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EDITORIAL BOARD

EDITORIAL

Welcome to the seventeenth volume of the **Scottish Journal of Criminal Justice Studies**. In addition to the Chairman's Report for the year, this year's Journal contains several presentations from the 2010 Annual Conference, which was held for the first time at Dunblane Hydro and chaired by the Rt Hon Lord Gill, Lord Justice Clerk. The theme of the conference was *"Managing Risk and Re-Integration"* and it commenced with a presentation by Professor Jill Peay of the London School of Economics entitled *Mental Disorder and Crime: Some Unresolved Questions* which provided an excellent overview of the subject matter of the conference. This presentation raised the vital, but thorny questions of identifying those who are dangerous, assessing their risk and managing their reintegration into communities, and; questioning whether those with mental illness are properly identified, and then managed appropriately. The paper is reproduced here in its original form as an oral presentation. The second paper, entitled *Reducing Risk: Integration or Aversion? Risk assessment and the use of IPP in England and Wales,* is by Professor Hazel Kemshall of De Montfort University. This paper traces the implementation and impact of the controversial Indeterminate Public Protection (IPP) sentences introduced under the Criminal Justice Act 2003 in England and Wales, and poses important questions about the possible future of penal policy lying between precaution and risk aversion on the one hand; and integration and rehabilitation on the other.

The Gordon Nicholson Memorial Lecture entitled *'Violence Risk Assessment and the Illusion of Certainty'* was given by Professor David Cooke of Glasgow Caledonian University and is also included here in the form of an oral presentation. The lecture traces the rise of actuarial risk assessment in Scotland in recent years, and is a fitting tribute to Sheriff Principal Nicholson, one-time Chairman and Honorary President of SASO. Continuing the theme of developments in Scotland, the paper by Yvonne Gailey of the Risk Management Authority develops some of the arguments outlined in her conference presentation. With the catchy title *We Can if we Choose to and if we Follow the Evidence,* it considers some of the challenges arising from Scottish policy on the assessment and management of risk, and promotes an approach to risk practice that is evidence based and guided by principles of human rights and proportionality. The following paper entitled *Managing Challenging Sex Offenders in the Community* by Katherine Russell and Rajan Darjee of the

NHS Lothian Sex Offender Liaison Service at the Royal Edinburgh Hospital, discusses the complexities involved in the management of sex offenders and proposes ways of working with this diverse and challenging group that can increase staff wellbeing whilst at the same time help manage risk.

Also included in this volume is the prize-winning student essay by Graham Bell, who is currently undertaking an MSc in Criminology and Criminal Justice at the University of Glasgow. His essay, which was the judges' unanimous choice, is entitled *Can evidence about desistance influence penal policies and practices? Should it?* Finally Sarah MacQueen of Edinburgh University reviews the recent edited text *Criminal Justice in Scotland* by Croall, Mooney and Munro.

In future volumes, SASO hopes to continue to publish as articles those papers presented at Branch Meetings or at Day Conferences that Branch Secretaries consider suitable for a wider audience. The **Journal** is also keen to publish original articles on matters of interest to the Scottish criminal justice community. I would particularly like to encourage articles from practitioners, and those with practice experience, which inform the realities of work in criminal justice. Contributors are asked to send articles (in word or in .rtf format) to the Editor (michele.burman@glasgow.ac.uk). All articles will be reviewed by two members of the **Editorial Board**.

Michele Burman

CONTENTS

Mental Disorder and Crime: Some Unresolved Questions

Professor Jill Peay, London School of Economics

Introduction

Today, I'm going to focus on general questions, located in the English context although I will draw on some US and some Swedish data. But I think it would be foolish of me, quite frankly, to try and address the Scottish context, so that's what I'm going to not do.

The list of resolved questions in mental disorder and crime might be considerably shorter than the list of unresolved questions. There is a terrible tendency in this field to focus very much on specific disorders, usually personality disorder and particularly schizophrenia; and on particular crimes, namely crimes of violence. And we very much neglect a whole range of other mental disorders; such as various anxiety disorders, depression and dementia. And we also ignore other kinds of crimes like white collar crime, state crime, regulatory crime – none of these really get touched on greatly in the literature. So there's a large field out there; but I'm going to try and restrain myself and focus what I'm going to be talking about very much on the two themes for the conference that have been identified – that is, identifying who is dangerous, assessing risk and managing their reintegration into communities, and questioning whether those with mental illness are properly identified, and then managed appropriately.

Now, when I teach at the LSE in respect of mental disorder and offending, and on issues of dangerousness, I always keep the two separate. I think it is important to do that because otherwise students can very easily become confused about the relationship between what we mean by 'dangerousness' and what the relevance of mental disorder is. And it is always important to remember that 'dangerousness' may have as much to do with the likelihood of reoffending, that is do with repetition, as it has to do with the seriousness of reoffending. Reoffending by the released mentally ill is actually very low, comparatively. Reoffending by those released with personality disordered is, by definition, very different, so the two are different kinds of territory. The kinds of questions we might ask are, 'do mental disorder and dangerousness intersect to a degree that deserves a focus beyond, for example, that on dangerousness and drug or alcohol abuse?' and 'in what ways might mental

disorder underpin dangerous offending?' And I'm going to further focus those questions down onto what I regard as some of the more unresolved questions, so the two I'm going to address are, 'are dischargeable offender patients more or less dangerous than released offenders?' and 'does mental illness act as a risk factor or a protective factor for serious offending?' And 'does the answer depend as much on conventional factors underpinning offending, as on any unique contribution made by the mental disorder?' It is always important to recall, when thinking about this area, that working out these answers, and answering these questions at a population level, is a very different kind of exercise to working them out in respect of any individual. They are two very different kinds of tasks.

The other caveat I need to make, and this of course is a conference that will be quite statistical, is that statistics are an artefact; they are a product of other people's decision making, and they in effect act to simplify what are quite complex interactions. So whenever using statistics I always like to apply a health warning. And this is a health warning that is cited by Mike Maguire in the *Oxford Handbook of Criminology*, but as he notes it is attributable to Harper (1991).

'Let me be quite clear about this, statistics are not tables or numbers, sets of techniques, lists of formulae, but an approach to understanding the world about us. However that world is very complex, and there is no quick and easy way of gaining such understanding. If everything appears simple and crystal clear, probably you have misunderstood the issue you are considering'.

And my last caveat concerns reconviction data. I'm sure I don't need to elaborate to an audience like this what the problems are with reconviction data, because they are legion. But the group I'm going to be talking about – that is restricted patients – are relatively intensively supervised so the data we do have on their offending is likely to be amongst the best available.

Offender patients subject to a restriction order

Restricted patients are those offender patients where a decision has been made by a court that it's necessary to impose a restriction on their discharge from the order (primarily, that is, from hospital detention) for the protection of the public from serious harm. So these are people where there is a risk of serious harm, not people for whom there is a high risk of causing some kind of harm. So a risk of serious harm is required for the order to be made in the first instance. And there are two sets of data that I'll be drawing on. First, the

annual publications by the Home Office, *Statistics of Mentally Disordered Offenders* (notably, this set of annual publications has now ceased); and second, a Home Office bulletin published by Kershaw, Dowdeswell and Goodman in 1997 entitled *'Restricted Patients – reconvictions and recalls by the end of 1995: England and Wales*. There are definitions of both 'grave offences' and what we mean by 'sexual or violent offences', but I am not going to dwell on those for the moment.[1] I can go back to them, if anyone wants to look at them again.

I want to start by looking at this table of restricted patients.

Table 1: Restricted patients: 1999-2006 totals first discharged: % reconvictions

Discharge by **Tribunal** and matched on PNC
1,159 (1% grave) (7% all)

Discharge by **Secretary of State** and matched on PNC
172 (0% grave) (4% all)

1984-2008 the % of patients conditionally discharged by the tribunal, out of a total discharged by either the tribunal or the SS, ranged from 56% to 90% (tribunals cd 4,214 patients and the SS 1,141 patients)

The table concerns patients who were discharged between 1999 and 2006. These are first discharges and the statistics relate to their percentage reconvictions during a two year period following release. Now, the first thing to say about this table is that I think I spent about two days trawling through all of the previous annual publications to add up all of these statistics, and put it into a nice, neat little table for you. I had no sooner finished the task, when the Ministry of Justice, on November 4th 2010, produced their compendium of figures, which went through exactly the kinds of data that

1 '**Grave' offences** are defined as all indictable-only offences for which the maximum sentence is life imprisonment plus arson not endangering life (which is triable either way). The main 'grave' offences are homicide, serious wounding, rape, buggery, robbery, aggravated burglary and arson.
The category of 'sexual or violent' offences is defined in Appendix 5 of The Criminal Statistics under the headings of sexual offences and violence against the person. They include homicide, endangering life, robbery, kidnapping, child abduction, cruelty or neglect of children, abandoning child, concealment of birth, buggery, rape, indecent assault, incest, procuration, abduction, bigamy, and gross indecency with children.

I had been looking at. Thankfully they came to the same results that I did. They also had access to an additional year's data, so if you go and look at their table you'll find one extra year in there. But I thought, I've worked so hard on this tables you're getting mine not theirs.

The table compares discharge by the tribunal and discharge by the Secretary of State. The tribunal has the opportunity to discharge at set intervals when patients have asked to have their cases reviewed. The Secretary of State has a continuous jurisdiction so can discharge at any point when it is regarded that the moment is right to discharge. You might think, given the differences in their opportunities to discharge, that the bulk of the discharges would be done by the Secretary of State. But no, the bulk of the discharges are done by the Mental Health Review Tribunal. Over that period, 1,159 discharges compared with only 172 discharged by the Secretary of State. If you then go and look at the reconviction rates for grave offences, then there is just one percent by those discharged by the Tribunal, and between nought and one percent for the Secretary of State. And for all offences, seven percent by the Tribunal, and four percent by the Secretary of State.

There are some things that are remarkable here. First, there is a very low reconviction rate for the commission of grave offences, given that these are people who had largely committed serious offences, for whom it was predicted that there would be a risk of serious harm if they were to be released. So the fact that they don't commit more very serious offences is very reassuring. Second, there is a very low reconviction rate for all offences as well, and I find that quite remarkable. And third, there is not much difference between the Secretary of State and the Mental Health Review Tribunal in terms of success rates. The other notable matter, is that if you look at a longer run of case discharges, you'll see that it is true across the board that the Secretary of State has historically discharged fewer patients than the Mental Health Review Tribunal; and indeed the direction of travel is progressively towards Tribunal discharge.

So, what are the problems with this, and what might explain this? Well, maybe it's cherry picking, in that the Secretary of State may only select the really, really good (low) risks; maybe it's because the Tribunal and the Secretary of State are discharging from different places, and that is certainly the case. The Secretary of State largely discharges from low security hospitals; whereas the Tribunal are discharging patients from the special hospitals, for whom the Secretary of State almost never exercises the power to discharge. There may also be an effect relating to the kinds

of patients that they discharge and it's certainly true that Tribunals are discharging more patients with personality disorder, and the Secretary of State tends to focus on those with mental illness. You might also say it's because there's an opportunity to recall, and so where anyone looks a 'bit dodgy' in the community the Secretary of State has the power to yank them back into hospital so they don't go on and reoffend; thus the statistics conceal a problem with the 'not at risk' population. It may have something to do not so much with the criteria for discharge, because the criteria for discharge are pretty much the same between Secretary of State and the Mental Health Review Tribunal, but they may be operating very different thresholds in terms of when they find themselves satisfied with the criteria. Here, I'd point you in the direction of a book that's just been published by Tessa Boyd-Caine, called *Protecting the Public: Detention and Release of Mentally Disordered Offenders.* The final point is that because we discharge so few of these patients, it's very, very hard to learn from our mistakes; and because we don't make many mistakes, as we are terribly cautious in terms of how we discharge.

The next table concerns the two year reconviction rates specifically for violence and sexual offences.

Table 2: 2 year reconviction rates: violence and sexual offences

	Matched	R	%R	E%R	A-E%R
1985-89	503	21	4	11	-7
1989-93	549	14	3	11	-8
1993-97	582	14	2	11	-9
96-2000	600	11	2	11	-9

1999-2006, 1331 discharges matched on PNC: 7% reconvicted within 2 years (2% for violent/sexual offences, 1% grave offences)

This table looks at those restricted patients who have been discharged across particular time periods between 1985 and 2000. The column marked 'matched' are those people who are released who then go on and offend and who can be found on the offender's index which the Home Office compiles. 'R' relates to the number who reoffend, the percentage 'R' is the percentage who reoffend, and as you can see it's very low – 4, 3, 2, 2 per cent. These are low percentage reconviction rates. 'E' percentage 'R' is the expected reconviction rates. Now, what the Home Office used to do was to compare

those people who had been discharged as restricted patients, in terms of their demographic data, in terms of their offending histories, with people who were released from prison, and to calculate what the percentage reconviction rate would have been, had they been released from prison. And you can see that the expected rate is much greater for similar offenders coming out of prisons. So 'A' minus 'E' is the figure which indicates that actually we are doing rather better with patients than with those coming out of prison.

Sadly the Home Office no longer produces this data so we can't make these comparisons anymore in this way. We've got it up to the year 2000, but then nothing since. What we have from 2000 are simply the reconviction rates within two years matched on the police national computer, but not matched with prisoners. So, that data is no longer available. So, the kinds of questions that can be asked are: 'are the Secretary of State and the Tribunal both spotting good risks amongst the cohort of people they might discharge?', 'does it have something to do with the effects of supervision, once you've been released from prison or from hospital?', 'does it have to do with treatment-effected change? That is, something has actually happened to the good whilst people have been in hospital, but perhaps not in prison?', or 'does it have to do with the fact the Tribunals may be as or more cautious than the Secretary of State, given different cohorts of patients?' We don't really know the answers to these questions.

Prisoners with a mental disorder

The next thing I want to look at is the data included within the new *Compendium of Reoffending Statistics and Analysis,* a statistical bulletin produced by the Ministry of Justice (2010). This relates to all custodial offences and some additional recorded offences. So it is dealing with lower level offending, and not just very grave offences, and not just sexual and violent offences. But it does have a very helpful section on the release of mental disordered offenders, so that you can compare the reconviction rates of mentally disordered offenders from psychiatric hospital - 5.8% reconvicted within two years - with the rate of reoffending by adults coming out of the criminal justice system within twelve months – a figure of 9%. These are reoffending rather than reconviction rates because the time period isn't quite sufficient to get them up to the reconviction point. But they are 5.8% for patients, and 9% of adults for first time reconvictions/ reoffending.

The Compendium also has a very interesting survey of the reported mental health difficulties amongst the prisoner population. And although no clinical

diagnosis of mental health was made amongst this population, prisoners were asked a number of questions about their mental health status, so there is self-report data. And the prisoners did report a number of mental health issues before they came into custody. Interestingly these weren't associated with higher rates of reconviction on release. And these are the areas where the Ministry of Justice have looked at the mental health needs of prisoners. I will just pick out two or three things here. First, 17% reported that they had been treated or counselled for a mental health or emotional problem in the year before custody (MoJ 2010:6). Thus, people going into prison were reporting already having had mental health difficulties at that point; this is perhaps not surprising. But 9% said that they had 'heard voices saying quite a few words or sentences' when there was no one around to account for it, and 2% had been prescribed anti-psychotic medication in the year before custody (MoJ 2010: Table 4). So there were evidently some quite seriously disabled people going into custody. And given that was the group that was going in to prison, when you look at the people who are coming out, and you look at that 17% who were treated or counselled for a mental health or emotional problems in the year before custody, the fact that that 17% on release from prison had a very similar reconviction rate of 54%, compared with those who did not report mental health problems, who had a 52% reconviction rate, is notable.

Now you might say that at 52-54% this is a very high rate of reconviction and therefore perhaps whatever mental health problems there are that exist, they're only having a marginal impact in terms of the other factors that are underpinning reoffending. That's another question we can't really unpack terribly well. So, two things matter. We used to think we knew that discharge from hospital of restricted patients was more successful than matched discharge from prison; in effect hospitals did better than prison. We don't know that any more because we don't compile the statistics. Ought we to know it? Or rather has that initiative been abandoned because frankly, it's just too difficult to make those kinds of comparisons in an accurate or helpful way. Obviously if you really wanted to address this question, you would need randomly to allocate people to prison or to hospital and then release them after a set period of time, and then see what's happened, in order to work out whether what has gone in the two institutional contexts is different and is having any effect on re-offending. And that, quite frankly, is never going to happen. So it may be we are just going to be left with what can only be described as very unsatisfactory data.

Mental Disorder and Crime

Moving on now to the question of whether or not mental disorder and crime are related. As I indicated earlier, the way in which this question is usually posed, is along the lines of 'are people with mental illness more likely to engage in violent behaviour?', 'which psychiatric illnesses are associated with violence?' and 'what's the magnitude of the increased risk?' The context, which is important to try and hang onto, is twofold: firstly, most people who are violent are not mentally ill. So if we want to think about violence we need to look elsewhere than at our mentally disordered cohorts. And secondly, most people who are mentally ill are not violent. So even if you look within the mentally ill, most of them are not violent.

The second aspect has to do with selective perception. We are all terribly selective about the way in which we perceive these problems: the law is selective; the media is selective; professionals are selective, and academics are selective. There is a very neat little publication published earlier this year by Mitchell and Roberts (2010) looking at public opinion on the sentencing of those convicted of murder. And it absolutely rams home how wide the gulf is between what people perceive to be the situation in respect of the sentencing of murderers, and what the facts actually are. We are all very prone to these preconceptions about quite emotive areas. But I think there is a particular conflict between what I describe as forensic clinicians who spend day in day out dealing with what are a particular cohort of very problematic dangerous patients, and someone like myself who sits on the sixth floor of a corporate academic block in London protected from the realities of a lot of the day-to-day world of dealing with mentally disordered offenders. So, you have to accept that my view on this is quite skewed in its own way.

But given that the causes of crime are complex and multi-factorial, there are two things you can ask. First, 'what additional contribution does mental disorder make to the likelihood of offending behaviour?' and, secondly, 'is mental disorder primarily a protective factor, reducing the likelihood of offending or is it primarily a stimulus to offending?'. And the problematic answer to that has been set out by Graham Thornicroft from the Institute of Psychiatry in his 2006 book called *Shunned*, which is about stigma and discrimination towards those with mental disorder. Thus,

> *'whether or not there is any <u>additional</u> risk, depends upon the type of diagnosis, the nature and severity of the symptoms present, whether*

> *the person is receiving treatment and care, if there is a past history of violence by the individual, the co-occurrence of antisocial personality disorder and substance misuse and the social, economic and cultural context in which an individual lives.'* (Thornicroft 2006:139, emphasis added)

That pretty much covers all the bases in my view, so the real question, the real unresolvable question is, 'how do these things all interact with one another; what impact does one have upon another; what impact do two or three have upon one another; and then, what impact do they have in respect of any individual in any particular context?'. And to those questions we certainly don't know the answers.

