at the moment, none of the Boards are doing.

But finally, we must also acknowledge that much of the failure of NHS Scotland in engaging with these issues is down to having limited resources. Despite the requirements of the 2010 Act, there is no clear plan on how to deliver the necessary mental health services to those offenders who need them, especially acknowledging the challenging circumstances of delivering such services to this particular group of people, and there is also no clear understanding of what resources are required to do so. Needless to say, the resources allocated are thus not adequate.

In conclusion, we find that in order to improve our criminal justice system, we need to focus both on our approach to sentencing, and our approach to providing mental health services to those offenders who need them.

Dr Azeem Ibrahim
Executive Chairman

1. Summary and Recommendations

1.1 Summary

Up to 2011 Scotland had the highest rate of incarceration in the European Union¹ despite recorded crime figures steadily falling since the early 1990s. Changes since then have had an important effect. The Criminal Justice and Licensing (Scotland) Act 2010 made a deliberate decision to avoid the use of short prison sentences. Equally, it transferred care for prisoner’s mental and physical health from the Scottish Prison Service to the NHS². Recent announcements by Michael Matheson, the Justice Secretary, indicate a desire to continue to reduce reliance on prison as a means of punishment within the criminal justice system³.

Despite these changes, in May 2015, Scotland’s prison population was 7,632⁴ (of whom just over 1,100 were awaiting trial – and most of these will be released without ever being convicted). Of those sentenced, 272 were young males, 5,475 were adult males, 12 were young females and 296 were adult females.

However, Scotland’s prison population is made up overwhelmingly of individuals with mental health problems, learning difficulties and with problems of alcohol or drugs dependency⁵. This has been noted as a major problem in most reviews of the wider UK prison system⁶ but so far little has happened to avoid the reality of jailing people who need help themselves. As several reports note: “Prison is not the most appropriate environment for people with severe and enduring mental health problems. Their primary need is their mental health and the appropriate place to address this is in a hospital⁷”.

- 1 eurostat. 2014. *Crime Statistics* [Online]. Brussels: European Union. Available: http://ec.europa.eu/eurostat/statistics-explained/index.php/Crime_statistics [Accessed 21 May 2015].
- 2 Gillies, M., Knifton, L. & Dougall, R. 2013. Prison Health in NHS Greater Glasgow & Clyde: A health needs assessment. Glasgow: NHS Greater Glasgow and Clyde.
- 3 Matheson, M. 2015. My vision of how Scotland can change the way the world treats female offenders. *Sunday Herald*, 21 May, p.31.
- 4 Scottish Prison Service. 2015. *Prison Population* [Online]. Edinburgh: SPS. Available: <http://www.sps.gov.uk/Corporate/Information/SPSPopulation.aspx> [Accessed 25 May 2015].
- 5 Broderick, R., McCoard, S. & Carnie, J. 2013. Female Offenders 2013. *Survey Bulletin*. Scottish Prison Service, McCoard, S., Broderick, R. & Carnie, J. 2013. Male Young Offenders 2013. *Survey Bulletin*. Scottish Prison Service.
- 6 Lord Bradley 2009. Review of people with mental health problems or learning disabilities in the criminal justice system. Department of Health.
- 7 Graham, L. 2007. Prison Health in Scotland. Edinburgh: Scottish Prison Service, HMIP 2008. Out of Sight: Severe and Enduring Mental Health Problems in Scotland’s Prisons. Edinburgh: HM Chief Inspector of Prisons for Scotland.

Obtaining definitive data as to the extent of mental health problems is complex due to how the information is recorded. The 2012 Commission on Women Offenders estimated that 80% of all women in prison in Scotland had mental health problems⁸. A Scottish Prisons Service report estimated that 14% of all prisoners had a history of psychiatric disorder⁹ and that around 4.5% of prisoners have a severe and enduring mental health problem¹⁰. Other data suggests that 80% of all prisoners have two or more mental health disorders – most commonly a combination of a diagnosed illness and substance misuse¹¹. For comparison, between 1-1.5% of the wider population have a severe and enduring mental health problem and around 25% have mental health problems at any one time (mostly in the form of depression or anxiety)¹².

