

PRE-BUDGET SCRUTINY FOR 2020-21 BUDGET

SUBMISSION FROM SOCIAL WORK SCOTLAND, TO JUSTICE COMMITTEE'S CALL FOR VIEWS

27 September 2019

Social Work Scotland is the professional body for social work leaders, working closely with our partners to shape policy and practice, and improve the quality and experience of social services. We welcome this opportunity to feed into the Justice Committee's scrutiny of the Scottish Government's budget for 2020-21.

Budgets provided to the public, third and voluntary sectors for health, education, employment, through-care, family-contact, rehabilitation/re-offending, in-cell technology and other services provided to prisoners

Criminal justice social work (CJSW) provides a range of statutory services to individuals in the community and prison at different stages of the criminal justice system. These include:

- Bail supervision;
- Alternatives to prosecution measures such as Fiscal Work Orders and Diversion from Prosecution;
- Criminal justice social work reports;
- Risk and need assessments using accredited tools, e.g. the Level of Case Management Inventory (LS/CMI), Stable & Acute 2007 (SA07), Spousal Assault Risk Assessment (SARA);
- Community Payback Orders (CPO);
- Delivery of accredited programmes, e.g. Moving Forward: Making Changes and the Caledonian System;
- Throughcare services to statutory prisoners (i.e. long-term prisoners serving more than 4 years or short-term sex offenders released on licence), including community and prison-based assessments and reports for parole;
- Supervision of individuals released from custody on licence, e.g. parole, extended sentence, supervised release order, Order of Lifelong Restriction); and
- Voluntary Throughcare to short-term prisoners and the Throughcare Addictions Service.

CJSW therefore plays a central role in the justice system, and in particular the rehabilitation and management of individuals subject to community-based supervision. As the

responsible agency for managing the risk of serious harm and the needs of people subject to statutory supervision, the 'risk' sits squarely with CJSW.

Funding is provided to local authorities in a ring-fenced grant provided under sections 27A and 27B of the Social Work (Scotland) Act 1968 as amended (referred to hereafter as the S27 grant).

There are currently a number of acute pressures on local authority CJSW. Scottish Government Justice Analytical Services estimate a 7.5% increase in CPOs as a result of the extension of the Presumption Against Short Term Sentences (PASS). As Community Justice Scotland (CJS) point out:

“Of the forecasts provided by Justice Analytical Services, even a ‘LOW’ uptake would result in approximately 1,300 additional people across Scotland receiving community sentences. If the policy has greater impact, then numbers could further increase. It is likely some of this number will require additional support to complete their sentence successfully. Local Authority areas and service providers need to be able to meet this demand for support.”¹

The report goes on to argue that research undertaken by Progressive Partnerships, an independent research organisation, suggests that “a proportion of these people (i.e. those currently receiving a prison sentence of up to 12 months that might now get a CPO) may have more complex needs that will require more support than the current ‘average’ person completing a CPO”.²

It is true the total number of CPOs in Scotland has declined since their introduction in 2011 from a peak of 19,451 in 2015-16 to 17,834 in 2017-18.³ However, notwithstanding the impact of PASS described above, there have been several practice developments in the last 10 – 15 years that have had a significant impact on CJSW workloads and the ability of services to work effectively with individuals and are not fully funded. These include, but not limited to:

- Structured and accredited risk assessment tools – a range of tools have been introduced, all of which require substantive training and time to complete. To reference only three: (1) the introduction of the Level of Service & Case Management Inventory (LS/CMI) at the turn of the decade, an assessment and case management tool completed on all individuals which underpins all CJSW statutory work with individuals at both the criminal justice social work report stage and post-sentence (it requires a 5 – 6 training course); (2) Stable & Acute 2007 and Risk

¹ Sentenced to Smart Justice: A report on proposed extension of the Presumption Against Short Sentences, May 2019.

² Ibid

³ Scottish Government, Criminal Justice Social Work Statistics in Scotland, 4/2/19

Matrix 2000 for sex offenders (requires 3 day training); and (3) the Spousal Assault Risk Assessment (SARA v3) for domestic abuse, again resource intensive.