However, we do know some things; Fazel and Grann published an interesting article in the *American Journal of Psychiatry* in 2006 called 'The Population Impact of Severe Mental Illness on Violent Crime'. So this is trying to descend to a level of detail and think about it in a slightly different way. It is based on Swedish data. Now, for those of us who are very anxious about the notion that we get tracked from birth to death, and wouldn't want to live in Sweden, we approach this data with some ambivalence. However, it is fabulous data precisely because you do get tracked in Sweden from birth to death, they have highly detailed national registers about all sorts of things that happen to people which enable you to go and do this kind of study that you just couldn't do here. That would not be to claim that these are perfect records: all such records are prone to recording errors and interpretative inconsistencies. However, they are probably as good as they get.

The study was based on 205,846 violent convictions from a population of 7 million people aged 15 and over between 1988 and 2000. During that 13 year period, there were 45 violent crimes committed per 1000 inhabitants, of which 2.4 were attributable to those with severe mental illness: this means that there was a population attributable risk of 5.2%. That is, patients with severe mental illness commit 1 in 20 violent crimes. Thinking about it another way, violent crime would have been reduced by 5.2% if all those with severe mental illness had been institutionalised indefinitely. However you can dig a bit deeper, and they do.

Table 3: Fazel and Grann (2006) The Population Impact of Severe Mental Illness on Violent Crime. *American Journal of Psychiatry* 163: 1397-1403

- Women patients over 40: 19% population attributable risk
- Women patients aged 25-39: 14%
- Women patients aged 15-24: 2.9%
- Male patients aged 15-24: 2.3%

There are two things to recognise about this data before we dig deeper. Firstly, the patient groups included those with co-morbid diagnosis such as substance abuse. Now we know that the intersection of mental disorder and substance abuse does increase the probability of offending so this cohort wasn't just people with serious mental illness; it was people with serious mental illness and substance abuse. And secondly, it assumes causality. So if you have a mental illness and you have offended, the assumption is that the mental disorder contributed to the offending. Now, that isn't necessarily true. But the statistical analysis of it makes that assumption. However, for me, the interesting issue here concerns the different population attributable risks for men and women across different age groups. If you look at the male patients between 15 years and 24 years, with a population attributable risk of 2.3% you can see it's absolutely tiny, and one of the reasons it's absolutely tiny is because this is the peak age of offending for men. So there are lots of men out there doing lots of offending, and whatever mental disorder they have is making a very small contribution to the population attributable risk. But if you look at women patients over 40 years, there's a 19% attributable population risk. So what that means is if you wanted to try and think about being effective in the way in which you screen people at court for the relevance of mental health for offending, look at women over 40 because you've got a much greater likelihood of picking up on a mental disorder that has contributed to offending in that population than you have in any other population. Of course there aren't very many of them at court in that age bracket, but once you've got them, they are worth looking at.

Another body of work worth examining is the MacArthur study in the US; this ran for over ten years looking at risk assessment and violence. It is perhaps a little curious that it took the researchers as long as it did to make the following observations, but when they did, it made a huge amount of sense. Thus, Paul Appelbaum and his colleagues importantly observed in 2000 that chronic schizophrenia entails fewer opportunities for violence. For violence you need initiative, you need organisation, you need social contact,

and you need psychomotor activation. And severely ill patients have less desire and fewer opportunities to engage in the interpersonal interactions that can lead to violence, compared with less severely ill patients. So, on one level, severe illness is a protective factor.

But the MacArthur study dug deeper than that; Jeff Swanson and his colleagues in 2006 published an article based on an analysis of 1,410 patients at 56 different sites across the US – all of these people suffered from schizophrenia. What they concluded is that high negative psychotic symptoms were significantly associated with a reduced risk of violence, and that they moderated the effect of positive symptoms. So violence was only significantly increased by positive symptoms when negative symptoms were low. If you have just high positive symptoms, then yes, there is an increased risk of violence. But if you have high positive symptoms and high negative symptoms, it doesn't increase the risk of violence. And, of course, this can lead you to think about the kinds of situations in which people with severe schizophrenia are likely to find themselves being located, and it helps you to understand why it is when you combine high positive symptoms with routine contact, the kind of routine contact that people have when they are living with or being cared for by their families, that this is these are the situations in which, if violence is going to occur, that it is most likely to occur. Families can be very protective in other ways, but in many ways, families are often the focus of the incidents of violence that take place.

This is the table that the MacArthur study used to set out the difference between positive and negative factors for major violence.

Table 4: Major Violence Risk Factors

Prior arrests	**Demographic**
Seriousness	Age (-)
Frequency	Male
	Unemployed
Child abuse	**Diagnosis**
Seriousness	Antisocial PD
Frequency	Schizophrenia (-)
Father	**Other Clinical**
Used drugs	Substance Abuse
Home until 15 (-)	Anger control
	Violent fantasies
	Loss of consciousness
	Involuntary status

The negative factors are age (thus, the older you get the less likely you are to be violent); schizophrenia turns out to be a negative risk factor, and; if your Dad is at home until the age of 15 that's a negative factor. Positive factors are just the kinds of things you'd expect them to be: number and seriousness of prior arrests; child abuse; diagnosis in terms of antisocial personality disorder; if you're a man; if you're unemployed; and other clinical factors like substance abuse, anger control and violent fantasies. Which leads us to Eric Silver's (2006:689) observation, and this really is the unresolved question –

> *'We don't have a clear understanding of the cause or mechanisms that produce the associations between mental disorder and violence, what we need is an embedded individual level approach, not group data, but an individual level approach focussed on a range of theoretically and empirically valued risk factors that may increase the likelihood of violence either in conjunction with or independent of mental disorder and its treatment'.*

And, as John Monahan (2007:144), who headed up the MacArthur Foundation Violence Risk Assessment study in the US, observed mental health status makes 'at best a trivial contribution to the overall level of violence in society'.

So, why do we focus on mental disorder? Well, I think we focus on mental disorder because we have much higher aspirations for effective intervention here, and indeed, there is some evidence to support this, via the limited reconviction data. Mental disorder is a modifiable risk factor. Secondly, I think there are all of the issues about the public's perception of this continuum of fear, need and merit. But finally I'd ask if really we are asking the wrong questions? Are we too focussed on the issue of mental health and crime, and fail to think about some of the other more fundamental questions that have to do with violence than simply the existence of a mental health problem? And to some extent, I do that in my 2010 book, *Mental Health and Crime*. I wouldn't advise you to buy it because it's unbelievably expensive, but you need to know that it's available in all good libraries! And I've put up the colour photograph of the cover of my book because, as a kind of soft southerner, I had this image that coming up to Dunblane in November would be very chilly and quite dark. So I thought a nice sunny photograph would raise the tone if things were looking bleak here. But they have not been, so thank you very much.

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Reducing Risk: Integration or Aversion? Risk assessment and the use of IPP in England and Wales

Professor Hazel Kemshall, De Montfort University, Leicester

Introduction

This paper presents the current position on Indeterminate Public Protection Sentences in England and Wales. Whilst no direct comparison to Scottish Orders for Life Long Restriction is made (indeed the IPP and OLR populations are not directly comparable on the grounds of either volume or exact criteria), interesting and important lessons can be learnt from the IPP experience. This paper draws on recent research (most notably by Jacobson and Hough 2010), and Ministry of Justice statistics as published in October 2010 as well as significant inspection reports.

In brief the key lessons explored in detail here are:

The potential for net-widening and the unexpected growth of IPP sentences.

- The impact on prisoners of the IPP sentence.
- The impact on key criminal justice agencies of the IPP and attendant difficulties of risk assessment and management.
- The impact of risk aversion on broader public protection policy.
- The implications of economic constraint and the age of austerity on future risk policies.

The Indeterminate Public Protection (IPP) sentence was introduced by the Criminal Justice Act 2003 (sections 224-236). The provisions of the Act allow for an IPP to be imposed if an offender has committed one or more of any of the specified 96 sexual or violent offences which would attract a maximum of 10 years imprisonment, and the person poses:

> *a significant risk to members of the public of serious harm occasioned by the commission by him of further such offences* (Sn 229 (1)).

In addition, the person can be presumed to be dangerous if he/she had a previous conviction for any specified offence (Section (229 (3)). The term 'serious harm' is defined in legislation as meaning 'death or serious personal injury whether that is physical or psychological' (Criminal Justice Act 2003, s. 224(3)), (Baker 2010). This has been labelled the 'life and limb test' (JUSTICE 2009).

The Criminal Justice and Immigration Act 2008 amended the dangerousness provisions by introducing a minimum 2 year tariff (aimed at reducing the number of short tariff IPPs), increased judicial discretion, and made IPP available for persons convicted of a 'serious, significant' offence meriting 4 years determinate sentence or more.

The current position in England and Wales

Ministry of Justice figures for the use of the Indeterminate Public Protection Sentence in England and Wales released in October 2010 make for startling reading. In particular the following are noteworthy:

- 6,130 IPP prisoners in England and Wales; with courts continuing to pass around 70 IPPS per month.
- Of these some 2,850 have passed their tariff date; and Ministry of Justice figures estimate most IPP prisoners will stay in prison on average some 4.5 years beyond tariff date.
- Only 99 had been released by June 2010, with approx 24 recalled.
- Each prisoner costs £40,000 per year.
- 2,120 had not finished one programme as of July 2010 (about a third).
- The population is mostly male, and two thirds are aged between 21-39, the ethnic breakdown broadly reflects the prison population as a whole, and IPP prisoners have a significantly higher rate of mental illness than other prisoners.
- The Projection is for: 12,000 IPPs by 2012 if they go unchecked.

(Source: Ministry of Justice (2010) *Sentencing Statistics: England and Wales 2008, Ministry of Justice* Statistics Bulletin http://www.justice.gov.uk/publications/docs/sentencing-stats-2008.pdf); and Jacobson and Hough 2010).

By the autumn of 2010 this position had resulted in a growing controversy

about the overuse of IPPs, and the plight of prisoners subject to them. The perceived over-use of IPP sentencing also resulted in a review of the sentence in November 2010 and at time of writing the outcome of the review was awaited. The controversy and growing debate about IPPS was notable for the range of agencies and personnel who engaged it, including the Prison Governors Association, Her Majesty's Inspectorate of Probation, Her Majesty's Inspectorate of Prisons, and The Prison Reform Trust to name a few. The Prison Governors Association for example called for an end to IPPS and the 'bureaucratic limbo' that these prisoners find themselves in.[2] IPPs have also been labelled 'unfair and inhumane' (Prison Reform Trust 2007) - unfair because prisoners are serving longer than determinate equivalents with no end in view. As such, IPPS severely undermine the notion of proportionality that has underpinned sentencing since the Criminal Justice Act 1991. An analysis of Ministry of Justice sentencing data shows that too high a proportion of IPPS are for lower risk offences and that the principles of proportionality and seriousness are not adhered to (Ministry of Justice 2010). Some 58% of IPPs have a tariff term of between 2 and 5 years (Jacobson and Hough 2010: 12). A report by the Prison Reform Trust in 2007 argued that the indeterminate sentence for public protection is 'unfair and unsustainable' (Prison Reform Trust 2007), a position reiterated by Jacobson and Hough in 2010.

This has been paralleled by an increasingly risk averse approach by the parole board, particularly to IPPS (Justice 2009; Parole Board 2009). This was fuelled by the high profile Serious Further Offence inquiries of Hanson and White (HMIP 2006a) and Rice (HMIP 2006b), and the subsequent criticism of the then Home Secretary Charles Clarke (see Kemshall 2008 for a full discussion). This resulted in considerable debate and reflection on 'who to release' and how to determine 'safe for release', not least from the then Chairman of the Parole Board (Nichol 2006, 2007).

Following the election of the coalition government in May 2010, the incoming Minister of Justice Ken Clarke initiated a 'scathing attack on the 'Victorian bang 'em up' prison culture of the past 20 years.'[3] This was coupled with arguments that 'rising prison numbers are not linked to falling

2 http:www//guardian.co.uk/society/oct/31/prisoners-left-in-limbo-parole/ [accessed 3/11/2010]

3 http://www.guardian.co.uk/society/2010/jun /30/Kenneth-Clarke-prison-sentencing-reform [accessed 3/11/2010]

crime'.[4] The subsequent criticisms from within the Conservative party illustrated how difficult sentencing reform will be to achieve even in an 'age of austerity'.[5] However, the IPP is currently under review and there are further sentencing reforms proposed in the Green Paper.[6]

By 2007 the consensus of opinion was that 'far too many people were sentenced to an IPP under the original CJA legislation' (Jacobson and Hough 2010: 23). The impact of the changes in the Criminal Justice and Immigration Act 2008 (discussed above) has approximately halved the rate of IPPS, but the growing consensus as of 2010 is that this is still too little and that the threshold for dangerousness is still set too high (Bennett 2008; Hebenton and Seddon 2009; Jacobson and Hough 2010).

Recent research on IPPS in England and Wales

Important research by Jacobson and Hough (2010) identified that there were problems with IPPS almost from the outset. In particular, the numbers exceeded expectation, presenting prison management difficulties, long waiting times for group programmes, and a costly increase in the prison population (see pages 7-9 for a brief overview of IPP development). Their report also highlights the volume of IPP prisoners with mental health difficulties, the lack of rehabilitative opportunities in prison, and the syndrome that prisoners cannot 'prove' they are safe to release until of course they are released. This has been described by the Prison Governors Association as a 'kafka- esque-limbo'[7] (the impact on prisoners is considered in more detail below). A key issue for IPP prisoners is 'exit' from the system, in effect overcoming the considerable barriers to release. This is significantly linked to the high threshold of safety for release and the risk aversion of the parole board:

> *If it is difficult to establish how exactly IPP prisoners can demonstrate their reduced dangerousness, it is also difficult to know by how much the level of dangerousness needs to be reduced. In other words, how 'safe'*

4 http://www.guardian.co.uk/politics/2010/jul/14/kenneth-clarke-prison-falling-crime [accessed 3/11/2010].

5 http://conservativehome.blogs.com/thetorydiary/2010/12/michael-howard-attacks-ken-clarkes-fatally-flawed-prisons-policy.html [accessed 6/1/2011]

6 http://www.guardian.co.uk/society/joepublic/2010/dec/14/ken-clarke-prison-reform-green-paper [accessed 14/12/2010] and http://www.justice.gov.uk/consultations/breaking-cycle-071210.htm [accessed 6/1/2011]

7 http:www//guardian.co.uk/society/oct/31/prisoners-left-in-limbo-parole/ [accessed 3/11/2010]

does an IPP prisoner have to be in order to be released? The vagueness of the 'life and limb' test for release has already been noted; but this is evidently a test under which the demands made of prisoners can be very stringent. Since IPP prisoners must positively demonstrate reduced risk before they can be released, the converse of the relatively low threshold of dangerousness for an IPP sentence is a relatively high threshold of 'safety' for release. (Jacobson and Hough, 2010: 44).

Interestingly their research was paralleled by a joint thematic inspection by HMI Probation and HMI Prisons in March 2010, and the report summed up the current position on IPPS as:

'Given that the current position is unsustainable, a major policy review should be conducted at Ministerial level, analysing the costs and benefits of these sentences' (p. 8).

And in fact this review is currently underway. The joint thematic also states:

There are key differences between IPP and other prisoners. Managing such offenders through their indeterminate sentences is a more demanding task than work with those serving fixed-term sentences. With indeterminate sentences, prisoners cannot be released at all until probation and prison staff have done all the work they can with the offender, with the offender's active cooperation, and made an evidenced case to the Parole Board that the individual can now be safely managed in the community. Their management consequently requires an intensive level of service by the offender manager ('home' probation officer) as well as by prison staff. (p. 14).

And interestingly:

At first, IPP prisoners were treated as lifers. This might have seemed appropriate, but it failed to recognise that the numbers of IPP prisoners were likely to be significant and would include a sizeable proportion with short tariffs, given the basis upon which the sentence was made; and that provision within the prisons' estate for lifers was not geared up to take on such a sizeable group over such a short period of time (p. 14).

Thus pressures on the prison system increased and by extension upon the Probation Service with the report concluding that:

> *It was apparent that areas/trusts needed to consider further the practice issues generated by IPP prisoners and the implications for their workload overall, and the future costs of a sizeable and cumulating number of offenders, subject to active supervision for many years* (p. 16).

Impact on prisoners

The research by Jacobson and Hough (2010), the joint inspection and comments from the Prison Governors Association also highlighted the impact on prisoners. There are some parallel points for the Scottish OLR sentence, not least, what has been termed a 'kafka-esque limbo'; with resulting feelings of hopelessness, a nothing to lose attitude-especially for young male prisoners. We know that such feelings stymie rehabilitation and can lead to more risky behaviours. There are feelings of frustration, lack of incentive and a lack of future goals to aspire to amongst this population group which again can present management problems. This is exacerbated by long waiting times for group and treatment programmes and, perhaps the most pressing challenge, is what to do with those IPP and OLR prisoners who are deemed unsuitable for programmes. This is despite the legal challenge by IPP prisoners Brett Walker and David James[8] that without a programme they could not demonstrate to the Parole Board their improvement, low risk and fitness for release and the subsequent House of Lords decision (see Padfield 2009). Jacobson and Hough, using official statistics noted that: 'around one-third of all IPP prisoners, and just under one-fifth of those who had already passed their tariff dates, had not completed any accredited offending behaviour programme as of mid-January 2010' (p. 19). This was particularly acute for short tariff prisoners (see Hough and Jacobson 2010, pp: 38-39 for a review of the key difficulties for IPP prisoners).

Offender management of IPP prisoners has also been challenging. The HMIP report (2010) summarised the position on offender management thus:

- *The completion rate of sentence plans for IPP prisoners was unacceptably low, as was the rate of reviews*
-

8 R. (Walker) v Secretary of State for Justice (Parole Board intervening) [2008] EWCA Civ 30; Wells vs Parole Board [2009] UKHL 22.

- *The high level of demand for the limited range of programmes within the prisons made attempts to sequence work virtually unworkable*
- *One-quarter of the cases in the inspection sample had not undertaken any work to address their offending or other related issues*
- *An offender manager had been allocated to the case within the required timescale in only just over two-thirds of the inspection sample* (p. 24). (HMI Probation and HMI Prisons (2010).