In effect, despite the gains from the 2010 Act, Scotland continues to incarcerate the most vulnerable and marginalised in our society. The Act has had positive effects but the full gains are hampered by wider public discourse (especially as mediated by the tabloid press) about criminal justice, attitudes to sentencing among the judiciary and lack of available support for those with mental health needs.

1.2 Recommendations

1.2.1 Guidance

The issue of creating systemic sentencing guidelines for Scotland has been under discussion since 2006¹³. The committee reviewing this is due to meet from October this year and make fresh proposals in early 2016. At the moment, the focus is on equity relating to the nature of the crime, the amount of damage and disruption caused and whether the offender already has a criminal record.

8 Commission on Women Offenders 2012. Final Report. Edinburgh: Scottish Government.

9 Graham, L. 2007. Prison Health in Scotland. Edinburgh: Scottish Prison Service.

10 HMIP 2008. Out of Sight: Severe and Enduring Mental Health Problems in Scotland's Prisons. Edinburgh: HM Chief Inspector of Prisons for Scotland.

11 Gillies, M., Knifton, L. & Dougall, R. 2013. Prison Health in NHS Greater Glasgow & Clyde: A health needs assessment. Glasgow: NHS Greater Glasgow and Clyde.

12 Hatloy, I. 2011. *How common are mental health problems?* [Online]. MIND. Available: http://www.mind.org.uk/help/research_and_policy/statistics_1_how_common_is_mental_distress [Accessed 20 April 2012].

13 The Sentencing Commission for Scotland 2006. The Scope to Improve Consistency in Sentencing Edinburgh: The Scottish Government.

The SNP has already acknowledges that short prison sentences simply do not work¹⁴ and there are welcome indications that this approach will be extended to end all sentences of less than six months¹⁵. Equally there is growing recognition that prison is not the solution for particular groups, at the moment this is leading to an acknowledgement that imprisoning women is detrimental to their wider family leading to greater social problems¹⁶. This offers an opportunity to rethink the whole approach to sentencing guidelines. As argued in this paper, and in report after report, placing people with mental health problems in jail simply worsens the situation.

Thus the new sentencing guidelines need to be clear that there are groups of individuals who should never be sent to prison.

■ 1.2.2 Integration

One consequence of the 2010 Act was to move responsibility for the mental and physical health of prisoners from the Scottish Prison Service to the NHS Health Board that contains the prison. The intention was that there would be less gaps in service provision as someone was placed in prison and subsequently returned to the community. The reality is that few NHS Boards have been able to address the challenges¹⁷ and that services remain partial. Scottish Prison Service reports¹⁸ report that there are examples where this has worked successfully but in many instances there has been no improvement since 2011. Of note, none of the NHS Board annual reports make even passing mention of the challenge of the provision of mental health services in prison.

NHS Boards should be required to report on how they are discharging their duties under the 2010 Act. Such reports should be contained both in the wider annual report and in particular audit reviews.

14 Sapouna, M., Bisset, C., Conlong, A.-M. & Matthews, B. 2015. What Works to Reduce Reoffending: A Summary of the Evidence. Edinburgh: Scottish Government.

15 Robertson, A. 2015a. *McLeish: Scrap prison sentences of six months or less in next parliament* [Online]. Edinburgh: Holyrood. Available: <https://www.holyrood.com/articles/news/mcleish-scrap-prison-sentences-six-months-or-less-next-parliament> [Accessed 23 June 2015].

16 Loucks, N. 2015. Imprisoning Mothers: The Impact on Children and Families. *Scottish Justice Matters*, 3:2, 29-31, Matheson, M. 2015. My vision of how Scotland can change the way the world treats female offenders. *Sunday Herald*, 21 May, p.31.

17 Gillies, M., Knifton, L. & Dougall, R. 2013. Prison Health in NHS Greater Glasgow & Clyde: A health needs assessment. Glasgow: NHS Greater Glasgow and Clyde.