- ViSOR – this electronic Home Office sex and violent offender register requires social workers to regularly input information.
- MAPPA – the Multi-Agency Public Protection Arrangements require significant commitment from CJSW, from joint visits and assessment with Police Scotland, attendance at meetings to comprehensive risk management plans.
- Order of Lifelong Restriction (OLR) – introduced to manage the risk of individuals posing the very highest risk of serious harm, local authorities are responsible for managing individuals in the community subject to an OLR and are required to commit significant resources to manage these individuals and submit ongoing detailed risk management plans to the Risk Management Authority for approval. Whilst the numbers in the community are currently small, this will only increase in coming years.
- Moving Forward: Making Changes (MF:MF) – this (no longer) accredited sex offender programme (currently being reviewed and revised) requires significant resource both from teams delivering the group work programme, but also, and crucially, CJSW social worker case managers.
- Caledonian System – whilst funding is provided separately by Scottish Government, this accredited domestic abuse programme, available only to approximately two-thirds of local authority CJSW due to lack of central funding, places significant demands on CJSW social worker case managers (for example, they are responsible for delivering the lengthy pre-group programme work that is not covered by the Caledonian funding).
- Multi Agency Risk Assessment Conferences (MARAC) – protecting victims of domestic abuse, MARAC requires significant input from CJSW, including chairing and attending meetings, providing background information and contributing to action plans.
- Multi-Agency Task & Coordination (MATAC) – focussing on perpetrators of domestic abuse, this is a further additional commitment for CJSW.

Additionally, other developments in the justice environment continue to increase workload and pressure on a strained and over-stretched CJSW system. Many of these developments are, in themselves, welcome. But most are driven forward in isolation, with too little consideration given to the compound effect they collectively impose on CJSW. For example, Social Work Scotland members report a very significant rise in the requirement for CJSW to attend Parole Tribunals and Hearings in prisons. As this mostly requires attendance in person this development absorbs worker's time. Relatedly, the lack of availability in the Scottish Prison Service of reliable connectivity limits CJSW ability to use videoconferencing with prisoners, for both Integrated Case Management (the process by which SPS manage statutory prisoners) and the development of CJSW report. Other examples of developments putting pressure on CJSW is the push to increase bail supervision numbers, and to offer Diversion to greater numbers.

Despite the seismic change in the demands and requirements placed on CJSW since the early 2000s, there has not been a comprehensive review to quantify and accurately cost the component parts of the work CJSW does. The S27 funding formula has been reviewed, but this was limited to how the grant is distributed. (In simple terms, the workload element was reduced from two-thirds to half, a rurality element was introduced and social and economic indicators are applied.) We believe the funding formula now requires comprehensive review.

Under the current formula, CJSW are actually penalised for reducing re-offending, as retrospective three year activity levels are the basis for allocation. Moreover, there is a clear case to consider more than one year grant allocations, as the current approach limits effective planning, being confirmed only in December of the preceding year (limiting our ability to respond constructively to reduced allocations). Previously, under the previous funding formula, whilst not entirely satisfactory, there was a mechanism to 'soften' any significant reductions in allocation from one year to the next.

We believe there is also a clear case for removing the separation of Part 1 and Part 2 funding, and instead providing local authorities with one S27 grant allocation.⁴ This would enable greater flexibility to allocate resources in accordance with local strategic plans and priorities.

In 2014 the Scottish government initiated research into the unit cost of a Community Payback Order (CPO). We are not aware that the final report was published, perhaps reflecting the complexity of establishing a 'unit cost' of a CPO, given the diversity and geography of Scotland and/or the difficulty of assimilating all the relevant expenditure/resources involved in delivering CPOs. In the absence of that research, in 2015-16 the cost of a CPO was estimated at £1,771. This figure was calculated by dividing total recorded expenditure on Community Payback Orders across the 8 Community Justice Authority's by the volume of those disposals. Importantly, the expenditure figure did not include the costs of delivering some services which may be accessed by offenders as a consequence of requirements imposed with these orders. Working off this basis, over the past four years the cost of managing an individual CPO has increased to approximately £2,000+.⁵ But as noted above, we would strongly suggest that this is a significant underestimate of the average cost of a CPO.

Indeed looking at the system as a whole, the actual cost of delivering CJSW services in line with National Outcomes and Standards for social work services in the criminal justice

⁴ The S27 grant comes in two parts – Part 1 is a flexible grant covering alternatives to prosecution, CJSWRs, CPOs etc. with Part 2 being targeted to specific types of work, e.g. the Multi Agency Protection Arrangements, women etc.