Impact on key agencies

The practice implications are also severe, in this case on probation and prisons, and there are again potential parallels with Scotland. In particular both research and inspection reports note the high volume against the under-resource, something which both the Risk Management Authority and the Scottish Prison Service must also be acutely aware in respect of Orders for Life Long Restriction. This is not to say that some IPPS and OLRs are made on very serious crimes and concern very high risk offenders, but is the current proportion correct? What are the short tariff terms on some IPPS and OLRs telling us? Jacobson and Hough note that:

> *the numbers of IPP sentences with tariffs of 23 months or less over the years 2005 to 2008 totalled 1,637. Most of these would not have received an IPP had they been sentenced after July 2008, when the CJIA (2008) ruled out tariffs of under two years other than in cases where the person has a previous conviction for a very serious offence* (p. 12)

Entry to the 'system' via court based risk assessments has also been critiqued. The quality of Probation court reports in particular has raised concerns. In effect, are they fit for purpose and do they aid these difficult and complex decisions? The HMI Probation and Prisons joint inspection (2010) found that only 65% of reports *'contained an analysis of the offence that provided helpful information to the court'* (2010: 19). This of course means that 35% do not. 'In summary, they were often long on description but short on analysis or explanation' (2010: 19). The key English risk assessment tool for informing such reports, OASYs, has been described as 'flawed and formulaic' and practitioners still struggle to make meaningful distinctions between high and very high risk (Jacobson and Hough 2010: 27). The joint HMIP report summary states:

- *The language used in the national guidance to help practitioners distinguish between RoSH and dangerousness was not easy for practitioners to understand*

- *Although we saw some general improvement in practice overall, compared to the first inspection, the quality of PSRs written on IPP prisoners was often still unsatisfactory*
- *Report writers did not assess the offender fully enough in over one-third of the cases examined. This had implications both for sentencing and the way the individual was managed within the prison system (p. 18).*
- *Whilst the proportion of reports containing a clear assessment of Risk of Harm to others had increased significantly (from 19% to 62%), since the first inspection, we were still disappointed to find that 38% were not of a sufficient standard. These assessments were so central to the purpose of the report and the overall judgement of the court, that to find that over one-third were not satisfactory was of considerable concern* (p. 20).

Pre-sentence report writing can be exacerbated by the difficulties with key terms and risk thresholds- 'significant risk of harm' and so forth. Guidance on these points can be both muddy and unhelpful as evidenced by the 2007 risk of harm position paper by Her Majesty's Inspectorate of Probation which was somewhat at odds with that of the National Offender Management Service (see Baker 2010 for an interesting analysis of this confusion). Summed up: 'all harm', or 'significant harm'? As HMIP put it in the 'position paper': 'Harm' or 'serious harm'? (HMIP 2007). The language of the National Offender Management Service 2005 guidance did not help, for example: 'The risk of serious harm assessment in pre-sentence reports should not be framed in 'significant risk' or schedule 15 terms. It should be framed in terms of risk of reoffending and impact so that the court can take both variables into account.' This in itself was somewhat at odds with the Home Office briefing paper on the Criminal Justice Act 2003 (Home Office 2004). Thus report writers and judges are operating slightly different but importantly different languages of risk with differing tests and thresholds (see Kemshall 2003, 2008; Nash 2006). And what do we mean by significant in practice? Again OASYS, with its primary focus on reoffending, hasn't always helped practitioners to establish this, and the threshold for 'seriousness' remains unclear despite the 'life and limb test' (see Baker 2010).

This raises the important issue of judges' decision making. How do judges actually understand and apply the 'dangerousness criteria'? The legislative parameters of the Criminal Justice Act 2003 set the parameters for

dangerousness in two ways; by specifying that the person had to be convicted of any one of 96 specified sexual or violent offenders which had a maximum sentence of at least 10 years; and 'pose a significant risk... of serious harm', and a previous conviction of any specified offence could indicate a significant risk of serious harm (CJA 2003). In essence, the catchment area was wide, resulting in both high IPP figures but absurdly a number of short tariff terms. As already stated, judges are highly dependent upon pre-sentence reports for assessments of dangerousness and the underpinning risk assessment tools relied upon to generate assessments of risk of harm. However, how many judges could state the margin of error contained in the risk assessment tools they are presented with in Court? Are the probability statements of actuarial risk instruments well understood? Certainly risk assessments for the OLR in Scotland are in my view more robust, more evidential, and the pedigree of risk assessment tools is made clear. However, perhaps we still need to ask are these tools, practices and processes fit for purpose? The issue of predictive utility in our main risk tools has not yet been fully resolved, and predictions of future dangerousness are notoriously difficult to make (see Cooke this volume). Within this climate the 'precautionary principle' has tended to dominate (Hebenton and Seddon 2009; Kemshall 2008).

Risk aversion or integration?

IPPS are also rooted in a broader societal and penal policy risk aversion. UK penal policy of the 1990s and 2000s, particularly in respect of sexual and violent offenders, was characterised by a persuasive logic of the precautionary principle, best expressed as 'better safe than sorry', but also by the notion that lack of evidence of risk does not mean there is no risk, resulting in a tendency to be precautionary in risk responses. In such a climate neither politicians or policy makers are likely to make rational or dispassionate decisions about risk- and arguably the costs of risk management on this scale have been under-estimated and the benefits somewhat over-stated. The 1990's and 2000's period was also politically risk averse, but interestingly the current economic climate may place a brake on this. Putting it simply, prison places cannot be built, and criminal justice agencies are facing real and challenging reductions in their resources. In this climate, the resurgence of the rehabilitation agenda is not a co-incidence, but represents a strategic consideration of how to provide criminal justice within a shrinking resource base[9]; in effect we are moving from the rhetoric of public protection to the

9 See for example Ken Clarke's rehabilitation revolution'. http://www.guardian.co.uk/society/2010/jun/30/Kenneth-clarke-prison-sentencing-reform [accessed 3/11/2010]

economics of public protection. Interestingly, this has been paralleled by the joint HMIP/HMC (2010) report emphasising the 'right mix' in responses to sex offenders- with an emphasis upon 'holistic' responses, 'balance', and so forth. The broader agenda we know is characterised by a resurgence in interest in desistance, the 'Good Lives Model', a focus on community integration, and strengthened community supervision with an emphasis upon offender engagement and pro-social modelling (Kemshall 2010; McNeill 2009). We can speculate that such an agenda will only be successful if both policy makers and politicians become less risk averse, and if as a society we are prepared to accept that integration can also be an effective risk management technique, and researchers of course will have to provide the evidence for that. The role of the new Sentencing Council may also provide an independent assessment of the costs and impact of any proposed legislative changes, and provide more objective evaluations of legislative benefit (Sentencing Guidelines Council 2008).

Conclusion: Some broader considerations

The debate we are about to enter, and within which any review of IPPS or OLRs is rooted, is that between precaution and risk aversion on the one hand; and integration and rehabilitation on the other. I have argued elsewhere that such a debate can be won if we consider, emphasise and communicate the idea of 'blended protection'- literally a blend of community protection measures with re-integrative approaches (Kemshall 2008). I have suggested that such an approach needs to contain:

1. Public awareness and public education about the risks presented by these offenders. Jacobson and Hough for example state that: *'A decision to abolish or further restrict the IPP sentence would require strong political leadership, in a context where public expectations about protection from the risk of serious crimes has become increasingly unrealistic. It will always be a challenge to convey to the public that criminal justice agencies cannot provide complete protection against these risks'*. (p. viii).
2. Supportive and integrative approaches such as Circles of Support;
3. Effective treatment programmes;
4. Pro-social supervision with an emphasis upon the 'Good Lives Model';
5. Appropriate and balanced use of control measures; and effective partnership working including with the voluntary sector.

Perhaps the age of austerity will enable us to seize the agenda, particularly if we can emphasise the credibility and effectiveness of programmes both within and without custody. However, as we do so, we need to be cautious, and remember not to displace risk onto those least able to manage it, whether this be less experienced, less well trained and cheaper staff, or local communities least equipped to manage the risks professionals can inadvertently place within their midst. And of course, the riskiest strategy of all would be not to seize this potential opportunity.

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The Gordon Nicholson Memorial Lecture

Violence Risk Assessment and the Illusion of Certainty

Professor David Cooke, Glasgow Caledonian University

It is a great honour to be asked to give the SASO Memorial Lecture in memory of Sheriff Principal and Temporary Judge Gordon Nicholson, Chairman and Honorary President of SASO. He was a mainstay of SASO; he gave a great deal of time and personal support to the organisation in the formative years; he always promoted inter-agency working, seeing issues from a variety of perspectives. On a personal note, in my few interactions with him, I was always struck by his warmth and his humanity.

I want to talk about the rise and rise of actuarial risk assessment in Scotland. This is a trend that I've observed over the last ten to fifteen years but it seems to be gathering pace as we speak. So I want to talk about the fundamental problems of making predictions about individual people; the problem of stating that this individual will go on and be violent or engage in sexual violence. I'll say something about the practical, logical and statistical issues, and something about the unforeseen consequences of going down the route of an over-dependence on statistical models for predicting future violence. If I have time I'll talk a little about alternative approaches such as structured professional judgment.

It's often useful to see where we've come from, to look at how this area has developed over the last number of years. Looking back over my career in forensic psychology over the last 25 years or so, I can identify three eras. The first era is the 'murky past', and that's where I started. Basically the clinician would talk to a patient and then go into a darkened room, lie down on a couch and then come up with a view about whether this person was dangerous or not. This is what we call 'unstructured professional judgment', and it's been criticized - quite rightly - because it's not clear what the clinician was focusing on, what risk factors they were considering. It's not clear whether the factors they considered were based on any evidence in the research literature -- were these things risk factors for future violence or not. It wasn't clear whether they were doing a comprehensive evaluation of

the person, covering all the things which were relevant to the person's risk of future violence. And of course while they are lying there on their couch, we're not sure how they were actually combining the information together, to come up with this conclusion that this person was 'high risk'. So that was the murky past.

Then we moved onto the 'prediction' era, and I blame the psychologists, I'm a psychologist, so I can do that. They developed this delusional belief, that you can predict what individuals are going to do over long periods of time. They developed instruments such as Static-99, Static-2002, the V-RAG, the Risk Matrix 2000, even the late lamented Tay-Prep as ways of trying to predict what an individual offender was going to do.

And then we move into the current era, which is really an era where the emphasis is on the 'management of risk'. Essentially we identify people as being at risk of future violence, and then design services - maybe treatment, maybe monitoring, maybe supervision - which is designed to obviate the risk that they pose.

Of course, many professionals have been trained in these three different eras and so, decision-makers will see reports written by people influenced by these different approaches.

But perhaps I should tell you a bit about my 'murky past', before moving onto other issues. I started off as a clinical psychologist working in Gartnaval Hospital in Glasgow, treating depressed ladies from Bearsden and elsewhere, and I must have been terribly wicked because I was sent to the Barlinnie Special Unit (BSU) to start working with people there. And well known recidivists would include TC Campbell, and of course Dan Gunn here was one of our best known recidivists! In the BSU I had to carry out risk assessments, but they weren't called risk assessments, they were called parole reports, but they were essentially risk assessments. So having worked with these depressed ladies from Bearsden wasn't really a good preparation, it didn't really tell me what I should do, so I asked the psychiatrist, colleague, a distinguished forensic psychiatrist Peter Whatmore who said 'My boy, what you need to do is read this paper here'. Now this was a paper published by Peter Scott in *The British Journal of Psychiatry,* in 1977, a long time ago, but it still holds a lot of wisdom. It doesn't tell us what we should do but it tells us the nature of the problem, the complexity of the task of risk assessment. And I think it bears consideration, so Peter Scott said 'prediction of dangerousness', or what we would call risk these days,

'is particularly difficult', that's the first thing. 'Because dangerousness is a resultant of a number of processes', so we've got to consider a number of processes, 'which occasionally may be synergistic', in other words they may be multiplicative in effect. So for example, if I see someone with a major mental illness, and a co-morbid substance misuse disorder, the risk of future violence for that person, is more than adding those two risk factors together, it is synergistic. And some of these risk factors of course are within the individual, so we need to consider the individual, but we also have to consider the context. Some of these risk factors are in society. So if you take a large-scale study like the MacArthur study, they showed that the community the patients went back to influenced whether that forensic patient was violent in future or not. Another thing is that the risk isn't static, so each risk assessment has a sell-by date, you can't just do a risk assessment and that's it done, it is only relevant for a particular time. 'Key factors are the individual's adaptiveness - will they change? their resistance to change, and of course, their intentions'. And it's very difficult to work out what an individual's intentions are, so Scott doesn't tell us what we should do, but he tells us the nature and the complexity of the problem, and I commend this paper to anyone interested in this particular field, it still bears reading now.
So, risk assessments are carried out by forensic practitioners to inform decision makers about future risk, to tell the decision maker about the risk that this individual in front of them poses. And so, can we use actuarial tools to predict for individuals is a key question. Because that is what the decision maker is interested in, they are not interested in group studies, they are interested in the prisoner or patient in front of them. So I think there are a number of lines of argument we need to consider if we are going to answer this question. Firstly, there are statistical theories, secondly there are logical arguments, and third there are empirical results. So, can we use actuarials to predict? There is a political push towards actuarial risk assessments in Scotland, in the criminal justice system. In a recent news article a spokesman for the Scottish Government said 'Risk Matrix 2000 is currently the most accurate predictive tool available and is used widely by social work, police and prison service throughout the UK'. Now, that is true – it is widely used -- but, let's have a look at this in more detail, is it effective?

Now, the Risk Matrix 2000 is an 'actuarial risk tool' in which you consider a number of risk factors which have been derived from studies of large samples of offenders, and I'll be talking about sexual offending here. And basically, in this first step you look at a number of characteristics of the individual, their age, whether they've had criminal appearances in court. And then the next step is you look at the number of aggravating factors: was their victim

a male; was the victim a stranger to them; were they single or have they ever been in a marital type relationship, and; have they convictions for non contact sexual offences? Basically you look at these characteristics, you add up scores, with a little algorithm and you then use that score to say 'which group does this person belong to?' Do they belong to a "low risk" group, a "medium risk" group, a "high risk" group or a "very high risk" group?' And associated with these categories are different levels of risk. So if you are in the "high risk" group, it is predicted that 36% of those in the high risk group recidivated over the fifteen years in the follow up study. So far so good, so logical, or is it? I think there are a number of problems with this approach. I'll try and illustrate one or two of them, some logical, some statistical. The first problem is that this model of actuarials is based on a false analogy. It's based on an analogy which comes from life insurance. I have a friend Bob, who is a retired actuary, and was a specialist in insuring parrots. He realized from his life tables that if he set the premium at a certain level, and predicted that over the next fifteen years only two parrots would die, then his company would make a lot of money and he would retire on a very large pension. So, he sets the premiums, and then follows the sample of parrots up, and then after a number of years, one Polly is gone, it is ceased to be, it is passed on, it is not pining for the forests, for the fjords, it is an ex-parrot, ok? And then, another one goes, and after fifteen years Bob realizes that he's made a profit because he has predicted correctly that two would die in that period. But notice, Bob doesn't care which parrot dies, he only cares the proportion, getting the proportion right. Now in our setting we are interested in the individual in front of us, not the proportion of some group that the person is derived from. I think it's a false analogy, and calling it actuarial gives it a false sense of science, or of being scientific.

Another problem is the 'fallacy of division'; this is a division which rests on the problem of drawing conclusions about individuals based on the collective properties of a group. So we know for example, that on average more intelligent people earn more money, but if we think of people with high IQs that we know, it may be that they are not earning more than the average. So going from groups to individuals is problematic, and that's what we are doing with an actuarial approach. We are saying here that there is a group with 19% chance of reoffending and we are then assuming that this chap here has a 19% chance of reoffending, we are going from the group, and generalizing to the individual. But the problem is actually worse than that, what we are assuming – that is based on the assumption that this group of people are homogeneous, they are similar to each other. But in fact they are not, this chap here in blue is in the "medium risk" risk group, because

he is 18 years old. He doesn't have any other risk factors, he's just 18. That makes him "medium risk". This chap here is also in the "medium risk" group because he is over 35 years old and has never been married, and has engaged in a non-contact sex offence; he has been a peeping tom, say. And then this chap here is in the same "medium risk" group because he has got five or more criminal appearances, nothing else. So they are not similar. But then we are generalizing to this case here. But it's even worse than that, because what happens, people only have this particular tool, and so they apply it to people to whom it is not appropriate.

I had a case earlier this year of a 56 year old man who had been downloading lots of pornography, no previous convictions, a first offender. This test was applied to him and he was regarded as "high risk." There are a number of things here: it is a fundamental principle that if you use an actuarial tool, the person you are assessing should be similar to the people who the test was developed on. They should come from the same population in statistical terms. This 56 year old man was much older than the average. The sample for the RM-2000, the original one, was collected on people who were in prison in 1979. There wasn't use of the Internet at that time, so Internet offending may not be captured reliably there. The standardization sample would all have been in prison, so they'd offended severely enough to go to prison, and this man, who had no previous convictions, was being compared to them. So the tool is being used inappropriately even if you believe the views of the actuarial approach.

Those are a number of logical problems with the use of this approach, but let's move on and look at the question of accuracy -- the degree of certainty, or uncertainty, we should have in relation to the predictions that we're making. This is important because claims are made to suggest things are actually quite accurate. For example, this report from a High Court case: "RM-2000S (sexual) has been proven to have approximately 75% accuracy in predicting reconviction rates in sexual offenders, and actual rates of reoffending will exceed the rate of reconviction." Now I've got two problems with this kind of statement which is in a Social Enquiry Report. Seventy five percent sounds rather good, but let's look at it more carefully. If we look at the prediction of who will *not offend,* the accuracy is 93%; this is using Don Gruben's figures, from his study here in Scotland. But if we look at predicting who *is going to reoffend*, in other words, positive prediction, the figure is only 24%. The other problem I have with this statement, and it's not an unusual statement, one sees it quite commonly, is this "actual rates of reoffending will exceed the rate of reconviction." Now, my reading of that, is

that the author is suggesting that, it is more likely they *will reoffend* because we know we don't pick up all the examples of offending. But in fact, all that means is that you are adding error to the measurement of what you're predicting, so actually the prediction accuracy will drop. But the way this report is written implies actually will catch more than you would think – it implies that the accuracy is probably better than 75%.

So let's look at this more systematically. In Barlinnie Prison, a number of years ago, we did a study in which we interviewed 255 prisoners, and we assessed their level of psychopathy using this thing called a Psychopathy Checklist-Revised. I'm telling you this for two reasons: firstly, in all the studies that have been done really, the Psychopathy Checklist comes out as the strongest risk factor that we have – psychopathic personality disorder. The second thing is that we actually have the raw data so this allows us to do analysis that we cannot do with other risk assessment instruments, but let's illustrate some of the problems.

Let me take you through work I did with my colleague Christine Michie who is a statistician. Basically, along the bottom axis we have the person's psychopathy score, so how 'glib', 'superficial',' impulsive', 'callous', etc., are they? And up the side axis we have the probability of reconviction that should, for a violent offence, be significant enough to get them sent back to prison. And as the person's psychopathy score goes up their probability of reconviction goes up. Now, those of you who are interested in methods and statistics will know that there is always error in any measurement that we do, and there are standard ways of measuring that error, and we call that a 'confidence interval'. If we repeated this study lots and lots, the average would fall between here and here, 95% of the time. Now, we can estimate the line pretty well down at the bottom, but as we get up higher, the lines diverge. That's because we don't have enough psychopaths in Scotland. We have lots of people with low scores but we don't have so many with high scores, we send them all to England.

Now, the problem is, people who are interested in this sort of approach think that this tells you the accuracy of your prediction for an individual. It doesn't it. It tells you how well you can measure this association, this average. And we have to produce another statistic, called a 'prediction interval', which is a measure of the certainty we have around a measure for an individual case. So if I say an individual has a 29% chance of reoffending, that's an estimate, and the true value lies somewhere between here and here. And we can estimate that using a prediction interval, and I should say, we are using

logistic regression, so it is easy to estimate these things with that technique. What this shows basically, is the best estimate for someone with an average score is 32%, but actually the estimate could lie effectively between zero and 100%, 95% of the time. So you cannot be certain about individuals.