18 Broderick, R., McCoard, S. & Carnie, J. 2013. Female Offenders 2013. *Survey Bulletin*. Scottish Prison Service, McCoard, S., Broderick, R. & Carnie, J. 2013. Male Young Offenders 2013. *Survey Bulletin*. Scottish Prison Service.

There is a need for comprehensive data collection so that the real situation is understood and clear to policy makers

■ *1.2.3 Provision of Mental Health Services*

This leads onto the largest problem. Despite the Scottish Government's clear commitment to the provision of mental health services, the reality is of a service that is stretched and struggling to meet the needs of our communities¹⁹. Those in prison present particular problems both in terms of their needs and the organisational implications. As noted above, NHS Boards in Scotland are not reporting how they are meeting the requirements of the 2010 Act. In addition, both prisoners and ex-prisoners present particular problems. They are often abusing alcohol or drugs and they may still be involved in criminal activities. As a result, they are rarely seen within the mainstream Community Mental Health teams and referred to specialist Forensic Mental Health services. The latter are being cut back, removing key specialist services.

The NHS needs to be clear about how it will meet the mental health needs of prisoners and ex-offenders. In particular, there is a need to review the barriers to them being able to access mainstream mental health support and to improve the quality of specialist services.

19 Nowell, R. 2014. Mental Health in Scotland. Edinburgh: Scottish Parliament Information Centre (SPICE).

2. Introduction

Despite falling levels of crime, Scotland's prison population grew from 6,606 in 2003 to 8,178 in 2011²⁰ and since then has dropped to 7,434 in early 2015²¹ (of these 1,200 have not been convicted and are awaiting trial). The main reason for the welcome drop in recent years has been the impact of the SNP's 'Community Pay Back' approach to sentencing²² introduced in 2011 which reduced the numbers being sent to prison for short periods drawing on research which showed that community sentences are far more effective than short periods of incarceration in preventing re-offending²³. Furthermore, especially for young people, the quicker they are diverted from criminal activity (and the less they are involved with punitive criminal justice) the less likely they are to re-offend²⁴.

Despite these welcome improvements, Scotland's prisons remain full of people who were themselves in care when they were younger, come from the poorest neighbourhoods in Scotland²⁵, have drug or alcohol^{26,27} problems and have pre-existing mental health problems²⁸. Estimates of the extent of mental health problems vary but it has been estimated that 14% of the prison population has a history of psychiatric disorder²⁹; that 90% of all prisoners suffer from some form of mental illness³⁰; and, that between 4.5% and 14%³¹ of the prison population are diagnosed with severe and enduring mental health problems³². Other data suggests that 80% of all prisoners have two or more psychiatric disorders – most

20 eurostat. 2014. *Crime Statistics* [Online]. Brussels: European Union. Available: http://ec.europa.eu/eurostat/statistics-explained/index.php/Crime_statistics [Accessed 21 May 2015].

21 Howard League Scotland. 2015. *January 2015: Scottish Prison Population* [Online]. Available: <http://www.howardleaguescotland.org.uk/news/2015/january/january-2015-scottish-prison-population> [Accessed 21 May 2015].

22 Scottish Government. 2014. *Community Payback Orders* [Online]. Edinburgh: Scottish Government. Available: <http://www.gov.scot/Topics/archive/law-order/offender-management/CPO> [Accessed 15 May 2015].

23 Sapouna, M., Bisset, C., Conlong, A.-M. & Matthews, B. 2015. *What Works to Reduce Reoffending: A Summary of the Evidence*. Edinburgh: Scottish Government.

24 Ibid.

25 Houchin, R. 2005. *Social Exclusion and Imprisonment in Scotland*. Glasgow: Glasgow Caledonian University.

26 McCoard, S., Broderick, R. & Carnie, J. 2013. *Male Young Offenders 2013*. *Survey Bulletin*. Scottish Prison Service.

27 Broderick, R., McCoard, S. & Carnie, J. Ibid. *Female Offenders 2013*.

28 Gillies, M., Knifton, L. & Dougall, R. 2013. *Prison Health in NHS Greater Glasgow & Clyde: A health needs assessment*. Glasgow: NHS Greater Glasgow and Clyde.