⁵ Calculation based on most recent available data, and in consultation with Scottish Government data analysts.

system⁶ and associated Scottish Government practice guidance⁷, including the alternatives to prosecution schemes (Diversion, Fiscal Work Orders) and statutory community supervision (e.g. Throughcare services both during a prison sentence and post release) has not been accurately costed this century. Despite the fact that since 2000 the demands on CJSW have increased exponentially, driven by successive waves of criminal justice policy innovation and reform. Such an analysis, to identify the current actual cost of CJSW, could be done by conducting a time and motion study to assess the cost of producing a CJSW report, completing LS/CMI (including the extensive risk of serious harm component), managing an individual on a prison licence, etc.

This is not a call for a return to a justice system (and associated policies and practice) of the 1990's. Social Work Scotland, along with many other informed stakeholders, strongly support many of the developments of recent years, encouraged that policies are driven by evidence and a commitment to human rights. But we cannot build or maintain a system on the strength of ideas alone. The system must be built methodically, on robust, appropriately resourced foundations; of which CJSW is one. This argument was made repeatedly in the written submissions and oral evidence (including from Victim Support Scotland and the Sheriff's Association) heard by the Justice Committee this year, in considering the proposed extension to PASS. These made explicit reference to the need for more resources for CJSW, without which it is difficult to see how the extension of PASS will succeed. Social Work Scotland supports the principle of community justice partners leveraging and sharing resources (in its broadest sense, including money, accommodation, data etc.) but this assumes there is significant spare capacity across the criminal justice system. There is not.

In considering the resource requirements of the criminal justice system, another factor which must be taken into account is the recent national public sector pay award. This has not been funded by Scottish Government, and in the six months since coming into effect Social Work Scotland members are reporting a serious impact on budgets. A survey of local authorities showed that, of the 23 that responded, 21 are required to fund the pay award from the S27 grant. One local authority calculates that they will have to find almost £1 million to cover the pay award between 2018 and 2021; that money will have to come from CJSW budgets. In another local authority, their small uplift in Part 1 funding in 2019-20 of £50,000 is less than the cost of the pay award. This situation creates serious challenges in filling posts when they become vacant, and creates pressure to re-design or re-organise services to meet the budget short fall. However, the time required to do this properly, with the requirement to consult and work with staff and unions, inevitably means that savings are not going to be achieved until future financial years. And in that time there will no doubt be further changes and funding reductions.

⁶ Scottish Government, 2010, National Outcomes and Standards for Social Work Services in the Criminal Justice System

⁷ Criminal Justice Social Work Reports 2011, CPO 2019, Throughcare, Diversion, Bail Supervision, Fiscal Work Orders etc.

It is understood the S27 grant is made up of the 'criminal justice social work' allocation in the Scottish Government budget, topped up from money in the community justice 'offender services' budget. The former budget has remained static for several years at £86.5 million. In 2017-18 the total allocation to CJSW including money from 'offender services' was £98,819,949; since then there have been marginal increases to £100,080,038 in 2018-19 and £100,115,038 in 2019-20. As set out in the paragraphs above, we believe that this has led to significant, systemic underfunding of CJSW. This is impacting on the ability of CJSW to deliver on the three key outcomes set out in NOS – reducing reoffending; promoting social inclusion; and public protection and community safety. And this will, in turn, impact on the system's collective ability to deliver key Scottish government policy initiatives, such as PASS, community justice and bail supervision. CJSW is centre stage in efforts to modernise Scotland's justice system, and under the spotlight in managing the risk of individuals subject to statutory supervision, or coordinating interventions and services to rehabilitate and transform lives. The resource requirements of such a key player must be properly understood and fully met.

Longer-term challenges and financial requirements to tackle issues such as staffing levels in prisons, over-crowding, drug use, safety and security of staff and prisoners, the use of the open estate and an ageing prison population.

A number of developments are currently underway which will present financial challenges. Perhaps most significant is the work instigated by the Health and Justice collaboration Board to integrate health and social care in prisons. This is a programme Social Work Scotland is proud to be involved in, and tests of change are currently underway in six prisons. The integrated health and social care in prisons programme gives us a valuable opportunity to explore how health, well-being and social need affect the risk of offending in the future, and to work across statutory and voluntary throughcare systems to deliver a more holistic, individualised and integrated response to individuals, reducing the risk of reoffending. Following an evaluation report in autumn 2020, the responsibility for integrated health and social care services in prisons is likely to fall to local health and social care partnerships. Only 13 partnerships have prisons in their areas, but these partnerships will in due course face a significant pocket of need for services.