Now in a paper which was published this year (Cooke & Michie 2010), we had some of the most intense debates with the reviewers that we have ever had, but I won't go into that. But one of their arguments was 'it's a funny wee Scottish sample'; so we obtained data from Belgium, and we showed the same thing; and then we got data from the MacArthur study, the gold-standard study, and, with those data you see the same pattern. The MacArthur study confidence intervals are better because they have about five times the sample sizes, but when it comes to the individual prediction interval it's just the same.

We have done a similar thing for another risk assessment tool, the Static-2002, which is very similar to the Risk Matrix 2000. We now have the raw data for this, and this is something which is optimized to predict sexual offending, that's a probability of recidivism. This is a sample of about 1200 cases, and you can see the same pattern. Now, you might be thinking 'ah well, this is just statistics, its just flaky psychology, we can't really measure anything much with psychology can we?', but actually it's more fundamental than that. It's a problem about the inherent variability of people, and the difficulty that poses for prediction.

So let's go away from statistics and psychology, and do a thought experiment about prediction. Now if I tell you the height of the next person to come through the door, can you predict what their weight is going to be? The advantage of this thought experiment over using psychopathy so predict violence is that we can measure height and weight more accurately, so we don't get noise in the system from that. The correlation between height and weight is stronger than it is for psychopathy and violence and we are doing a prediction immediately, we are not saying over the next fifteen years or whatever. So if we think about that, can we predict whether the next person is going to be a Twiggy or a Mr Blobby? So, we get a sample of 200 Scottish males, and we carry out essentially the same analysis, looking at height and weight, so height and weight along the, height along the bottom axis, weight along the side axis here, and that's the association, a nice straight line. The confidence interval is very tight because the association is very strong, but then, predicting what someone will be, that is the prediction interval. So, if I say the next person coming through the door is 1.7 metres high, the best

prediction is that they'll be 78 kilograms. But around 95% of the cases will be between 61 - 95 kilograms. So it's something to do with inherent variability of people that is the problem. Now what's disappointing is that psychologists knew this. This is Allport writing in the 1940s and he said "We find that 72% of the men with antecedents make good, and many of us conclude that John therefore has a 72% chance of making good. There is an obvious error here, the fact that 72% having the same antecedent record as John will make good, is merely an actuarial statement, it tells us nothing about John."

Let's forget about psychologists, what about epidemiologists? This is Geoffrey Rose, the doyen of preventative medicine, and in his classic text he said "Unfortunately, the ability to estimate the average risk for the group, which may be good, is not matched by any corresponding ability to predict which individuals are going to fall ill soon." And I could give you lots of quotes like that from medical statistics, medical epidemiology research literatures, and so when I was listening to Mr McCaskill talking about Mr Al Megrahi's survival time, I just wondered if he knew about this problem. I suspect not.

Now, another development which is concerning me is, why not use the tools as screens? People say 'well maybe they are not that good as risk assessment tools, we'll use them as screens', and the RMA, back in 2007, said, 'the RMA continues to work with the Scottish Government in supporting and developing an integrated multidisciplinary approach to risk assessment, in which the RM-2000 plays a useful role as a screening tool.' An interesting idea – screens are used in a number of areas of life, particularly in medicine, and the idea is to try and identify people early on before the symptoms have got extreme, or even when their symptoms are asymptomatic. And the idea is that you identify them and then you intervene – one obvious example is the use of statins to reduce blood cholesterol level. But it's interesting if you look at the British Medical Journal study by Wald and his colleagues in 1999, they said "Because serum cholesterol is an established risk factor for ischemic heart disease, it was believed that it would be a useful screening test." This belief was unfounded. The point I'm making here is, developing a screening test is difficult, it is complicated. In medicine they use randomized control trials and all sorts of complicated things to do it. It is not something you can take an inadequate tool for and just say 'we'll just use it as a screen', rather than use it as a real test. So let me look at this example – if we take Wald's diagram at the bottom axis you've got serum cholesterol level, and you've got the distribution of the level in the bloodstream of those who are

unaffected by ischemic heart disease, and there you have the distribution in those who had heart disease. The important thing is the two distributions overlap to a huge degree. You can't really distinguish between folks in terms of their blood cholesterol level, which may surprise some of you. So, if we look at how well we can detect people, using this as a test, we can detect about 15% using blood cholesterol; level, so we are missing 85%. Not all screens are bad though, some screens actually work, and an example this is alpha feto-protein used to detect the risk of Down's Syndrome and this is the level of those unaffected, this is the level of those affected and the detection rate is 90%. So I want you to hold those two graphs in your head, and I'll show you the graphs for an actuarial risk assessment tool which one might propose could be used as a screen. And this is the Static-2002, these are the data from the development sample of 1121 subjects, and there is a huge overlap, it's more similar to the graph I showed you of the cholesterol than it is the alpha feto-protein, and detection rate of 14%, so you are missing about 86%.

Now, one of the problems in this area of risk assessment is the use of high-faluting statistics and its quite difficult sometimes to work out what it actually meant on the ground when you look at the results of the studies, and a man called Gerd Gigerenzer has written extensively about different ways of interpreting information using natural frequencies, natural numbers rather than complex indices, and I recommend this book of his, called *Reckoning with Risk.* He argues that if we're looking to try to understand a single event probability, the probability that a single event will happen, the best way of doing it, is in natural frequencies. So what does that mean? If we take the data from Don Gruben's study of the RM-2000 in Scotland, we can do some calculations, and we can work out how many high risk cases will reoffend. So I'm thinking here we're in a situation, that Sherriff Ray is sitting in her court, and one after another ten men, come through, and she has a report which says everyone of them is 'high risk' - what does she do, how many of them are actually going to go on and reoffend? Well, we can work it out. It's one and a half – or fifteen and a hundred but I couldn't get a hundred people on the slide [ref to powerpoint]. So that is how good it is at screening. But the problem is more serious than that, because the idea of a screen implies that you screen the person and then, if they are risky, or you think they are risky, you go on and do a more intensive evaluation. But that's not what's happening, its not being used in that way. And if we look at a judgment in the appeal court, in the case of Thomas Russell Curry; "the Risk Matrix 2000 assessment tool is regularly and widely used for the purposes of assessing the risk presented by an offender to the public. In our

view the trial judge is entitled to proceed upon the basis of the outcome of the risk assessment carried out using the risk matrix". So in other words, the judges don't know that this is supposed to be a screen. This worries me. I think that there are some unforeseen consequences for this drive towards the use of actuarials that we need to consider: firstly, there are errors, and I showed you something about errors. And the important thing to emphasize is there are errors in both ways. We don't detect people who are truly risky and we say people are risky who are not. And that means a whole enterprise of systematic risk assessment may fall into disrepute because people lose confidence. Secondly, there is disempowerment – I think this is very important, you know I talk to social workers who are instructed to use these tools, they don't think they work, but they are instructed to do so, and it tends to mean that they stop, some of them will stop thinking, stop formulating their cases and there is a loss of skill. It distracts people from proper practice that could be directed to more productive ways of working. I think there is a waste of resource here where we have limited resources being put into tasks which are, to some degree, meaningless.

So, why have these things become so accepted? I think there are a number of reasons. First, they are bureaucratic processes - ticking boxes, accountability and all these things. Bureaucrats like simple systems, the fact that they don't work may be a secondary consideration if I'm being cynical. They have the appearance of science: samples are collected; data are analyzed; arcane statistics are generated, so it must be true. That's why they seem to be accepted. Now, who haven't I insulted yet? Oh yes – right, decision makers. If you believe commentators like Ben Goldacre, in his book *Bad Science*, he says "One of the problems is that many of the decision makers are arts graduates who don't have the background in statistics and numerical reasoning". And people like Gigerenzer would concur with that. And another problem is there is a lack of independent evaluation of these instruments and there is a vested interest, not necessarily financial, in promoting their use. So I think we've got a fundamental problem here, and one of the problems is that people who know about these things, and I don't mean me, I mean statisticians, are not being involved in talking and considering and feeding in about the use of these tools. And in criminal justice we don't have a good history when it comes to statistics. To give one example: as you all know, Professor Meadows argued that this lady was likely to have killed her baby because the probability of two cot deaths was 73 million to one. He made an error that even an undergraduate psychologist shouldn't make in terms of statistics -- I mean a very basic error. And he made another more complex error. But we are not good at statistics and it worries me that these tools,

which are essentially statistical in nature, are being promoted by people who are not statisticians, and I would concur with the Royal Statistical Society when they said, "Although many scientists have some familiarity with statistical methods, statistics remains a specialized area. The Society urges the courts to ensure that statistical evidence is presented only by appropriately qualified statistical experts, as would be the case for any other forms of expert evidence."

So, just, before finishing, I happened to look at the McLean Committee Report the other day. The McLean Committee sat about 10 years ago now, and the second recommendation of 52 recommendations was a particular approach to risk assessment. It said at that time 'current evidence suggests that the structured clinical approach for risk assessment should be seen as the most helpful approach in relation to risk assessment for forensic purposes, and this should be reflected in guidance and training.' And I must say there is nothing I have seen in the last 10 years which would change my view on that particular recommendation of the McLean committee.

So I'm going to conclude by saying I think there is a problem with this illusion of certainty, which comes from the use of these actuarial tools and I think that is dangerous for us who work in the criminal justice system.

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We Can if we Choose to and if we Follow the Evidence

Yvonne Gailey, RMA Scotland

Introduction

This paper builds on a presentation to the SASO conference in 2010: the conference title posed an ostensibly simple question: *can we*?

Can we manage risk: can we acknowledge the uncertainty, the limitations, and be clear that risk will not be eliminated and yet use our best endeavours to reduce reoffending, protect others while respecting human rights, individual worth and dignity?

Can we support in and reintegrate in to the community those people that we currently repeatedly return to prison? Can we deliver the credible and demonstrably effective community disposals that the Prisons Commission believed would play a part in breaking this cycle?

Furthermore, as Rt Hon Lord Gill challenged the conference in his opening remarks, c*an we deliver services from routine supervision to lifelong risk management that honour the values of justice, welfare and care that SASO seeks to preserve and promote in Scotland's approach?*

This paper considers some of the challenges that we have set for ourselves in recent Scottish policy, and questions what evidence there may be to support us in our aspirations, and what principles might guide us. It will also introduce one current initiative in Scotland that is particularly relevant to the conference theme, in that it seeks to promote a shared and consistent approach to risk practice that is evidence based and guided by principles of human rights and proportionality.

An early and widely accepted definition of evidence-based practice, first championed in the medical field, described it as a "conscientious, explicit and judicious use of current best evidence in making decisions about individual patients" (Sackett et al. 1996: 71). This definition has been adopted by some, and refined by others to clarify essential elements of the approach: best research evidence, professional expertise, and client values (Institute of Medicine 2001; Macdonald 2000; Petersilia 2005; Bogue et al 2004).

Broadly, an evidence-based approach has certain characteristics:

- it draws on a critical and impartial review of the best available research evidence
- it values the knowledge base and experience of the practitioner
- it is concerned with the engagement and values of the individual service user, and
- it measures and reports on outcomes to encourage transparency, accountability and learning.

Evidence-based approaches to assessment and intervention are identified as means to promote the rights of individuals (Dunkel 2009) and are based on concepts of adopting the least restrictive interpretation of a sanction and pursuing the least restrictive means necessary to achieve the desired goal. Practice that balances rights and responds proportionately has at its core a respect for human dignity and worth.

Contributions from a number of disciplines have argued that a primary and firm focus on human rights transcends the ethical codes and value bases of different disciplines, and perceived conflicts between individual liberty and community safety (Hudon 2001) to provide the potential for a unified and cohesive approach (ATSA 2007).

I suggest that that the extent to which we can respond affirmatively to the question posed to this conference is determined by the extent to which we embrace the evidence and rights based approaches.

Appreciation and Reflection

Poignantly, my deliberations in preparation for this paper were both interrupted and influenced by news of the death of Professor Donald Andrews who committed his influential career to providing evidence as to whether and how, *we can* achieve reductions in re-offending.

This paper presents an appreciation of Don Andrews' contribution to this field, and a presumptuous, personal reflection on how he may have responded to our questions.

Don Andrews was a mighty and fearless champion of evidence based practice in the criminal justice field: co-author of the risk/needs instruments the LSI-R (Andrews and Bonta 1995) and LS/CMI (Andrews and Bonta

2004); five editions of the Psychology of Criminal Conduct; the Correctional Program Assessment Inventory (2000) (Andrews and Gendreau 2002); and latterly Professor Emeritus and Distinguished Research Professor at Carleton University in Ottawa where he spent his influential career. Don was no less than a household name in our field - and a force to be reckoned with by any who dared to deny 'the evidence'. He has left us with his work, his wisdom, and his often repeated challenge to deliver humane, ethical, just, and effective human services if you want to reduce re-offending. I believe he would respond to our questions by saying "you can…if you choose to… and if you follow the evidence".

That evidence is very fully documented in the recently published 5th edition of *'The Psychology of Criminal Conduct' (*Andrews and Bonta 2010a) and includes key messages:

- ***people*** who demonstrate certain positive values, skills and qualities have a more positive impact on their clients;
- ***interventions*** that accord to certain ***principles*** have a *demonstrably* greater impact on reoffending rates;
- ***organisations*** that select, train and support people to deliver interventions that accord to those principles have a greater impact.

Don began his career at a time when such optimism was very much needed. I wonder how different our view of the world might be if a small group of psychologists and researchers at Carleton University in Ottawa, with their peers around the world, had not committed themselves to countering the negativity and pessimism that was being generated in this field in the 1970s when Robert Martinson summarised rehabilitation at that time as largely "… pageantry, rumination and rubbish" (Andrews and Bonta 2010a).

And how influential the 'nothing works' dogma was; it was almost unquestioningly accepted by the media, some criminologists, the political left and the political right. Welcomed by the political right it justified tougher, more punitive criminal justice policy in the USA and the UK. Ironically, the impact was the opposite of what Martinson had intended; he had believed that exposing the 'illusion' of rehabilitation would reduce the prison population and end the excessive detainment of individuals in the name of treatment. And a year before his tragic death in 1980, Martinson conceded that his conclusion had been incorrect: some things do work.

Interestingly, while other jurisdictions responded by embracing the 'nothing works' agenda, it had a much lesser impact in Scotland. In the late 60s and early 70s the course of criminal justice in Scotland was being profoundly influenced by the ethos of Kilbrandon. Scotland embraced a progressive innovative, rehabilitative and restorative approach just as the rest of the world pronounced it passé. It created a new profession, social work, to deliver this approach, a profession that from the outset was guided by this ethos - if for a while little else.

I feel entitled to say this because, as one of its early recruits, I entered this new profession in the late 1970s knowing *what* I wanted to do and *why*, but with little idea about *how* to do it. But I, like many others, was abruptly awakened in the mid 1990s by the revolution that became known as the 'what works' movement.

My own epiphany happened at a 'what works' conference in 1995: repeatedly speakers presented on the collective findings of an international group of researchers who had responded assertively to Martinson's claims, and laid out for us the basic roadmap of 'what works':

Prioritise intensive interventions for those who need them

- Focus on the issues that underpin their offending
- Use approaches that tackle those issues and deliver them in a way that engages and motivates
- Don't rely on one approach – increase the chances by adopting various methods
- Use the influence of the community, harness positive influences
- And then do what you plan to do, and do it well; that is, follow the roadmap carefully and *make it work.* Always the last on the list – but as we will discuss a key to *how well it works.*

Reducing Re-offending: Evidence based practice principles

This early research has since grown into a substantial body of literature, which explores the ways in which strategies of assessment, intervention and supervision contribute to improved outcomes in terms of reduced risk of reoffending. Various contributors to this literature identify a number of principles of more effective practice (Serin 2006) but perhaps the most influential articulation of them is the risk, needs, and responsivity model (RNR) (Blanchette and Brown 2006; Ward et al 2007; Andrews et al 1990; Andrews and Bonta 2006; Andrews 2001; Andrews and Dowden 2007).

The RNR model includes many elements of effective practice within its key principles but is summarised as

- **Risk**: Intervene as much as is warranted by the density of factors contributing to offending, but no more.
- **Need**: Focus on areas of need that support offending.
- **Responsivity**: Use sound methods that are accessible and relevant to the individual.

While not without criticism and challenge, what sets the RNR model apart and has gained it international recognition as the 'premiere model' of offender rehabilitation (Ward and Maruna 2007) is the outcome data to demonstrate its effectiveness (Taxman and Sachwald 2010). For, put simply, the more of those principles that are adhered to the greater the impact on reoffending rates, and as importantly, the fewer principles adhered to the lesser the effect. (Andrews and Bonta 2010a).

However, it is also evident that the model sometimes works better than others, and to date better in the research environment than in the 'real world'; the principles resonate with common sense, but their application is not easy and requires commitment at all levels. The road map is not one for front line practitioners alone – it needs to be followed at all levels of the organisation. Many reasons are offered and explored for the disappointing results that have been shown in a number of jurisdictions, but essentially they involve lesser adherence to the fundamental principles.

New approaches tend to be tested out in carefully prepared conditions; pilot studies with a small group of well selected, supported staff, and overseen by those who designed the intervention. The results are better than when they are 'rolled out' on a larger scale. There is evidence of large scale 'roll outs' of what are described as 'star' programmes that have resulted in failure. Examination of those failures highlights valuable learning points:

In the USA and in the UK, well known and respected programmes such as Multi Systemic Therapy, Aggression Replacement Therapy, Reasoning and Rehabilitation have on occasions yielded disappointing results when introduced on a large scale. In summary, failures involve less well trained and supervised, and on occasions disaffected or disempowered staff; lack of attention to basics such as risk/needs assessment and case management; little quality assurance, and; introduction in the midst of organisational upheaval. In addition there are concerns about mechanistic, technical or

managerial approaches. But let's not repeat Martinson's mistake – the misguided or unethical application of a sound approach reflects on the application, not the approach.

In a recent review of this research literature, it is concluded that the very credibility of criminal justice policy and practice hinges on the extent to which organisations choose to embrace the principles *and* the implementation challenges (Lipsey and Cullen, 2007).

Applying the Principles in Policy and Practice

Is there a lesson we need to learn about the distinction between 'rolling out' a new initiative and implementing one? I'm sure we can identify with the decision makers involved in those disappointing ventures, the evidence *is* convincing and compelling, and the desire to make progress quickly is understandable. However, often the introduction of evidence based practices involves major change that takes time, as well as significant and enduring commitment from all levels in the organisation: implementation in the real world poses challenges that should be anticipated and addressed; expectations need to be realistic and accommodate strategies of implementation monitoring, quality assurance and evaluation. Staff attrition may be minimised through engagement, training and organisational commitment, but successful initiatives have to contend with the reality of the pressures associated with frontline service delivery (Bourgon et al 2009). Staff training in evidence based practices may be identified as an essential component, but unless training is accompanied by strategies of post training support, evaluation of application of learning to practice, and mentoring, it is unlikely to deliver the desired results.[10]

The criminal justice agencies in Scotland have embarked on an ambitious and collaborative initiative to reduce the use of imprisonment, through, in part, strategies of promoting reintegration and enhancing community disposals. The Scottish Government led response to the recommendations of the Prisons Commission, 'The Reducing Reoffending Programme', identifies a positive impact on recidivism rates as one essential means and end of this policy.