29 Graham, L. 2007. *Prison Health in Scotland*. Edinburgh: Scottish Prison Service.

30 Gillies, M., Knifton, L. & Dougall, R. 2013. *Prison Health in NHS Greater Glasgow & Clyde: A health needs assessment*. Glasgow: NHS Greater Glasgow and Clyde.

31 Ibid.

32 HMIP 2008. *Out of Sight: Severe and Enduring Mental Health Problems in Scotland's Prisons*. Edinburgh: HM Chief Inspector of Prisons for Scotland.

commonly a combination of a diagnosed illness and substance misuse³³. Dealing with people with severe mental health problems is time consuming and this leads to a reliance on segregation and control rather than treatment³⁴.

33 Gillies, M., Knifton, L. & Dougall, R. 2013. Prison Health in NHS Greater Glasgow & Clyde: A health needs assessment. Glasgow: NHS Greater Glasgow and Clyde.

34 HMIP 2008. Out of Sight: Severe and Enduring Mental Health Problems in Scotland's Prisons. Edinburgh: HM Chief Inspector of Prisons for Scotland.

3. Context

3.1 Overall Prison Population

As noted in the introduction, up to 2011 Scotland had the highest rate of incarceration in Western Europe³⁵ with 8,718 in jail and this population was originally estimated to reach 9,500 by 2020³⁶. The impact of the 2010 act has prevented this growth and the prison population was 7,434 in January 2015³⁷ and 7,632 in May 2015³⁸. The detailed breakdown of the May figures is:

Table 1: Scottish Prison Population, 22 May 2015

Category	Figures
Untried Male Adults	1109
Untried Female Adults	67
Untried Male Young Offenders	111
Untried Female Young Offenders	4
Sentenced Male Adults	5457
Sentenced Female Adults	296
Sentenced Male Young Offenders	272
Sentenced Female Young Offenders	12
Recalled Life Prisoners	76
Convicted Prisoners Awaiting Sentencing	223
Prisoners Awaiting Deportation	4
Under 16's	0
Civil Prisoners	1
All Scotland Total in Custody	7632
Home Detention Curfew (HDC)	287
Overall Total	7919

3.2 Mental health

3.2.1 Level of Incidence

Estimating the actual incidence of mental health problems in the prison population is complex and is hindered by inadequate data. One particular problem is that the lack of routine monitoring means that prisoners have to self-declare if they

35 Aebi, M. F. & Delgrande, N. 2012. Annual Penal Statistics. Strasbourg: Council of Europe.

36 SAMH 2012. Mental Health and Criminal Justice in Scotland. Edinburgh: Scottish Association for Mental Health.

37 Howard League Scotland. 2015. *January 2015: Scottish Prison Population* [Online]. Available: <http://www.howardleaguescotland.org.uk/news/2015/january/january-2015-scottish-prison-population> [Accessed 21 May 2015].

38 Scottish Prison Service. 2015. *Prison Population* [Online]. Edinburgh: SPS. Available: <http://www.sps.gov.uk/Corporate/Information/SPSPopulation.aspx> [Accessed 25 May 2015].

have problems and not all will do so for fear of the stigma or that it may affect other aspects of their treatment³⁹. The last major systemic research into prisoners' mental health was a UK report published in 1997 by the Department of Health⁴⁰. This is still commonly cited and found that 90% of all prisoners had a mental health problem and that 70% had two or more problems (often mental health and some form of addiction). In effect, mental ill-health is the norm for the UK's prison population.

A Scottish Prison Survey⁴¹ found that 14% of all prisoners had a history of psychiatric disorder (in other words serious and sustained mental health problems) and that 7.3% had a history of self-harm. A report for the Prison's Inspectorate⁴² found that 4.5% of all prisoners have severe and enduring mental health problems most commonly schizophrenia and bi-polar affective disorder. The same report notes (but does not quantify) that there are 'a significant number of prisoners with a personality disorder. The majority of prisoners with mental health problems also have substance misuse issues⁴³'.

However, it should be noted that there have been real improvements in some respects. The rate of prison suicides in Scotland has dropped substantially⁴⁴ mainly due to better monitoring and intervention⁴⁵. Equally, many of the non-custodial community pay back sentences can include mandatory acceptance of mental health treatment⁴⁶.