Elsewhere in the justice landscape, there are some potential efficiencies to be made in developing integrated, multi-disciplinary services and by reviewing and aligning third sector services in prison. To date these have grown organically, rather than through any strategic needs assessment and commissioning plan. It is likely, therefore, that they will not cover all current (and the expected increase) in needs which we will see in our prisons. In the context of integrated health and social care provision in our prisons (as described in paragraph above) we will need to review which and how services have been delivered in prison, and consider provision within the wider commissioning and procurement framework.

There remains a lack of data around the health and social care needs of people in prison, which some tests of change and a Government commissioned strategic needs assessment

will seek to rectify in the next few months. Like the Scottish population as a whole, the prison population is ageing, meaning there will continue to be a greater number of people who are frail, and require additional support. But the prison population also has significant levels of need in terms of mental health, addiction, learning disability and neuro-diversity. These needs impact on people's capacity to make use of any opportunities for learning and development in prisons and then to successfully reintegrate into their communities on release. The prison estate does not currently have the capacity to meet the needs of a growing population of people with complex age and/or health related conditions. Without investment in the estate, this means care will likely be delivered in inappropriate settings, potentially without the equipment that would be deemed necessary in community settings. This not only places people in receipt of services at risk, but workers too. The Justice Committee may want to consider the elements both of the prison estate and the delivery of a whole systems approach to health and social care in a justice setting in its future planning.

Views on how to achieve a rebalancing over the longer-term in expenditure on prisons and that of community-based alternatives to incarceration and preventative spend, including the challenges of provision in remote or rural areas.

If we are to achieve this re-balancing, and potentially unlock resources to re-distribute to community-based alternatives, Scotland needs first to agree and articulate what the role of prison is. If our national aim, as articulated by Professor Cyrus Tata and others, is that imprisonment should be used sparingly, only where warranted on the grounds that the risk of serious harm is so great as to require confinement, and never on the basis of 'rehabilitation' or 'self-improvement', we should say so clearly, and work out the policies to achieve it. Over time we would see a reduction in the prison population, freeing up resources to be transferred elsewhere.

With such an agreement about the role of prison in place, the change itself would require robust strategy, energy, collaboration, and, perhaps most importantly, bold leadership and financial investment. The newly established Community Justice Leadership Group, co-chaired by the Cabinet Secretary and COSLA's Community and Wellbeing Spokesperson, offers an opportunity to explore whether this is possible. The group could set a clear vision for what the justice system in Scotland to look like in 20 – 30 years' time, and agree the outlines of how we get there. (An example of this scale of ambition is the Housing to 2040 vision.) The group could crystallise what a compassionate justice system looks like, how it balances responsibilities, and identify the milestones on the journey to achieve it. Critically, the group could set coherent 'stretch aims' for the system, such as limits on the number of people in prison by a certain time. Without such clear stretch aims it is too difficult for a disparate system to coalesce around a shared vision, or agree on the scale of change needed.

However, to do this right requires both time and investment. A system built up over decades, which itself reflects public attitudes and culture with roots which go even further,

cannot be transformed through policy documents and rhetoric. Vested interests will need to be challenged, all parts of the system be open to radical change, and resources made available to facilitate the transition. Simply put, the current system will need to continue to be maintained (and improved) while the new one is built. That cannot be done (or at least cannot be done quickly) with no increase in overall spending. For example, to win public (and some professional) support for a compassionate justice system, significant investment will be needed in deploying and evaluating the effectiveness of community-based interventions. We know such interventions work, but to fundamentally rebalance the system Scottish Government and its partners will need to go further than securing the support of experts.

The alternative is that public sector money will continue to be invested in an increasingly complicated version of the current system, with policy innovations woven into a prison-centric infrastructure. That will fail to unlock the potential of those policy innovations, and make it less likely that we develop across Scotland the integrated services needed to prevent offending and re-offending in our communities. It will also mean we fail to unlock the significant resources allocated to a growing and aging prison population.

For further information, please do not hesitate to contact:

James Maybee

Chair of Social Work Scotland's Justice Standing Committee & Head of Criminal Justice
Social Work, Highland Council

James.Maybee@highland.gov.uk