10 Lowenkamp, C. (2011) Presentation to RMA Working in Partnership Conference .23rd March 2011. Dunblane, Scotland

Based on his work, I presume to speculate what Don Andrew's advice on this programme would be: I believe he would endorse the focus on effective disposals based on sound assessment, and caution that the impact on reoffending will be attained by the quality and integrity of the human services delivered within the sanction, rather than by the reshaping of the sanction itself, and the degree of success will relate to the extent that evidence based practice is embraced.

I think he would acknowledge that we have made a good start: we have just reached the end of the first phase of a long term project to introduce the Level of Service and Case Management Inventory as the common means of risk/needs assessment in criminal justice social work in the community and the prison service. A national training programme has just begun that will be completed by the end of 2011. One aim of this project is to ensure that every offender under supervision has a case management plan that relates directly to a risk/needs assessment. Let's be very clear that that is what the LSCMI is for; to structure assessment and case planning in line with the principles of RNR; it is not for the purpose of categorising or labelling; the authors are explicit that it is not designed to determine the sanction, but to guide the most constructive and least restrictive interpretation of one; so, this is a good start. To many it may not feel like the start but the conclusion of a long process of planning and development involving design of the practice process and refinement of the materials for Scotland.

But it is only the start, because we still have to choose whether to 'roll it out' or to 'implement it with integrity'. The Scottish agencies have opted to use the LS/CMI as a basis for risk assessment and case planning, not as a 'stand alone' assessment instrument, but as one element of a broader approach to risk assessment that is being implemented. The LS/CMI identifies a wide range of factors relevant to understanding and responding to an individual and his/her offending. The holistic range of issues that it reviews encourages individualisation of the assessment process, but it only identifies factors: it remains the task of the assessor to analyse the relevance of those factors for the individual in context, and the nature and seriousness of the behaviour; and to evaluate the emerging understanding of those against the decision making criteria of the task in hand. If we choose to implement rather than roll out, we will adopt means to quality assure and evaluate this practice.

This opens up many further implementation questions: following training in the use of the LS/CMI, how well is it used; does it assist in case planning and decision making or is it a mechanical, routine and meaningless activity; does it improve outcomes?

We have a close neighbour that we could learn from in this regard. Jersey Probation Service has been involved in a ten year project to implement and evaluate their adoption of evidence based practices- they began with the use of the Level of Service Inventory and progressed to introduce some programmes, and is now investigating the skills of officers in one to one supervision. They have done this in conjunction with Swansea University, with Professor Peter Raynor evaluating the work throughout. Here we have a model example in the real world. Not only can Jersey demonstrate the impact of various sanctions and interventions, lower risk/needs scores after intervention, but imagine what it is like for practitioners in Jersey to have routine and continuous attention paid to their practice, to have feedback on the impact their work is having, to know whether 'it works' or not. I suggest that this is implementation rather than rolling out.

But again this is only the start. Assuming that the LS/CMI is absorbed into sound assessment practice and a case management plan is developed that sets the way for evidence based intervention, the next step is to deliver it. It is on the task of case management, working with an individual to promote change, delivering good supervision sessions to engage and motivate, providing the right services, that the effectiveness of community disposals relies.

The Prisons Commission recognised the centrality of this task, and urged that it be given priority. It also recognised that criminal justice social work services are central to the delivery of effective community disposals.

How does this position us when we question *can we* deliver services in the community that encourage rehabilitation and reintegration, interventions that reduce re-offending, and that promote desistance.

The introduction to a recently published book lays the foundations of supervision in both evidence and values (McNeill et al 2010). Each of the editors has at one point or other, identified the advantages and importance of locating this responsibility within the social work value base, and of a criminal justice system that aims for more than 'correctionalism'. In Scotland, we start with the advantage of having a well established approach that embraces responsibility to deliver human services of care, inclusion and empowerment, along side responsibility to promote reduction in re-offending.

Don Andrews would agree that this ethical position is important and overcomes difficulties that have occurred in other jurisdictions: there is a

fundamental problem where staff view their task as correction/punishment and do not embrace the potential for positive individual change through the provision of human services; and there is a fundamental problem where staff see their role as promoting individual health and well being and do not embrace the responsibility of crime reduction. This dual responsibility and concern is an established value of practice in Scotland and has been demonstrated to be linked to effectiveness by Don Andrews and others.

From the late 1970s Don Andrews and colleagues began to identify characteristics and practices that distinguished more effective practitioners, and in 1980 he described them as:

- High quality relationship skills
- Modelling of prosocial values and behaviour
- Use of reinforcement
- Firm but fair use of authority
- Motivational interviewing
- Skill building through structured learning
- Cognitive self change techniques

Various meta-analyses have since confirmed their importance, reframed them as skills and techniques, and identified them as *core* correctional practices (Dowden and Andrews 2004). For this reason the Scottish Accreditation Panel for Offender Programmes would expect to see evidence for the above in programmes that it considers viable, but are those skills and techniques routinely applied in community supervision? Many will be, often, but unlike an accredited programme there is not an existing manual for community supervision.

As yet we do not have the research to give us the fine detail of what takes place in community supervision in Scotland – and in that regard we have much in common with the rest of the world.

> *"With little research to guide agencies in the development and implementation of evidence-based community supervision, there is a need to provide concrete guidance to those seeking to bring such practices to community supervision"* (Borgoun et al 2010)

However, new research is emerging that has the potential to be of great importance in this regard (Bonta et al 2010). Intrigued by the unknown of community supervision, but convinced of the importance of case management

James Bonta and some colleagues went about exploring this. They found few studies to draw on but from what they found, it seemed that community supervision produced a small positive effect of two percent and in examining supervision sessions they found a lack of the skills and practices that would be expected to produce better outcomes (Bonta et al 2008).

In response to this a research project was initiated to explore the potential of training correctional officers to deliver core skills and techniques, in structured supervision sessions, using cognitive behavioural skills and techniques, to clients with medium to high risk needs levels. Following training officers were offered monthly practice supervision. After two years there was a difference of 15 – 18 percentage points in reoffending rates. The higher rate was achieved by those officers who availed themselves of the supervision. Not surprisingly, this research is generating considerable interest internationally, as most would seek to achieve such outcomes.

There is much in this research that is of relevance to us as we endeavour to deliver 'effective community disposals, and as we move from the stalwart of probation to the Community Payback Order
I'm sure I am not the only one who feels rather sad that we are saying farewell to probation after such a long history. There is plenty literature commenting on the history and development of probation, just not much on its effectiveness. We should be grateful for works by Fergus McNeill that give a rich and informative account of individuals' experiences, of what worked and did not work for them (McNeill 2010).

But what we lack is the outcome data that is one essential aspect of the evidence based approach. As we move forward with the new Community Payback Order, it would be wonderful if we could gather the data and undertake the research to let us know its impact on reoffending, to give feedback to practitioners on the effectiveness of their practice, and indeed contribute to the evidence base of 'what works' and 'how'.

And there is a further and current challenge to preserve the aspects of probation in Scotland that have been distinctive and worthy of retention, and improve on those that have been less so.

Here we have further strengths to draw on in Scotland: we are working together to a constructive policy in criminal justice, one that seeks alternatives to repeat, short term prison sentences and promotes community based options as a means to reduce reoffending. However, the wider policy

the National Performance Framework, 'Scotland Performs', seeks far reaching outcomes that extend beyond the reduction of reoffending, and are relevant to the aims of reintegration and desistance. All Scottish public services are charged with responsibility to advance national outcomes that seek to reduce disadvantage, inequality and exclusion, and promote social inclusion. This policy includes outcomes related to reduced crime rates, and safer and stronger communities, but equally ones that promote the potential of individuals to achieve positive, meaningful participation in society.

This internal consistency in the current policy mirrors the consistency that can emerge between the research literatures that speak to reduction in reoffending and desistance. We have the capacity to draw on both, and demonstrate a commitment to evidence and values based practice that reaches from the individual practitioner to government policy.

Should we achieve this we would be attaining what Don Andrews and his colleagues have suggested as the next logical aspiration: not only practitioners and organisations commit to the principles of evidence based practice, but criminal justice systems and government policy do also (Andrews and Bonta 2010b).

Managing Risk: Serious Violent and Sexual Offenders

In Scotland we like to believe that we have our own approach, something that makes our way of working with those who offend distinctive. An edited book (Croall et al 2010) has just been published that explores this belief, its value and values, and again identifies the Kilbrandon legacy and the location of offender supervision in the realm of social work as essential aspects. However, the authors go on to warn of some threats to this through convergence with what they identify as the less constructive, more punitive approaches of other jurisdictions. They raise interesting and important points. They reiterate the view that attention to risk has led to examples of mechanistic practice and more punitive policy, and cite examples in recent history that may represent such convergence. One example that they explore is Scotland's approach to serious violent and sexual offenders.

In the late 1990s many jurisdictions around the world were introducing preventative/indeterminate measures or sentences to deal with those they considered to be the most dangerous offenders in their societies. In 2000 an expert Committee chaired by Lord MacLean sought to identify an approach for Scotland that respected human rights, perhaps setting it apart from others

from the outset.. It recommended a new sentence, the Order for Lifelong Restriction (OLR), an extraordinary sentence for the extraordinary offender whose pattern of behaviour suggests that he/she will require "concerted lifelong efforts" to manage the risk of life endangering offending.

Central to such a rights based approach would be a means to ensure that such a level of restriction would only be applied when warranted by the *risk,* in the first instance, and that subsequently efforts would be made to reduce that risk to allow for reduction in the level of restriction and return to the community. This approach would have no validity unless it was realistic to believe that 'we can' assess and manage risk. Acknowledging the limitations of risk assessment, the inconsistencies in practice at that time, the Committee recommended that standards of practice be set to ensure that all decisions were based at all times on the best available evidence.

At the outset, it was estimated that the OLR would largely replace the Discretionary Life Sentence, and a best estimate of approximately 15 such sentences being made in a year. The OLR became available to the High Court in June 2006: there are now 68 OLRS. At 31st March 2010 there had been no discretionary life sentences in cases where an OLR was available; giving a broadly positive indication about the early targeting of the order.

But we can't be complacent, the highly restrictive nature of this order, which has no review mechanism – it *is a lifelong restriction* – requires that its use is justified by the risk posed to the public, and that this risk, while it may be reduced is likely to endure for the remainder of the person's life.

The demands that this places on those undertaking risk assessments are onerous. The criteria and competencies that such assessors must meet are exacting and the accreditation process is rigorous – and they must remain so.
This is so in all cases but becomes a greater concern still in the case of young people. Neither the Committee nor the policy writers anticipated that this order would be considered for young people. However, it has been; 20% of the cases considered for and made subject to an OLR have been 21 years of age or under (Fyfe and Gailey, in press).

Furthermore, once an individual is made subject to an OLR, they will also be subject to a risk management plan that must be approved for its appropriateness and defensibility against published practice standards. And evidence must be given each year as to the integrity of its implementation. At

present the Scottish Prison Service has prepared and is implementing such approved plans on each of the current OLR cases.

A recent international review of international approaches to preventative detention and indeterminate sentences identified the Scottish approach as a model for other jurisdictions to consider due to its distinctive features (McSherry and Keyzer 2009).

In a forthcoming publication by the same editors, the risk management approach is identified by several international experts as the *alternative* to excessive detention in the name of public protection (McSherry and Keyzer, forthcoming). Closer to home, the argument has also been made that systematic risk management that adheres to evidence and rights based standards is an alternative to risk aversive practices that can be driven by a culture of anxiety and fear of blame (Kemshall 2009).

What we have aspired to in Scotland is a proportionate and rights conscious approach that *uses* the concept of risk constructively as a means to promote, not undermine, human rights. But I also acknowledge that complacency is not acceptable; inevitably there will be aspects and applications of this policy that merit review and revision on the basis of learning and challenge. But in a rights based approach such challenge is welcomed, as it is one means by which the original construct is tested and refined.

Nevertheless, the rights conscious and standards based approach that Scotland has taken to the management of its most serious offenders has at this point in time attracted positive international interest. Once again in Scotland we had the opportunity to work to a constructive and progressive policy that envisaged that in the future a framework for practice would be developed to embrace the risk assessment and management of all offenders (Scottish Executive 2001).

Managing Risk: A General Framework

For rights based considerations are relevant in the wider field too: risk assessment must provide the defensible basis for decisions that inform restrictions of liberty – to identify the least restrictive measures necessary to protect others; risk management plans should clearly link strategies to issues identified in such risk assessment; the format and presentation of both should be comprehensible and accessible to all parties.

For example Intensive Supervision Packages should be based on a risk management plan that:

- evidences the *need* for such measures,
- evidences how such a degree of restriction will address the elements of the risk,
- and has a realistic exit plan from such restrictive and resource intensive measures,

How else are such measures defended from challenges of 'prison in the community'?

Managing risk in the community, or in preparing prisoners for release, is of course highly challenging. It is now recognised that standards and guidelines are needed for risk practice in the wider field.

And so, there is a far reaching initiative underway to develop and adopt a common inter agency framework for consistent, collaborative, ethical and evidence-based risk practice. Responding to national research and inspections, the Scottish agencies, led by the Risk Management Authority and the Scottish Government have embarked on an ambitious programme of change to promote a shared multi agency approach to developing risk practice that is purposeful, appropriate and meaningful.

Within its first year, this collaboration has developed and agreed an approach based on guiding principles, practice standards and values, which promotes structured professional decision making and is applied in a tiered approach.[11] The rationale is that whilst defensible and ethical risk practice must be proportionate to the risk and appropriate to role and task, it is possible to share a common standard, evidence base and approach to such practice. Furthermore, acknowledging international and national concern about the challenges of defining and expressing risk in a manner that promotes collaboration among all parties, a core element of this approach is the development of a shared 'language of risk' that will promote meaningful communication.

11 Risk Management Authority (forthcoming)

Important to earlier discussion, this approach sets a standard of 'quality assurance' that embraces the implementation and evaluation issues that have been central to the success or failure of other international and national initiatives.

As with all the initiatives referred to in this presentation, this is an ambitious endeavour and must be viewed as a programme of change rather than a short term project. For, we must be wary of the temptation to look for quick fixes and easy solutions: implementing evidence based practices takes time, involves change and requires sustained commitment; and there is ample evidence to support this.

But, can we do it? Don Andrews would say that we can if we follow the evidence.

Conclusion

I was grateful for the opportunity to give this perhaps rather rambling and personal paper which allowed me the chance to reflect on matters that have been close to my heart as a practitioner for many years, and are now my privilege to advance with a small team in collaboration with the Scottish Government and agencies.

I was also grateful that the scheduling of this event allowed me the timely opportunity to give appreciation for Donald Andrews. I did so knowing that he would be indignant about my attribution of 'the evidence' to him, knowing that he would wish to acknowledge the colleagues who worked with him throughout his influential career, and also those who take this agenda forward.

I also know that as he answered our conference question with a definitive "yes, you can… if you choose to… and if you follow the evidence", it would be accompanied with the characteristic mischievous chuckle and foot stomping that many will remember with affection.

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Managing Challenging Sex Offenders

in the Community

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Introduction

Sex Offenders are a small but diverse group. This diversity is evident both in the crimes that they exhibit, i.e. ranging from indecent exposure through sexual assault, rape and sodomy to sexual homicide, but also in the way in which they interact with statutory agencies and respond to risk management strategies that are imposed on them. There are a small number of sex offenders who are extremely difficult to manage and cause the agencies involved with them to feel anxious, cause these agencies to fall out and disagree, and this often results in defensive rather than defensible risk management. In this paper we will discuss what the cause of these management difficulties are and discuss potential ways of working with these difficult offenders that will increase staff wellbeing and help manage risk. This is based on the work that we do in the Sex Offender Liaison Service in NHS Lothian which is a psychiatry/psychology led service that provides consultation, advice, support and assessment to criminal justice agencies working with high risk sex offenders.

Who are the challenging offenders?

Challenging offenders are those that agencies find difficult to manage, cause them anxiety and who they often disagree over when discussing with other agencies. However, these challenges vary from one offender to the next. There would appear to be six main types of challenging sex offender:

- Volatile/Hostile
- Uncommunicative/Isolative
- Unusual/strange
- Charming but unsettling
- Suspicious/Untrusting
- Devious/manipulative

The first category is maybe the most obvious. The offender is openly rejecting of supervision and their supervisor and reacts negatively, possibly aggressively, to attempts to engage them in risk management or treatment

strategies. The staff member can feel threatened, anxious and may react by over-estimating the actual risk that the offender poses thereby imposing overly restrictive risk management measures. Although rejection of supervision is known to be a risk factor for sexual recidivism (Mann et al 2010) no one risk factor on its own can make someone high risk and therefore this behaviour on its own cannot be seen as indicative of high risk of recidivism.

The second category pose a different problem: how do you work with someone who, rather than appearing unwilling to engage, seem unable to engage. They not only do not engage with their supervisor but they have no social supports or peer network. They do not reveal their thoughts and feelings about their offence or about their current situation. This means they can provide no reassurance that they are not offending or on a pathway to offending and the supervisor is left feeling like they do not understand why this person has offended in the past or why they would offend in the future. Anxieties and fears therefore originate from the sense of the 'unknown'. There may also be suspicions that the lack of communication is a means of hiding offence-supportive attitudes or the fact that offences may be happening in the present moment.

The 'unusual and strange' group cause anxieties because they appear different from other people on a supervisor's caseload and therefore the supervisor feels unable to draw on previous experience to help them deal with this person. This offender may say unusual things, or act in bizarre ways. There may be suspicions that there is an underlying mental illness although often this has already been ruled out by a mental health clinician. Again, there is a sense of the 'unknown'. Is the fact that this person is 'bizarre' a sign that they are at risk of further offending or is it that they are always bizarre and it is other factors that are related to their offending?

Fourthly, the 'charming but unsettling' group cause anxieties because the supervisor senses that despite the fact there is good engagement and interaction between them and the offender, they have a feeling that this is superficial and feel anxious that they are being 'duped'. Things are almost 'too good to be true'. The supervisor therefore feels unsure if they are acting appropriately. They may feel that it is hard to justify the continuation of strict risk management strategies when, superficially at least, the offender is engaging well.

The suspicious/untrusting group cause problems because the supervisor feels as if the offender is not being open with them because they don't trust anyone. The supervisor in turn feels reluctant to share information with the offender for fear that it will be misread or misinterpreted. This reciprocal mistrust leads to a breakdown in communication and may heighten fears about risk. In reality it is best to be completely open with these offenders and let them see everything that has been written about them as this reduces opportunities for the offender to feel as if things are being hidden from them.

Lastly, the devious/manipulative group clear cause problems because they have demonstrated to the supervisor over time that they cannot be trusted. They lie or twist the truth, play staff off against each other, and try to undermine efforts that people make to get to know them or the truth. The supervisor feels that they cannot believe anything the offender tells them. The temptation is to manage this offender closely and place lots of restrictions on them in order to reduce the chances of being manipulated or duped. This again may result in management strategies that are unrelated to risk.