■ 3.2.2 Consequences

The 2010 act transferred health provision to the regional NHS board that covers the area where the prison is located⁴⁷.

There are several related issues. First, and this is consistent across all existing studies, support is fragmentary. Some prisoners are able to access the help they

39 Graham, L. 2007. *Prison Health in Scotland*. Edinburgh: Scottish Prison Service.

40 Singleton, N., Meltzer, H., Gatward, R., Coid, J. & Deasy, D. 1997. *Psychiatric morbidity among prisoners*. London: Department of Health.

41 Graham, L. 2007. *Prison Health in Scotland*. Edinburgh: Scottish Prison Service.

42 HMIP 2008. *Out of Sight: Severe and Enduring Mental Health Problems in Scotland's Prisons*. Edinburgh: HM Chief Inspector of Prisons for Scotland.

43 Ibid.

44 Bird, S. M. 2008. Changes in male suicides in Scottish prisons: 10-year study. *The British Journal of Psychiatry*, 192:446-449.

45 Graham, L. 2007. *Prison Health in Scotland*. Edinburgh: Scottish Prison Service.

46 Scottish Government. 2014. *Community Payback Orders* [Online]. Edinburgh: Scottish Government. Available: <http://www.gov.scot/Topics/archive/law-order/offender-management/CPO> [Accessed 15 May 2015].

47 Gillies, M., Knifton, L. & Dougall, R. 2013. *Prison Health in NHS Greater Glasgow & Clyde: A health needs assessment*. Glasgow: NHS Greater Glasgow and Clyde.

need and even find prison allows them to undertake courses of treatment in relatively stable circumstances⁴⁸. However, there are gaps in provision at almost every level from entry to prison, to movement between prisons to release⁴⁹. Equally, despite responsibility now resting with the NHS there remains a serious shortage of trained mental health professionals who can work with Scotland's prison population. The Audit Commission noted there is both an overall shortage of mental health staff and significant variances between Health Boards⁵⁰.

3.3 Substance abuse and other problems

Mental health problems are not the only way in which the prison population differs from wider society. Of women in prison, 50% stated they had been drunk at the time of their offence, 28% believed that alcohol use hindered their ability to retain a job and 53% were drug users before conviction⁵¹. For men, 43% had been drunk at the time of their offence (this was even higher for younger men at 65%) and 79% had previous history of drug use⁵². Self-medication, via drink or drugs, is a common response to mental health problems if there is no access to proper support.

Many young people in prison had previously been in care: around 30% of young women and 34% of young men. In addition, 11% of young women and 22% of young men reported basic literacy problems and 25% of young men had no formal qualifications⁵³. Learning difficulties as well as mental health problems are common among the prison population⁵⁴.

More generally, Scotland's prison population is drawn substantially from the poorest areas⁵⁵. The impact of this is quite stark: "One in nine men from our most deprived communities will spend time in prison while they are 23"⁵⁶. However, social deprivation is 'neither a sufficient nor a necessary precondition

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- 48 Graham, L. 2007. Prison Health in Scotland. Edinburgh: Scottish Prison Service, SAMH 2012. Mental Health and Criminal Justice in Scotland. Edinburgh: Scottish Association for Mental Health, Singleton, N., Meltzer, H., Gatward, R., Coid, J. & Deasy, D. 1997. Psychiatric morbidity among prisoners. London: Department of Health.
- 49 HMIP 2008. Out of Sight: Severe and Enduring Mental Health Problems in Scotland's Prisons. Edinburgh: HM Chief Inspector of Prisons for Scotland.
- 50 Audit Scotland 2009. Overview of Mental Health Services. Edinburgh: Audit Scotland.
- 51 Broderick, R., McCoard, S. & Carnie, J. 2013. Female Offenders 2013. *Survey Bulletin*. Scottish Prison Service.
- 52 McCoard, S., Broderick, R. & Carnie, J. Ibid. Male Young Offenders 2013.
- 53 Broderick, R., McCoard, S. & Carnie, J. Ibid. Female Offenders 2013, McCoard, S., Broderick, R. & Carnie, J. 2013. Male Young Offenders 2013. *Survey Bulletin*. Scottish Prison Service.
- 54 Talbot, J. 2007. No One Knows: Identifying and supporting prisoners with learning difficulties and learning disabilities: the views of prison staff. Prison Reform Trust.
- 55 Houchin, R. 2005. Social Exclusion and Imprisonment in Scotland. Glasgow: Glasgow Caledonian University.
- 56 Ibid., p. 20