We propose that what supervisor's are dealing with when they are faced with these types of offenders or these problems is personality traits or personality dysfunction. The offender has a specific way of interacting that is making risk management difficult to achieve and leaves the supervisor feeling unsettled.

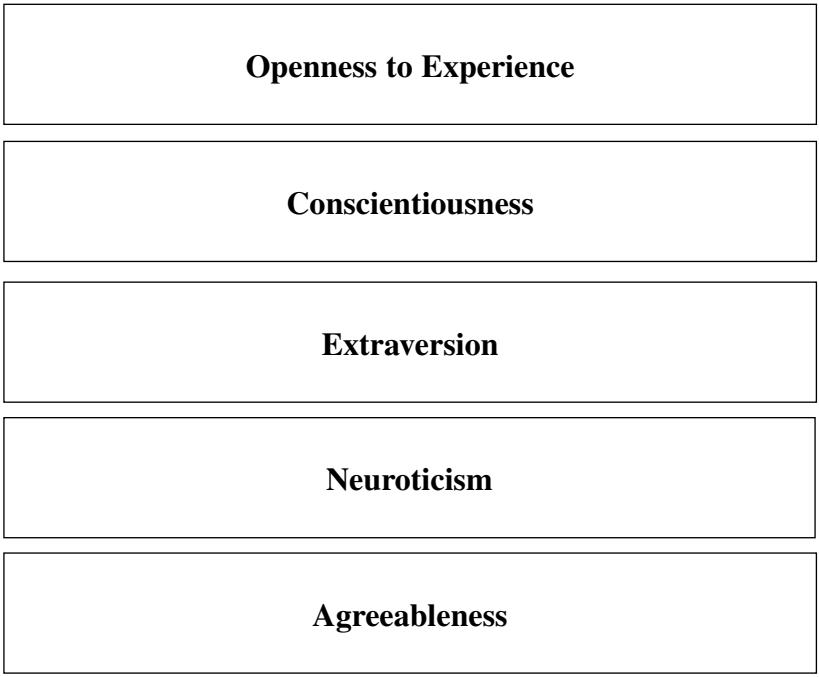
What is personality dysfunction or personality disorder?

In order to understand personality disorder, one first has to have an understanding of what a 'normal personality' is. Clearly, as human beings we all have a personality. That personality would seem to be unique to each person although at the same time we can also see that there are personality traits that we share with some other people. Personality develops over time so that as we develop through childhood certain parts of our personality become more or less dominant depending on the life experiences that we have and our families and friends who influence us.

The field of personality research is vast and over the last century a huge amount of work has been done to try and develop theories and models that explain personality, personality development, normal personality and personality dysfunction.

The model of normal personality function that is most dominant at present is the Five Factor Model (Tupes and Christal 1961; Digman 1990; Goldman 1993; Costa and McCrae 1992) represented by the acronym OCEAN (see Figure 1). This describes five personality dimensions and proposes that all human personality can be described in relation to where each person sits on each of these five dimensions.

Figure 1: Five Factor Model



The definition of Personality disorder given in DSM-IV (American Psychiatric Association, 2000) is that a person "exhibits an enduring pattern of inner experience and behaviour that deviates markedly from the expectations of the *culture* of the individual who exhibits it." Basically, where a person's personality causes serious problems for themselves or others then they have a personality disorder. This should be evidenced by problems in at least two of the following: cognition, mood, interpersonal functioning and impulsivity. Importantly, there should be evidence that these problems are lifelong and cause distress to the person or those around them and not be caused by an organic illness. Prevalence rates of Personality disorder in the community

are in the region of 5-10% (Darjee and Davidson 2010), in prisons increases to 25-75% (Fazel and Danesh 2002), and in sex offenders it rises to 50-60% (Craissati et al. 2008; Fazel et al. 2007). Personality Disorder therefore exists in a section of the population and research has shown that it is a risk factor for sexual and violent recidivism (Hanson and Morton-Bourgon 2004). More specifically Psychopathic Personality Disorder as measured by Hare's Psychopathy Checklist-Revised (PCL-R), which is present in an even smaller section of the population, has been shown to predict violent recidivism (DeMatteo et al 2010). According to the PCL-R, Psychopathic personality disorder has three facets: Interpersonally exploitative and controlling; Emotionally detached, cold and superficial; and behaviourally impulsive and socially deviant. Assessing the presence of Psychopathy in offenders is important because it is associated with sexual and non-sexual violent recidivism (DeMatteo et al 2010), institutional conflict, drop-out from treatment and supervision failure (Losel 1998; Hare 2006).

Unlike the five factor model of normal personality, current classifications of personality disorder are based on a categorical diagnostic system (e.g. DSM-IV). Within DSM-IV there are 11 personality disorders which fall into three clusters (see Figure 2).

Figure 2: DSM-IV Personality Disorder Clusters

Cluster A	Cluster B	Cluster C
• Paranoid • Schizoid • Schizotypal	• Antisocial • Borderline • Histrionic • Narcissistic	• Avoidant • Dependent • Obsessive-Compulsive

There are various criticisms that have been levelled at the categorical approach. Firstly, there is a degree of overlap between categories meaning that having one personality trait can make you eligible for having a trait in more than one category. This may be important as the categorical system works by saying that if you have X amount of traits in any category then you meet diagnostic criteria for that personality disorder. Secondly, individuals can meet criteria for more than one personality disorder. Is this meaningful? Is somebody more 'disordered' because they have multiple personality disorders rather than just one. It is entirely possible that two offenders may have exactly the same number of dysfunctional personality traits within the DSM-IV classification but depending on the spread of these traits across the disorders, one offender may meet criteria for two personality disorders and

the other offender would meet criteria for none. Thirdly, and maybe most importantly, a major criticism is that the categorical system is not valid. Can we really place people into diagnostic boxes when it comes to personality disorder, particularly when our understanding of normal personality is dimensional? Bearing this in mind it is interesting that this diagnostic system is being revised and the DSM 5 Working Group on Personality Disorder has indicated that they wish to move to a more dimensional approach to diagnosing personality disorder (Widiger et al 2011). Although the exact way in which this will be done has not been clarified as yet, preliminary work points to a model that closely resembles the Five Factor Model (see Figure 3).

Figure 3: Model of Personality Pathology (Kreuger, 2007)

Emotional Dysregulation	Dissocial Behaviour	Inhibitedness	Compulsivity
• Anxiousness • Emotional reactivity • Emotional intensity • Pessimistic anhedonia • Submissiveness • Insecure attachment • Social apprehensiveness • Need for approval • Cognitive dysregulation • Oppositional • Self-harming acts • Self-harming ideas	• Narcissism • Exploitativeness • Sadism • Conduct problems • Hostile-dominance • Sensation-seeking • Impulsivity • Suspiciousness • Egocentrism	• Low affiliation • Avoidant attachment • Attachment need • Inhibited sexuality • Self containment • Inhibited emotional expression • Lack of empathy	• Orderliness • conscientiousness

If someone has a Personality Disorder, surely they can be put in hospital?

Currently in Scotland, personality disorder is a mental disorder, as defined by the Mental Health (Care and Treatment) (Scotland) Act, 2003. However, people with a primary diagnosis of personality disorder in Scotland are not usually detained in secure hospitals. This is in contrast to England and

Wales where the Mental Health Act is sometimes used to detain people where personality disorder in hospital. This has led to confusion about how best to deal with personality disordered offenders.

In Scotland, although the 2003 Mental Health Act made it clear that personality disorder was a mental disorder the intention was never that it would be used to detain serious offenders with a personality disorder. Indeed if this was the case we would need to build many secure hospitals in Scotland or potentially turn all our prisons into secure hospitals. In England, only a minority of serious offenders with personality disorder are detained under the Mental Health Act. Legislation and Government policy in Scotland make it clear that the emphasis in the Mental Health Act is on the care and treatment of those who are either mentally ill or have a learning disability and this model of care and treatment is not appropriate when dealing with serious offenders with personality disorder. Within the health service there is a lack of appropriate treatment and management interventions for dealing with personality disorder. Instead policy supports the management of personality disordered offenders in the criminal justice system, e.g. the McLean Report explicitly considered the management of serious violent and sexual offenders (including those with personality disorders) and recommended a new type of sentence in the criminal justice setting, the Order of Lifelong Restriction.

Understanding Personality Disorder is key to risk management as it has implications for Risk Assessment, Treatment, and Management and Supervision. In terms of risk assessment, personality disorder is known to be a risk factor for future violent and sexual reoffending; it underpins many crucial risk factors (e.g. lack of emotionally intimate relationships with adults, callousness, lifestyle impulsivity, grievance/hostility); and it is crucial to understanding the risk a person poses.

In terms of treatment it is a key responsivity factor. Offenders with personality disorder need more flexible approaches to treatment that can deal with their interpersonal difficulties (Dowsett and Craissati 2008). Rigid standardised programmes that require the offender to progress through a programme at a certain pace regardless of how they are feeling or what problems they are experiencing on a certain day will not address the needs of the personality disordered offender. In fact, when working with an offender with personality disorder, if difficulties in interpersonal functioning are not addressed as they arise in treatment it is unlikely that risk is being addressed. Personality Disorder is also important in determining the timing, nature

and delivery of treatment. An offender with personality disorder who is experiencing crisis or major instability of mood is not going to benefit from treatment. It is important that other factors are stable in the offender's life prior to starting treatment so that they can have the best chance of benefiting from treatment.

In terms of Management and Supervision, personality disorder has implications for the motivation of the offender, their ability to engage, the nature of their relationships with staff, and the likelihood of non-adherence to conditions or restrictions. Staff will need to be responsive to the offender's presentation. For example, a narcissistic offender will intensely dislike being told what to do and being 'controlled' by a staff member or agency. They are therefore likely to spend considerable time challenging their supervisor, even becoming potentially hostile and aggressive. Consideration should be given to how important it is to be or appear to be 'controlling'. The supervisor can consider taking a less confrontational stance. This is not to say that they would not stick to the restrictions and conditions necessary to manage risk. However, a narcissistic offender may be unlikely to concede that they need supervision and management and acknowledging this will be important to avoid some needless 'battles'. It is worth considering whether letting them feel as if they are superior to the supervisor is going to be detrimental to their risk management. Probably not!

Risk Assessment with Challenging Offenders: what is important?

Risk assessors should be aware of subjective biases that may affect their interpretation of risk assessment tools. The current socio-political culture is such that sex offenders are regularly vilified in the press and the impression is given that sex offenders are at high risk of recidivism. When dealing with challenging offenders, it is easy to over-inflate risk or lose sight of what is important and what is not.

In terms of Risk Assessment, it is important to take an individualised approach. Risk tools should be used appropriately and those using them should have received training and be aware of each tool's limitations. There should be awareness of the role of risk factors, i.e., is thisa static or dynamic risk factor. How does this factor relate to risk of recidivism or risk management difficulties? Importantly, only use risk factors that have an empirical evidence base. For example denial, minimisation and lack of victim empathy are not significant risk factors for future sexual recidivism (Hanson and Morton–Bourgon 2004; Mann et al 2010). Factors without an

empirical evidence base should only be considered if a rationale can be given in any particular case.

When discussing the future risk that an offender may pose, it is better to use narrative scenarios rather than risk levels and scores. This is more meaningful and can be much more useful in helping guide detailed, proportionate risk management plans.

Finally whenever one is considering risk, one should also consider any relevant protective factors in the case. Protective factors can be either those that are external to the offender, e.g., positive relationships, stable accommodation, relationships with family; or internal to the offender, e.g., commitment to a pro-social lifestyle, finding spirituality, ability to engage in a mutually fulfilling sexual relationship, abstinence from drugs and alcohol.

Risk Management with Challenging Offenders: What is important?

In terms of Risk Management, it is important that the risk management plan is based on the risk assessment. Sometimes an appropriate risk assessment is completed, but due to anxieties or fears about a client, or a generic approach which does not allow for an individualised approach, the risk management plan appears unrelated to the factors highlighted in the risk assessment. Multi-agency working is the preferred model for managing challenging offenders as the anxiety is shared and there is access to more resources.

In our experience, managing the transition from prison to the community is particularly important. This is the time when the offender has to build relationships with a new staff group as well as re-adjust to the stress of community living. Good communication between agencies and the sharing of risk assessments and risk management plans can ease this transition. The transition should also be paced relative to the needs of the offender and individualised to their needs. With challenging offenders, there is an even greater need to get relationships with staff right as without this there is a high likelihood that the risk management plan will fail.

Treatment should only be delivered if it is appropriate and at the right time for the offender. Merely processing the challenging offender through a conveyor belt of standard treatment programmes will neither benefit the offender nor reduce risk. Restrictions within the risk management plan should be proportionate to the risk identified in the risk assessment as

overly restricting an offender can increase risk as much as insufficient risk management strategies.

The 'Good Lives Model' (Ward et al 2006) is an important model when considering risk management plans and therefore, in addition to working out what restrictions and monitoring are required, it is necessary to think about what positive approaches can be put in place to improve the quality of life of the offender and meet the needs, if appropriate, that they were previously meeting through offending.

When working with challenging offenders it is important that supervising staff are competent, supported and supervised. Each personality disordered offender presents a unique challenge due to their interpersonal style, type of offending, and response to risk management. It is important that staff do not feel isolated and anxious as this is likely to lead to a distorted perception of risk, poor management of cases and burnout. Mental Health Services can provide a crucial role in terms of providing consultancy on these cases to enhance the understanding of the case, but also to provide supervision to staff so that they can understand their response to the offender. Craissati et al (2011) highlight the importance of understanding an offender's early attachments to caregivers as they can help us understand the current relationships with staff and agencies managing the offender.

Multi-agency Risk Management

Historically, in Scotland, personality disordered offenders have been the 'hot potato' who no one agency wants to take responsibility for. Criminal Justice agencies want Health professionals to be involved as they are aware these offenders have clinical issues that they feel unable to deal with. Mental Health professionals view these offenders as not suitable for mental health care and not detainable, and therefore offer little in way of support to criminal justice agencies.

The introduction of Multi-Agency Public Protection Arrangements (MAPPA) in Scotland in 2007 for Sex Offenders has allowed for better joint working between agencies. MAPPA means that criminal justice and health agencies have a duty to cooperate in the risk management of these cases with a strong focus being on the sharing of information. In practice, the way in which MAPPA has been translated into working practice has varied around the country.

In Lothian and Borders Community Justice Authority (CJA), the Sex Offender Liaison Service (SOLS), funded by NHS Lothian, has been developed to provide clinical input to criminal justice agencies to help with the risk assessment and management of high risk sex offenders in the community. This clinical input is from clinical psychology and forensic psychiatry and provides input at different levels of intensity. SOLS Clinicians sit on MAPPA Level 2 and 3[12] Panels in Edinburgh and the Lothians; they are available for phone consultation on any sex offender; they meet regularly with police offender management unit officers and criminal justice social work teams to provide supervision and consult on cases; and they take referrals for risk assessment. In the first instance all referrals receive a case discussion between SOLS staff, the referrer and any other agency that is involved. This involves discussion of the background of the case, consideration of any information that is held within mental health notes on the patient, and a consideration of the risk factors in the case and its relevance to risk management. In some cases this proves sufficient for the referrer in terms of answering particular questions or concerns. In other cases, where SOLS staff feel that this level of examination has not been sufficient to provide the required insight to give advice and support, it is recommended that the offender is seen for a full assessment. A full assessment involves at least two 2-hour interviews with two members of SOLS staff (one male and one female); a full review of all available files and documents; a personality disorder assessment and a structured professional judgement risk assessment; and any other assessments that are felt necessary, e.g., cognitive assessments, behavioural assessments of paedophilia and sadism. The use of a male and female member of staff has proved extremely useful in assessing how the offender reacts to the different sexes which can be crucial to understanding their interpersonal functioning.

This service is extremely cost efficient. Currently there is less than one full-time forensic psychiatrist and one full-time clinical psychologist for the whole of the Lothian and Borders CJA (which has around 650 registered sex offenders). The service has access to trainees in both these professions who can come on a specialist placement. The service is currently only available for sex offenders. Our model enhances systems and services that already exist rather than developing brand new services. The role of SOLS

12 All offenders subject to MAPPA are assigned to one of three MAPPA Levels. These Levels are related to the risk of harm the offender poses and the complexity of multi-agency risk management. Level 1 refers to cases where there is single agency management. Level 2 refers to cases where there is multi-agency management. Level 3 is referred for the critical few where there is deemed to be an imminent risk of serious harm.

is to support other agencies, provide consultation and training, and assess offenders, by acting as part of the multi-agency team.

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Can evidence about desistance influence penal policies and practices? Should it?

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Introduction

Desistance research seeks to examine the 'how' and 'why' questions behind the recognised fact that the majority of offenders do eventually cease their offending behaviour. Beginning as far back as the 1930s with research in Boston by the Gluecks (Farrall and Maruna 2004) and a number of empirical studies in the 1930s and 1940s, recent decades have seen a growing interest in desistance related questions. The issue that this subsequently raises is in regard to the relationship of research with current penal policy and practice.

This essay will seek to detail some of the main research findings, before moving on to discuss the possible implications and challenges which these pose for both policy and practice. However desistance research is only one influence and discourse among many, and so the discussion will turn to examine the likelihood of whether or not the implications of the research will indeed have the potential to be influential. Finally the more philosophical questions as to the purpose of criminal sanctions in general and the place of rehabilitation in particular, as well as what place rehabilitation ought to have within our late-modern penal system, will be addressed.

An Overview of the Research

Within desistance research three broad theoretical perspectives can be identified, namely ontogenic, sociogenic and narrative theories. (Maruna 2001)

Ontogenic theories have the longest history and focus on the influence that age and maturation have on criminal behaviour. The existence of the age-crime curve, whereby by the age of 28-30 most offenders cease, has long been recognised, but desistance research seeks to establish the reasons as to why this correlation exists. Barry (2004) for example, conducted interviews with 40 young people, equally divided between males and females, concluding that the decisions which young people make in regard to both offending

and subsequently desisting were related to their need to feel included in the social world around them. Blumstein and others have pointed out that the age-crime curve is not inversely related to criminal activity on an individual level, even if the general pattern may be true, so that age may not necessarily affect the frequency of offending of individual offenders if they determine to continue their offending lifestyles.

Soothill and Francis (2009) studied age in relation to risk factors, seeking to determine at what age ex-offenders pose the same or similar risk of re-offending as 'non-offenders', concluding that certainly by the age of 30, as long as there have been no further offences committed in the previous 10 years, those who offended before they were 20 pose no greater risk of reoffending than those who have never committed an offence (2009:384).

Age is also related to the sociogenic influences below. The effect of life events such as cohabitation and employment seems to be age-related, with cohabitation only having a significant effect for men around their mid-20s, while the effect of employment is most significant for offenders over 26 (Farrall and Calverley 2006: 5; Porporino 2010:72). Work by Moffitt (1993) identified two types of offending, namely the adolescent-limited offender and the life-course persistent offenders, the entry and exit of offending behaviour for both groups being different and age-related. (Cited in Farrall & Calverley, 2006:7) Due to their status as 'liminal entities', many young people are furthermore deprived of the opportunities of full citizens and social recognition which accompanies it, which can be influential in helping offenders to desist. (McNeill and Maruna, 2007:230)

The difficulty with age and maturation theories is that they can never be independent of other factors in the offender's life, since maturation by its very nature results in different social factors. It seems unwise therefore to isolate ontogenic factors without regard to the sociogenic factors also. It furthermore fails to explain *how* age and biological development impact on offending behaviour (Raynor and Robinson 2009:138)

Sociogenic theories centre around the influence which social factors, such as employment, relationships (a 'steady job and the love of a good woman' (Maruna, (2001) cited in Porporino 2010:71), parenthood and education have on helping ex-offenders desist from crime, regarding these as the prime driving forces behind desistance. Laub and Sampson (2003) for example assert that 'we believe that most offenders desist in response to structurally-induced turning points that serve as a catalyst for sustaining long-term behavioural change' (cited in Porporino 2010:71).

While recognising the significance of social factors, sociogenic theories have nevertheless been criticised both for casting the offender in too passive a role - 'where good things might be happening simply randomly to bad actors' (Laub *et al.* 1998 cited in Porporino, 2010:71), for confusing cause and correlate (Porporino 2010:71) and for ignoring the role of human agency in the interplay between these external factors and desistance (Raynor and Robinson, 2009:139). Farrall (2002) for instance stresses that the significance of the external, objective factors depends on the offender's own subjective value of these factors, which cause them to re-evaluate their life (cited in McNeill 2009b:18). This has led Farrall (2002) to argue that desistance resides somewhere in the interfaces between developing personal maturity, the changing social circumstances, and the subjective narrative constructions which offenders build around these changing factors (cited in McNeill & Maruna, 2007:228).

The final perspective is that of narrative theories, which arise out of qualitative research and stress the significance of subjective changes in a person's self and identity (McNeill, 2006:46). Shadd Maruna's research (2001) in Liverpool, for example, compared the narrative 'scripts' of 20 persisters and 30 desisters who shared similar criminogenic traits and socio-economic backgrounds. He drew a comparison between the 'condemnation script' of persisters, who regarded themselves fatalistically as victims of circumstances and factors over which they had little control, and 'redemption scripts' which essentially stressed the inherent goodness of the narrator, who, in order to achieve some sort of power over otherwise bleak circumstances gets involved in crime, becomes trapped by the cycle of crime and imprisonment, but who, with the help of someone who 'believed in' them, manages to accomplish what he or she was 'always meant to do'. (Maruna, 2001:87) The role of this 'significant other' seems to envision 'an alternative identity and an alternative future for the offender even through periods when they cannot see these possibilities for themselves.' (McNeill, 2006:49)

Maruna and Farrall (2004), drawing on the work of Lemert (1954), distinguish between primary and secondary desistance. Primary desistance is the achieving of a crime-free period, whereas secondary desistance involves an underlying change in 'self-narrative' whereby the individual now regards themselves as a 'changed person'. (cited in McNeill 2009b:18) While Bottoms challenges the usefulness of this distinction, noting that many desisters only regard themselves as having changed retrospectively and are not necessarily aware of this as the change occurs, and therefore questions

whether such people are 'true' desisters if this cognitive identity change does not occur (2004: 376,371), McNeill & Maruna nevertheless assert that recent research provides 'compelling evidence' that long-term desistance does involve an identifiable change in personal identity (2007:226).

Another factor coming out of Maruna's Liverpool research is the concept of generativity, whereby ex-offenders find meaning and purpose in life from their previous degenerative lives, by transforming them into generative stories, which can be used to help and 'save' others, not least the youth of the next generation. Such generative pursuits fill the void left from their previous offending lifestyles, bringing a sense of fulfillment; exoneration from guilt and shame; legitimacy; and therapy, whereby the very act of helping others 'actually helps the ex-offender maintain his or her own reform efforts." (Maruna 2001:118-119) This generativity supports the 'redemption narrative' where something good is regarded to have emerged out of otherwise negative circumstances. (Maruna 2001:97)

The offender's own motivation is also a relevant factor. Burnett's research (1992) into the criminal careers of 130 men released from prison, followed up ten years later by Burnett and Maruna (2004), revealed that those who were most confident and optimistic about desisting, who not only wanted to stop but felt that they were able to desist, were more likely to succeed than those who were unsure and more fatalistic – so also Farrall (2002: 99-115, cited in Farrall and Calverley, 2006:6). Farrall (2004) looked at the role which motivation played in the overcoming of obstacles on release between three groups which he termed the 'confidents', the 'optimists' and the 'pessimists', concluding that probation supervision had little impact upon the resolution of obstacles, but instead that motivation and social and personal circumstances were of far more importance in determining the extent to which obstacles were resolved (Farrall 2004:201)

In the 2004 study Burnett and Maruna developed this discourse by analysing the role which 'hope' played in helping offenders to desist, concluding that hope, "which requires both the 'will and the ways'" (2004:395) 'seems to play a significant role in predicting post-prison success' but at the same time can quickly diminish in the face of dire circumstances such as homelessness, or extreme poverty (2004:399).

Hope therefore seems to be intrinsically related to the concept of agency, whereby offenders appear to need to discover a sense of self-determination and control over their lives and future, rather than be 'victims' to either their

circumstances, or indeed to the criminal justice system itself. Desistance therefore is not something which *happens to* the offender, irrespective of their own will. (Raynor and Robinson, 2009:139) This has led into discussion and research into the relationship between agency and structure (in terms of the "structural properties of social systems" (Giddens, 1984:146 cited in Farrall and Calverley, 2006:173). Within these contexts individuals can often assume the social identity expected of them, and so desistance theory seeks to examine how individuals can effect change within these structural pressures (2006:179), as well as the impact of culture, religion and so forth.

This leads on to a further area of research which looks at how desistance can be supported. Leibrich for example, in a study in New Zealand which examined why 48 individuals had remained conviction-free for 3 years, found that few mentioned the fact of their probation as being a factor in their desistance, with only half stating that they had found it useful (Leibrich 1994:42).

Rex (1999) on the other hand, explored the experiences of 60 probationers and reported that the probationers who did claim that their probation had helped them to desist, described their support as "active and participatory" (Rex, 1999: 375, cited in McNeill and Maruna, 2007:229):

> *"Probationers' commitments to desist appeared to be generated by the personal and professional commitment shown by their probation officers, whose reasonableness, fairness, and encouragement seemed to engender a sense of personal loyalty and accountability*."

These probationers seemed to interpret advice and assistance given to them by their supervising officers as a demonstration of their concern for them as people, and as showing an interest in their well-being. (McNeill, 2009[2]:20) Probationers, Rex asserts, value advice and guidance on how to resolve their social and personal problems rather than practical help (McCulloch 2005:12) which would seem to be amenable to the concept of developing agency, noted above.

Farrall (2002) in his study of 199 probationers, found that desistance could only be attributed to the input of the probation officer in a very few cases, although help with employment and assisting with family relationships appeared to be of specific relevance. From this Farrall has questioned the efficacy of 'purely talking' approaches and suggests that more be done in

way of 'direct action' in the supervisory process (McCulloch 2005:12). Nevertheless, desistance seemed to relate more to the offenders own motivation as well as the social and personal contexts in which obstacles to desistance were addressed (McNeill & Maruna, 2007:229). This has led Farrall to argue that much more attention needs to be paid to the social context surrounding the offender who is wishing to desist, and to a greater emphasis not just on human capital, but on the social capital which an offender wishing to desist needs, in order to be able to move towards desistance.

Putnam (2000), in observing the decline of social capital – "essentially the social networks and relationships within families and wider communities that can create and support opportunities for change" (McNeill, 2009b:50) – within late-modern Western culture, draws a distinction between 'bonding social capital (viz. close friends and family), 'bridging social capital' (viz. wider acquaintance, work-mates etc.) and 'linking social capital' (viz. linking to others from a dissimilar social situation), all of which are necessary to provide an ex-offender with the necessary resources to make the personal transition towards desistance.

The final issue which the desistance research highlights is that the path to desistance is not a smooth one, but rather, for those who wish to leave their offending behaviour behind them, their journey seems to be often marked by staggered progress and even occasional relapse. So Burnett: "desistance is a process which involves reversals of decision, indecision, compromise and lapses" (cited in Porporino, 2004:169). While for some it may indeed be experienced as an "event", for most it is a gradual development, as the offender seeks to deal with obstacles and assume new roles and a new 'identity'. Indeed Burnett points out that for many there is not even a decision to cease offending, but instead, even cognitively, the process is marked by "ambivalence and vacillation" (cited in McNeill, 2010:10).

Implications for Policy and Practice

Having reviewed the main findings coming from the desistance research, the question then arises as to what implication these findings could, all things being equal, have for current policy and practice, raising as they do a number of issues currently neglected in the criminal discourse. As Porporino points out however, the literature is not neat and tidy, but contains inconsistent findings, terminological uncertainties, and raises a number of theoretical issues, not least in the analysis of the data provided by ethnographic and

qualitative research. Nevertheless, he does concede that the research is still valuable for it gives the offenders themselves a voice in the debate, giving insight into what they themselves think, believe and experience as they seek to change their lives (Porporino, 2010:70).

The areas of policy and practice can be divided into 4 main areas.

1. Sentencing

From a desistance point of view, prison does not work. In terms of discovering agency, developing human (notwithstanding specific interventions) and social capital, and maturation, custodial sentences do not only *not* help, but in many ways do damage to the progress towards desistance. As Bauman (2000:210) asserts, custodial sentences merely 'prisonize' inmates, encouraging them to adopt habits and customs typical of the prison environment which are often very different from the behavioural patterns promoted by the culture outside. On release offenders find 'new structural impediments' as they seek to re-enter mainstream society (Farrell & Calverley, 2006:182) and face many long-term obstacles by virtue of their ex-prisoner status.

Where custodial sentences are necessary, Hough (2010:15-17) highlights that the quality of the prison regime itself can be a major factor in prisoner perceptions and to the extent that they would wish to address their offending behaviour. Not only do prisoners need to feel in a safe environment before they can begin the risky process of changing their attitudes and behaviour, but the quality of relationships with staff, not least in terms of civility and respect, may play an important role. This would be necessary not just with staff involved with interventions, but also discipline staff, otherwise the good work done in programmes could be undermined by the conflicting attitudes of staff in the residential areas.

The role and participation of families has been high on the agenda within Scottish prisons in recent years, not least within the integrated case management conference arrangements for long-term prisoners. Given the significance which families of origin have in terms of social capital, this is an area which needs to be further encouraged and developed.

Another issue for sentencers is the challenge raised by relapse, either where the conditions of probation are not kept, or where prisoners liberated on license breach the terms of their license, or indeed where an offender is appearing before the court after a period of desistance. More cognition

perhaps need to be paid to the fact that the decision of the court could be one that either supports an offender on the path to desistance or one which frustrates the progress that has been made.

This is perhaps specifically so in relation to recall to custody following a breach of liberation license. Whereas under a rehabilitative model of criminal justice a recall may have been viewed in terms of failure, under the risk paradigm a recall can be regarded as a success in terms of control and public safety. Risk management however needs to be balanced with supporting the progress of desistance for the individual in question where this can be evidenced.

2. Community Supervision

While Farrall (2002) concluded that probation was of little direct help, others, for example Rex (1999) and McCulloch (2005) have shown the indirect help which officers can bring in the process of desistance. Where supervision exists, the desistance literature can inform practitioners as to what the most efficacious practice could be.

In particular the relationship which is to exist between the officer and the probationer, as well as the role that can be played by the officer, has received a great amount of discussion. The research highlights that the quality of the relationship itself is critical if any effective support is to be given. This had led to a call for a re-training of the supervisory role, and the development of a range of different skills from the ones being emphasised at the moment. Dowden and Andrews (2004), for example, define the skills necessary for rehabilitative work with offenders as 'Core Correctional Practices' which include effective use of authority; modelling and reinforcement, relationship skills and problem-solving (cited in Raynor & Robinson, 2009:129).

Calling for a more holistic approach to case management, McNeill argues for the role of the supervising officer to be seen as being more 'therapeutic' in nature rather than merely administrative (McNeill, 2009b: 36). In particular the functions of being a motivator and listener need to receive more recognition. More precisely, Criminal Justice Social Work need to regard themselves less as providers of correctional treatment and more as supporters of the desistance processes (McNeill 2006:46; 2009b :17; 2010:46), not least in helping and assisting with the dealing with the obstacles which the ex-offender will inevitably face along the way (Farrall 2004:201). At the same time, rather than treating offenders as "needy and

beset by problems", such a model would promote a sense of "responsibility and self-efficacy" (Raynor and Robinson, 2009:167).

Through their work with the offender, it is not enough to focus simply on the individual and on their offence history and risk factors for the future. Instead more emphasis needs to be placed on the social context in which the offender finds themselves, and in aiding the offender in building social capital. This in turn may demand more work with the wider family of the offender, and indeed the community at large, with the possibility of even having more of an advocacy role in assisting the community in 'welcoming the offender back', and allowing him/her to resume their place within the very community against which they have offended.

In regard to generativity, the supervising worker may need to help find opportunities which enable the offender to 'put something back' into the community, and thus 'make good' for their past. This may involve accessing restorative justice agencies in regards to the victim, or merely accessing some form of meaningful volunteer work In all the above however, it is not enough to build social capital, but the offender needs to be provided with opportunities to practise their new skills and strengths (Weaver and McNeill, 2009:40). This may however require some reflection on the growing stringency of disclosure requirements which can prohibit ex-offenders from working with young people in particular. While sexual offences and offences against minors should of course be a barrier to working with this age-group, this need not be the case with other past offences, where the previous offending history may actually be an advantage in trying to inspire and engage with the next generation of potential offenders.

3. Interventions

While the above section discussed the significance of the role of the supervising officer and their possible key roles, desistance research has more to say in regard to interventions as a whole. These too need to be desistance-focussed.

There is much evidence to suggest that intervening too soon, especially in regard to young offenders, has more of a detrimental effect, reinforcing stigimatisation and exclusion (McNeill, 2009b:88). Where interventions are necessary, informal social controls seem to be far more effective than formal ones (Farrall and Calverley, 2006:194).

While the degree of structured interventions is presently related to the degree of risk which an offender is deemed to pose, Maruna suggests that interventions be targeted at those offenders who are most willing to engage and desist from crime, rather than on 'committed offenders'. (Maruna 2001 cited in Raynor and Robinson, 2009:140). This would concur with Porporino who argues that "those offenders who might need to be engaged the most by our programmes are indeed perhaps engaged the least." (Porporino 2010:69) This would inevitably raise challenges in regard to what assessment tools are used in selecting those who are most appropriate.

The content of current interventions has also been questioned, focussing as much as it does on cognitive skills and development, such as in the Constructs programme in Scotland. Cognitive behaviouralism grew out of the dependency on psychological methods of understanding repeat offending, and is based on the premise that many offenders exhibit poor problem-solving and decision-making skills (Farrall and Calverley 2006:12). However, Farrall (2002:75) found that few participants in his research seemed to have difficulties in this area, but rather that the converse was true (cited in Farrall and Calverley 2006:12). Alternatively Porporino argues that where cognitive and coping skills need to be developed, this ought to be done in a practical and concrete way as needs arise, rather than in an abstract setting removed from real-life situations (Porporino 2010:79). This therefore requires that interventions ought to be more individualised in nature, seeking to address specific issues in individuals' lives, rather than being a one-size-fits-all programmed intervention.

Porporino also questions interventions which are based on the premise of "change-the-offender", calling, in light of the desistance research, for interventions which place the offender in the centre, regarding them as the true expert on how they might change (Porporino 2010:63). Offenders therefore ought to be seen as co-producers of their own interventions.

Current, risk-focussed interventions have also been criticised for being too retrospective in nature, concentrating on the offenders' deficits, rather than being forward-looking and assisting the offender to have a new hope and vision of how their lives could be in the future. Such arguments lend support to more 'strength-based' models of intervention as postulated by Maruna and LeBel (2003) and Ward and Gannon (2006). These approaches, rather than being risk focussed, seek to harness the strengths and positives in the offender's life, and seek to support the transition to desistance and generativity. The 'Good Lives Model' (GLM) seeks to harness the ultimate

goals and rewards which all humans are deemed to aspire to, in encouraging desisting behaviour. While more empirical research perhaps has to be conducted, and some of the assumptions and suppositions behind the GLM could perhaps be questioned, these approaches nevertheless offer an alternative model, more consistent with desistance principles.

4. Investment in Communities

Since desistance research highlights the wider social context in which the offender dwells, it goes without saying that this raises implications for community investment also. The link between crime and areas of deprivation is well recognised, and so unless there is investment and programmes to deal with these social issues, the culture and structures within these areas will mitigate the motivation and desire for desistance.

Apart from work with communities to assist them in the process of receiving ex-offenders back (as above) there needs to be investment to provide employment opportunities and training schemes. Addiction issues also continue to be under-resourced, as well as general activities to combat boredom and apathy among youth.

These four areas above suggest some areas in which the desistance research may challenge the status quo. McNeill nevertheless argues that ultimately research findings ought not to dictate policy and practice, as has often happened before, but rather act as a resource to inform practitioners and policy-makers, by informing and challenging them in regard to the processes which they seek to support (Weaver & McNeill, 2009a:56).

Can Desistance Research be Influential?

While the desistance research has much to commend it, it is not the only voice vying to be heard. The pervasive influence of the 'new penology'[13] with its emphasis on actuarial justice, risk factors, managerialism and drive for efficiency, is one which has firmly taken root within the criminal justice system, and is the pervasive influence behind much of the current policy and practice.

The culture is also one of consumerism, of individuality and insecurity. Security is only maintained by a paradigm of exclusion, keeping out

13 Term attributed to Feeley & Simon (1992)

the 'flawed consumers' (Bauman, discussed in McCulloch and McNeill 2007:225) and with its 'criminology of the other' (ultimately being the poor, the marginalised and the disenfranchised), offenders are maintained at a distance. Incapacitation becomes the ultimate weapon of separation.

Within this new penology crime is therefore something which is regarded as an inevitability, and rather than seek its elimination it simply needs to be controlled. Garland (1996) and Rose (2000) refer to the collapse of Governmental control, where crime is the last vanguard where its power can be demonstrated. At the same time there is the recognition that it cannot actually be controlled, and so there is the parallel feature of responsibilization, where the public is expected not only to take responsibility for their own behaviour, but for protecting themselves and their communities against crime.

Driven, as Garland sees it, by the loss of faith in the rehabilitative model, offenders are no longer individuals in need of welfare and support, but carriers of risk. Within the risk paradigm existing practices are re-interpreted; social needs become criminological needs and risk factors, welfarist social work becomes case management, public protection becomes the over-arching principle, and so the beneficiaries of rehabilitation become not so much the offender but rather their communities and their potential next victim (Robinson 2008:7).

Within the pressures of managerialism and key performance indicators, power becomes centralised, and practices and programmes are assessed on the basis of their effectiveness and cost. The undergirding question is 'what works?' and unless evidence is given of efficaciousness new initiatives will not be welcomed.