for imprisonment'. The implications of this are explored in the next section. More importantly, while there is a correlation between overall deprivation and the likelihood of imprisonment there is no direct causal relationship⁵⁷. More direct reasons for entry into the criminal justice system include mental health problems, learning disabilities and/or addiction.

■ 3.4 Failures of criminal justice

While at one level the SNP's approach to penal policy has seen a welcome departure from the norms established by the Conservatives, New Labour⁵⁸ and subsequent Westminster Governments, it is not beyond criticism. The decision to end the use of short term custodial sentences has been matched by recent decisions to effectively end early release schemes for those with longer term sentences⁵⁹.

This has three problems. First is cost, as it is often calculated it takes £42,500⁶⁰ per year per prisoner. Second, ending early release also means losing an important incentive to manage behaviour when in prison, and this can include action to address substance abuse and involvement with mental health professionals. Finally it means that on release, it is not possible to make continued treatment a condition, leading to the danger that individuals simply drift away from any structured support they may need.

Our criminal justice system remains heavily influenced by the mindset of the UK's tabloid press and over 30 years of Conservative and New Labour Home Secretaries making the assertion, supported by no evidence⁶¹, that *prison works*. At the core of this is a belief that the decision to commit a crime is a considered

57 Ibid.

58 Brownlee, I. 1998. New Labour – New Penology? Punitive Rhetoric and the Limits of Managerialism in Criminal Justice Policy. *Journal of Law and Society*, 25:3, 313-335, Garside, R. & Ford, M. 2015. Criminal justice in the United Kingdom: 2010 to 2015. London: The Hadley Trust, Solomon, E., Eades, C., Garside, R. & Rutherford, M. 2007. Ten years of criminal justice under Labour: An independent audit. London: Centre for Crime and Justice Studies, Vanstone, M. 2010. New Labour and criminal justice: Reflections on a wasteland of missed opportunity. *Probation Journal*, 57:3, 281-285.

59 Sanders, D. 2015. *SNP plan to spend £17m a year locking criminals up for longer 'at odds' with party's progressive claims* [Online]. Glasgow: The Herald. Available: <http://www.heraldscotland.com/politics/scottish-politics/snp-plan-to-spend-17m-a-year-locking-criminals-up-for-longer-at-odds-with.127055289> [Accessed 26 May 2015].

60 Audit Scotland 2014. Scottish Prison Service: Annual report on the 2013/14 audit. Edinburgh: Audit Scotland.

61 Sapouna, M., Bisset, C., Conlong, A.-M. & Matthews, B. 2015. What Works to Reduce Reoffending: A Summary of the Evidence. Edinburgh: Scottish Government, Solomon, E., Eades, C., Garside, R. & Rutherford, M. 2007. Ten years of criminal justice under Labour: An independent audit. London: Centre for Crime and Justice Studies, Spencer, A. 2008. The Cost of Unnecessary Imprisonment. Edinburgh: Scottish Consortium for Crime and Criminal Justice.

trade off between a desire for the expected rewards and the risk of being caught (and presumably the severity of punishment that follows). For some, this is perhaps true, and may explain the type of behaviour found at senior levels in the UK's Financial Services sector, but for many who are caught up in the criminal justice system it fails to reflect the reality of their lives.

Addiction, mental health and learning difficulties as well as early involvement in criminality are all better explanatory reasons for why individuals commit crimes. Prison in turn, fractures ties with wider social networks (including between parents and children), reduces the chance of finding long term employment, adds to existing mental health problems and increases the chance of being homeless on release. In turn, it is highly likely people will re-offend as a result of these issues. To some extent, the prison system is expected to deal with a series of social problems⁶² at a time when its budget is under increasing strain⁶³.

However, we continue to lock up people who are in need of mental health assistance, and, especially for those with severe and enduring mental health problems, they often should be in hospital not jail. The 2010 Act, and related changes, has stopped the seemingly inexorable trend to increasing Scotland's prison population but the system remains too orientated towards punishment.

62 Spencer, A. 2008. *The Cost of Unnecessary Imprisonment*. Edinburgh: Scottish Consortium for Crime and Criminal Justice.

63 Audit Scotland 2014. *Scottish Prison Service: Annual report on the 2013/14 audit*. Edinburgh: Audit Scotland.

4. Where the problem lies?

4.1 Introduction

Overall the SNP's approach to criminal justice has been a mix of evidence based progressive policies and what can only be described as typical UK policies. On the positive side, the 2010 Act openly acknowledged that short term sentences are a disaster for all involved. Such sentences break apart the social ties of offenders and embed them into the criminal justice system. The community pay back orders have been more effective and it is welcome that the SNP has accepted the case to extend the approach and try to end all sentences of less than six months⁶⁴. In this respect, it is depressing that the Labour Party saw fit to campaign against this approach, in 2013, on the promise to "stand by our judge's right to impose prison sentences. SNP plans to abolish 6 month sentences means 65% of knife criminals will not be sentenced to prison⁶⁵".

Equally in the Scottish Government's favour has been an acknowledgement of the linkage between children being in care and then becoming caught up in the criminal justice system. More recently, attention is being paid to the particular problems caused by placing women in prison⁶⁶ and, specifically, a retreat from an earlier plan to build a larger prison in Inverclyde for women⁶⁷. Equally the broader question of how to deflect young people from the criminal justice system is under serious consideration⁶⁸.

On the other hand, despite falling levels of crime⁶⁹, the rate of imprisonment has more or less remained static since 2012. Scottish government policy is far more enlightened than that in the rest of the UK but remains influenced by

64 Robertson, A. 2015a. *McLeish: Scrap prison sentences of six months or less in next parliament* [Online]. Edinburgh: Holyrood. Available: <https://www.holyrood.com/articles/news/mcleish-scrap-prison-sentences-six-months-or-less-next-parliament> [Accessed 23 June 2015].

65 The Labour Party. 2011. *Five Key Pledges* [Online]. Aberdeen. Available: <http://www.aberdeenshire.gov.uk/elections/schools2011/LabourPartyManifesto.pdf> [Accessed 23 June 2015].

66 Daly, M. & Dahl, L. 2015. The Benefit Sanctions are Brutal. *Scottish Justice Matters*, 3:2, 35-36.

67 Robertson, A. 2015b. *New national prison to be built for 80 female offenders* [Online]. Edinburgh: Holyrood. Available: <https://www.holyrood.com/articles/news/new-national-prison-be-built-80-female-offenders> [Accessed 23 June 2015].

68 Scottish Government 2015. Preventing Offending: Getting it right for children and young people. Edinburgh: The Scottish Government.

69 Aston, L. & Lum, C. 2015. Crime Prevention and the Development of the Safer Communities Evidence Matrix Scotland (SCEMS). *Scottish Justice Matters*, 3:2, 17-18.

scaremongering tabloid headlines⁷⁰ and political opponents making the regular charge of ‘being soft on crime’. This mindset is particularly problematic in the case of mental health. As we have noted in this report, mental health problems, before being sentenced are the norm, so in reality the only way to address the issue is to rethink how Scotland handles almost all the prison population. This raises significant problems, not least, as the Howard League noted during the recent controversy about giving prisoners the votes, accepting popular prejudice is too often the easy answer⁷¹.

■ 4.2 Sentencing Practices

The importance of consistency in sentencing within the Scottish Criminal justice has been under discussion since 2006⁷² and the 2010 Criminal Justice and Licensing (Scotland) Act contained a requirement to reform the old Sentencing Commission to take this work forward. The Scottish Government has recently announced this will commence work in October 2015. This is a critical gap that has particular importance for the issue of mental health and sentencing. In so far as there is a structured approach in Scotland it is based around the nature of the crime and some note being taken of the impact on the victims.

Some recent proposals are designed to take some account of the circumstances of the offender, especially if they are female or have parenting responsibilities⁷³. However, the fundamental goal of sentencing guidelines is that “offenders committing similar offences are punished with similar penalties by different sentencers, whether those sentencers sit in the same court or different courts⁷⁴”. This approach fundamentally undermines attempts to take account of the impact of the criminal justice system on the offender.

Of course the standard view of the British press and of Whitehall Home Secretaries is that this is of no account. If someone has committed a crime they must be punished regardless of the longer term consequences. But as the Scottish Government is starting to acknowledgement that imprisonment punishes more

70 This is but one of many examples: Herbert, D. 2012. *Scots voters rebel over SNP's soft-touch justice* [Online]. London: Daily Express. Available: <http://www.express.co.uk/news/uk/354716/Scots-voters-rebel-over-SNP-s-soft-touch-justice> [Accessed 22 June 2015].

71 Blackburn, L. & Mackenzie, L. 2013. No votes in prisons. Edinburgh: The Howard League.

72 The Sentencing Commission for Scotland 2006. *The Scope to Improve Consistency in Sentencing Edinburgh*: The Scottish Government.

73 Loucks, N. 2015. Imprisoning Mothers: The Impact on Children and Families. *Scottish Justice Matters*, 3:2, 29-31.

74 The Sentencing Commission for Scotland 2006. *The Scope to Improve Consistency in Sentencing Edinburgh*: The Scottish Government., p. 9

than the offender in terms of women and families, and that children brought up in care are more likely to become caught up in crime, there is a need for some boldness in terms of mental health.

At the least, as noted several times in this report and others, those with a diagnosis of severe and enduring mental health problems⁷⁵ should quite simply not be in jail. Their primary need is for structured treatment and support. More generally, the Scottish Government is slowly coming to the view that prison is not the best solution to ensuring that crime falls in the longer term⁷⁶. This approach needs to be extended to those with mental health problems. Quite often the reason they committed a crime in the first place is the lack of effective mental health provision, prison simply makes this worse and the lack of support on release sets up a cycle of self-medication (often involving drink and drugs), intermittent work and housing arrangements and a return to prison.

■ 4.3 Available Resources

The shift of wider health care services from the Scottish Prison Service to the NHS was an important feature of the 2010 legislation. The underlying logic was this would remove one administrative barrier between services inside and outside of prison and improve access to scarce resources. Although there is evidence that NHS Boards are aware of the implications, and undertook some early planning, there is no publicly available documentation as to the impact. Prison provision is not being reported as part of annual reports⁷⁷ indicating it is not seen as a key service.

More importantly, the key part of mental health provision that deals with offenders, Forensic mental health, is being significantly reduced as the NHS copes with funding shortfalls. This matters as the most people in need of psychological services are seen as part of the Community Mental Health structure. However, ex-offenders are often not accepted as they are either still involved with criminal activity, self-medicating with drink or drugs or show other behavioural difficulties. In turn, this leaves a vulnerable group having to negotiate a fragmented care system.

75 HMIP 2008. *Out of Sight: Severe and Enduring Mental Health Problems in Scotland's Prisons*. Edinburgh: HM Chief Inspector of Prisons for Scotland.

76 Garside, R. & Ford, M. 2015. *Criminal justice in the United Kingdom: 2010 to 2015*. London: The Hadley Trust.

77 NHS Greater Glasgow and Clyde 2014. *Annual Review Self Assessment*. Glasgow: NHS GGC.

At the moment, no-one is really taking the issue of mental health, imprisonment and the wider criminal justice system seriously. The underlying problem is widely acknowledged and report after report points to the reality that most people in Scotland's jails are in need of mental health services (and that this predates their offending). However, because it is so widespread, it is politically harder to acknowledge than the problems of women going to jail or the impact on children if their parents are imprisoned. While it is a particular problem of mental health provision, it is also indicative of a wider failing in terms of criminal justice policy.

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