Crime has become politicised, with targets driven centrally and talking tough on crime seen as a vote winner. Penal populism, where the electoral advantage of a policy takes precedence over its effectiveness (Roberts *et al.*, 2003:5 cited in Maruna and King 2008:339) and popular punitiveness, driven by the tabloids, seem to silence the voice of rehabilitation and welfare support.

There are also issues of the place of research as a whole in regard to policy, with its requirement to be 'evidence-based'. Apart from the issues of funding, with government primarily funding research which it anticipates will add weight to its own practices, there have been criticisms made

of the methodology of the research under the ethos of 'What Works?' (McNeill 2009b:46) Current research is focussed more on interventions and programmes, whereas as desistance research is more focussed on process. Furthermore, while randomised controlled tests continue to be regarded as the 'gold standard' in regard to credibility, (Hough 2010) as well as the issue around scalability of qualitative ethnographical studies, the impact of desistance research may be unnecessarily muted.

Within Scotland there is the additional difficulty that power is being maintained by a minority government which thus requires cross-party consensus before making real change. The economic crisis facing the UK as a whole means that stringent budgetary restrictions seem likely, and offenders are rarely seen as worthy recipients from a political point of view.

Nevertheless there are also signs of hope

Escalating prison numbers, to say nothing of the financial cost of imprisonment, is increasing pressure for change in sentencing practices, and was a prime motivator for the McLeish Report which has advocated greater use of community sentences, a decrease in custodial sentences especially for short-term sentences, and has introduced into Scottish terminology the notion of 'payback'; "constructive ways to compensate or repair harms caused by crime." ('Scotland's Choice 2008:33). In addition, the Management of Offenders Act 2005 enshrines nine offender outcomes which the criminal justice agencies require to secure, including housing, employability, and literacy skills.

Considerable research suggests that the public is not nearly as punitive as sentencers, politicians and public officials assume and there is evidence that the public are not as opposed to community sentences as is sometimes advocated (Maruna and King, 2008: 339,340). Maruna and King further assert that there is widespread public support for the idea of 'redeemability'; that everyone can change their ways and 'make good'. (Maruna and King, 2008:344)

Scotland has also had a different history and development in its criminal justice system, and the influence of Kilbrandon from the 1960s still seems to live in, so much so that Scotland still seems to be more welfarist in principle and practice. Moreover irrespective of the latest political emphasis or policy drives, there is much evidence that in terms of practitioners operating 'on the ground', the rehabilitative welfare of offenders still holds sway (see for example, McNeill et al. 2009:423ff.)

While therefore there are a number of obstacles and vying voices in regard to penal policy and practice, it is nevertheless true that Scotland in particular, with its historic rehabilitative ideals, combined with recent political emphasis on lowering prison numbers, reducing recidivism, increasing community sentences incorporating notions of 'payback', may all provide fertile ground and an openness to the findings and implications of the desistance research.

Philosophical Foundations

The answer to the question of whether desistance research *should* influence policy and practice will depend very much on the philosophical understanding of the purpose of punishment, as well as the place of rehabilitation in modern criminal justice ideals, and the form which it should possibly take.

Feeley and Simon (1992) predicted that with the rise of the new penology, rehabilitation would disappear to be replaced with surveillance and control methods within the risk paradigm (cited in Raynor and Robinson, 2009:160). Bauman too proclaimed the demise of rehabilitation, claiming that it was prominent today 'less by its contentiousness than by its growing irrelevance" (Bauman, 2000:210). Bottoms also bewailed the fact that the passing of the 'rehabilitative ethic' had led to a 'widespread abandonment of hope.' (Bottoms, 2000:20). Nevertheless, despite the rejection of the therapeutic, or treatment, model of rehabilitation, rehabilitation managed to evolve and survive into the new criminology, 'remarketing' itself on utilitarian grounds of public safety (Robinson 2007:7) and as a means of managing risk (Garland 2001:176, cited in Robinson, 2007:12).

Despite the late modern emphasis on risk, and retributive forms of punishment, there are still valid arguments for a rehabilitative model, within which desistance plays a part. These would include pragmatic reasons, as well ethical or moral reasons, which also raise matters of justice.

In terms of its pragmatic purpose, given the current emphasis on reducing recidivism, it could be argued that rehabilitation is one way of achieving this. The validity of this argument depends of course on whether one takes a classicalist view on offenders, whereby they are acting out of free-will; a positivist approach which regards offenders as conditioned by social circumstances, not least poverty and deprivation, or adopts a position combining both. The link between poverty and deprivation however has been well established (Houchin 2005) and so the model of desistance presented above is one way to help offenders address the obstacles raised by their social context.

In terms of its ethical position, this would include for example humanitarian arguments, centred around the value of human individuals:

> *Arguments about rehabilitation are not simply about instrumental utility. They also make implicit or explicit claims about the nature and value of persons, about the relationship between states and citizens and about human rights*. (Raynor & Robinson, 2009:170)

Whereas the 'risk, needs and responsivity' model has been criticised in regards to its vagueness about values and core principles (McNeill 2009b:24) the rehabilitative model is grounded in concepts of justice. Garland (1985 – cited in Robinson and Crow, 2009:2) has asserted that the concept of rehabilitation was first conceived in French law in the late 17th Century to refer to the 'undoing of a criminal conviction' (cited in Robinson and Crow, 2009:2). Therefore Robinson and Crow (2009:2) argue that rehabilitation ought to refer not just to behavioural change, but the 'symbolic process whereby an individual is permitted to shed the negative label of 'offender' and be reinstated within the community." Furthermore Lewis (2005:121) argues that there is a *moral* duty on the state to not only undertake rehabilitative work with offenders, but to seek to tackle the very social problems which cause offending in the first place.

This raises the issue of the rights of the offender within the criminal justice system, and within rehabilitation in particular. Rotman (1990) and Lewis (2005) have argued for a rights-based model of rehabilitation, whereby rehabilitation is 'offered' to offenders as a right to help them reintegrate into society, while at the same time they themselves ought not to have rehabilitation forced upon them. Robinson argues that rights-based models have been all but silenced in a criminal justice concept that values more the rights of the victim (2007:5).

This leads on to the form which rehabilitative methods ought to take. The proposals in Scotland for a new Community Supervision Sentence involving payback have already been noted. Already existing are sentences such as Drug Treatment and Testing Orders, whereby offenders are given a community based sentence with drug testing and treatment conditions attached. This raises a number of issues, such as whether rehabilitation can be coerced or ought to be voluntary, and whether rehabilitation can be used as a form of punishment.

The role of agency in desisting has been noted above, as well as issues of motivation and timing on when interventions ought to take place. How does coercion and compulsion fit into these models? Especially, as Lewis point out, when the most effective rehabilitative strategies are voluntary? (Lewis 2005:122) At the same time Lewis has conceded that on occasions voluntariness might neither be possible nor desirable, but argues nevertheless that agency ought to be protected.

In the same way Duff (2005) argues for a model of moral rehabilitation to replace the previous therapeutic one. Similar to the underlying philosophy of restorative justice, Duff argues that wrong should not simply be punished, but the damage to the victim and wider community ought to be repaired. Therefore a 'formal, forceful apology' (2005:19) needs to be made by way of a 'burdensome task', or moral reparation (2003:190). In this process the responsibilization of the offender is protected, as they themselves are involved in the discussion as to what reparation would be appropriate, as indeed would the wider community. Such reparation, Duff argues, would not be an alternative to punishment, but a 'paradigm of constructive punishment'; a model as to what punishment should be.

Moreover such a model would fit in with Raynor and Robison's view (2009:170) of rehabilitation, which is understood not as "the prevention of re-offending, but as the promotion of desistance from offending." Rehabilitation, as argued above, then becomes not something done to the offender, but by the offender. While initially being compelled to be engaged in reparative work, this does not preclude it from becoming beneficial to the offender seeking to make good.

Conclusion

While much research has been conducted over the years as to 'what works' in terms of rehabilitation and interventions, as well as what factors aid the process, desistance research fills in the gaps in regard to why and how offenders come to cease their criminality, as well as give the ex-offender themselves a voice in telling their own story. As such "we now know more about how to help offenders effectively than we did at any time in the past, and we have learned a good deal about the difficulties of making it happen in practice, and a little about how to overcome them." (Raynor and Robinson 2009:172) The research, and implications which come from it, ought to be taken seriously by those involved in policy making and development of practice.

Whether this can happen within the new penology of managerialism, risk and 'what works', as well as a politicised context of punitiveness and incapacitation, remains to be seen. However the Scottish context of welfarism, as well as the desire to reduce recidivism and prison numbers as highlighted in the Scottish Prisons Commission Report (2008), mean that there ought to be some optimism that desistance research may be taken seriously.

Issues of social justice, humanitarian ideals, pragmatic considerations and the hope for the redeemability of all offenders, as philosophical ideals within notions of penology, as well as the possibility for the marrying of desistance principles with the new emphasis on reparation and payback, mean that the research and ideals contained therein should be allowed to impact policy and practice within the Scottish criminal justice system and beyond.

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BOOK REVIEW

Hazel Croall, Gerry Mooney and Mary Munro (eds.) (2010) *Criminal Justice in Scotland* Cullompton, Devon: Willan Publishing (Price: £25.99)

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Croall, Mooney and Munro have set out to address a gap in the current criminological literature with *Criminal Justice in Scotland.* Stating that the book has emerged from a '*shared concern that there is no collection of essays that offer a critical account and interrogation of key issues relating to criminal justice in contemporary Scotland*' (p.vii), the editors have brought together a collection of essays to examine two key themes: 'Criminal justice in Scotland: towards 'detartanisation'?' and 'Criminal justice, social justice and inequalities', the latter argued to be the focus that, coupled with reflection on ten years since devolution, marks this book as different from its predecessors.

The book is split into four parts. The first part 'Thinking about crime and criminal justice in Scotland: Introduction and social context' sets out the rationale for the book and provides the context in which to locate parts two and three: 'Issues in criminal and social justice' and 'Aspects of criminal justice process and practice'. Chapters two and three present information on social inequality in Scotland and outline more general arguments on the unequal process of criminalisation and the increasing 'problematisation' of groups, lifestyles and spaces . Moreover, they set out the core argument of the editors that neo-liberal punitivism has permeated Scottish criminal justice, welfare reform and urban policy.

Part two covers a wide range of issues, beginning with youth crime and justice in Scotland. Chapter four provides an overview of the historical development of Scottish juvenile justice and how it currently operates, with empirical data on patterns of youth crime used to assess the effectiveness of the present system. The authors conclude that the history of juvenile justice in Scotland to date has been characterised buy both stability and change and that there is a need for the findings of Scottish research to feed more visibly into the policy making process in order that the welfarist infrastructure of the

Children's Hearing System be strengthened and not transformed. Chapter five explores issues of gender, crime and criminal justice in Scotland by examining women as perpetrators and victims of crime and concluding that Scotland still has some way to go in both addressing the social conditions that lead to women's offending and victimisation and delivering an appropriate criminal justice response. Although perhaps beyond the scope of a single chapter it seems that there may have been a missed opportunity here to debate masculinity and its role in Scotland's culture, and in shaping crime and justice.

Chapter six looks at race and ethnicity, focusing largely on racist and ethnically motivated violence and the criminalisation of some immigrant groups. Interesting comparisons are made between the policing response to terrorist threats in Scotland and in England, highlighting the different approaches adopted and speculating on the impact these had. Chapters seven and eight explore corporate and environmental crime with a view to highlighting the crimes of the powerful. The analysis of the Scottish response to both is interesting in highlighting the difficulties of a small nation with limited devolved powers in seeking to address these issues.

Part three considers a range of elements of the criminal justice process from policing through to sentencing and punishment, although one noticeable absence is a discussion on the role of the Crown Office and Procurator Fiscal Service in the overall process. Chapter nine presents an analysis of Scottish policing based on themes identified in Michael Banton's (1964) research, which the author argues remain of central importance to modern policing: pluralisation of policing, policing of crime and disorder and police governance. Outlining developments in each of these areas, the author questions whether modern adaptations reflect a distinctively Scottish response.

Chapter ten examines the argument that sentencing and penal decision making have become less distinctly Scottish post-devolution. Increased emphasis on system efficiency and a move towards actuarial justice based on risk are highlighted as two key concerns, but it is noted that moves to introduce greater regulation of sentencing practice in Scotland by similar arrangement to England and Wales have been met with considerable resistance from the judiciary. Chapter eleven outlines the use of monetary penalties in Scotland and the development of community based punishment in Scotland. Key comparisons with recent developments south of the border are made but the conclusion is that it is too soon to tell if the Scottish response will be truly different. Chapter twelve examines the development

and use of imprisonment in Scotland and details the move by the Scottish Prisons Commission to break with penal policy in England and Wales.

Part four presents the final concluding chapter, wherein Scotland's '*particularist view of itself as a more rational, benevolent and equal society than that of the greater power south of the border*' (p.262) and McAra's (2007; 2008) argument that Scottish justice is founded on principles of 'penal welfarism' are challenged. Citing continued social and economic inequality as supporting evidence, the authors debate whether a focus on welfarism as a defining characteristic of pre-devolution Scotland is appropriate. Moreover, McAra is criticised for downplaying inequality in her analysis. Given the evidence presented in the preceding chapters, and that McAra's (2008) argument highlights the importance of locating criminal justice responses within a wider social justice model that recognises inequalities, this interpretation could stand to be debated further.

Perhaps it could be argued that the editors' fundamental argument presents a somewhat pessimistic outlook on Scotland as it currently stands. Perhaps a greater focus on the practitioners at the heart of the delivery of justice in Scotland, and an examination of practice 'on the ground' would have altered this perspective, particularly in light of resistance to the implementation of some of the most heavily criticised punitive New Labour policies in the immediate post-devolution period. Key legislative changes and policy rhetoric may, on the face of it, have led to the appearance that Scotland was indeed heading down the path of convergence with England and Wales, but those practitioners at the core of implementation and delivery did not rush to embrace and adopt the rhetoric and its resultant measures. Empirical research and evaluation on the implementation of Parenting Orders and Community Reparation Orders (see Hutton et al 2008; MacQueen et al 2008; Curran et al 2007), for example, has shown that it was the conflict between punitive approaches to broad social issues on the one hand, and the existing Scottish legal framework, practice arrangements and underpinning philosophies on the other, that led to their lack of use (no POs have been implemented and CROs, never used on under 16s, were abandoned in 2008). Thus, an examination of practice highlights both a pattern of divergence from England and Wales and, it is tentatively suggested, that the welfare oriented underpinnings of practice can, and have, sheltered Scotland to some degree from the worst effects of punitive politics. Greater consideration of practitioner perspectives may have changed the overall tone of the opening and concluding arguments.

Overall, this collection fulfils its ambition of addressing a gap in the criminological literature and will be of particular use to newcomers to criminology and the Scottish perspective. For those already familiar with this perspective the collection raises interesting questions and points to areas where future research and thought is merited, for example the location of Scotland in a global context subject to forces of power and inequality that transcend national boundaries. Moreover, key similarities and differences can be drawn out here with the potential for wider comparative analysis to be undertaken to further our understanding of the issues raised.

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SASO – Objects, Membership, Office Bearers, Branch Secretaries and Chairman's Report

Objects

The formal objects of the SASO are: "to initiate, encourage and promote as an independent Scottish body, study and research by all means into the causes, prevention and treatment of delinquency and crime, and to co-ordinate and consolidate existing work of that and the like nature, and to give publicity to such work, and to secure co-operation between bodies, association or persons engaged in any research or work or activity having objects similar or akin to those of the Association".

The Association is managed by a Council. There are branches in Aberdeen, Dumfries, Dundee, Edinburgh, Fife, Perth, Glasgow, Lanarkshire, and in Orkney & Shetland. Each branch carries out its own programme of meetings and local conferences. The Association organises a residential conference each year on the third weekend in November. It is Scotland's main criminal justice conference and attracts distinguished speakers from both within and outwith Scotland.

The basic aim of the Association, both nationally and locally, is to create a common meeting ground for the many professional groups and individuals interested in the field of crime and criminology. The membership is drawn from the Judiciary, the Legal Profession, the Police, the Prison Service, Social Work Services, Administrators, Academics, Teachers, Reporters to Children's Panels, Children's Panel Members, Doctors, Clergy, Psychologists, Prison Visiting Committees, Community Justice Authorities, Central and Local Government. It provides an opportunity for an exchange of views by its members, enabling them to explain their own problems and to appreciate the problems of others engaged in related fields. SASO has no agenda other than to make possible and encourage purposeful dialogue within the Scottish criminal justice system in ways which will contribute to its improvement.

Through study groups and conferences, communication between the professional groups is encouraged and individual members gain the opportunity to meet experts in different fields of study, and to discuss with

them matters of mutual interest. In the working parties it is possible for the members to contribute their own specialist knowledge or experience. Among the most valuable results of membership are the opportunity to meet and know others with whom it may be necessary to make contact during the course of one's professional life, and the consequent building of trust and confidence between members.

Membership

SASO has around 400 members. Those wishing to join should contact the Administrator, Irene Cameron, Association Management Solutions, PO Box 2781, Glasgow, G61 3YL. 0141 560 4092 icameron@a-m-s-online.com. Website address: www.sastudyoffending.org.uk

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Chairman's Report 2009-2010

Introduction

This is my fourth report to SASO. I am pleased to report that it has been another very successful year. The work of the Council seems to be primarily that of organising the National Annual Conference, ensuring healthy finances and supporting where necessary the work of the Branches. No sooner is one conference over then we are already heavily engaged in planning and organising the next. What made last year special was that it was our 40th Anniversary Conference – though if the truth be told, the inaugural conference of ISTD (Scotland) [The Institute for the Study of Delinquency] our predecessor organisation through two iterations ago, was held in September 1967. Nevertheless we celebrated 40 major conferences – a feat for any organisation.

Through our Branch activities and national conference we bring together many of those involved in the justice system within Scotland. Our membership continues to remain strong, at just under the 400 mark, and as we know, many more individuals attend our meetings and conferences which are also open to non-members. Our Administrator, Irene Cameron, is working through the membership list, updating details and attempting to modernise the membership subscription system, and we are attempting to get the tax back through gift aid as well!

National Conference

The theme of our 40th Anniversary 2009 Conference was "*From Kilbrandon to McLeish and Beyond: 2020 Vision?*" and this turned out to be a very successful and enjoyable event. Again, my thanks go to Niall Campbell, Eilidh Murray, Alasdair McVitie, Dan Gunn, Elizabeth Carmichael, Margaret Small, Cyrus Tata and others whose organizational skills and attention to detail proved so effective; and of course, to our administrator, Irene Cameron. Conference began with a drinks reception hosted by Lothian and Borders CJA. Following an Anniversary commemorative photograph, we held our Conference Dinner on the Friday night. We received a scintillating talk from our after dinner guest speaker Mangnus Linklater FRSE. We also awarded our first SASO Student Essay Prize to Fiona Jamieson for her dissertation: *'Exploring Judicial Sensibilities: A Narrative Approach'*. The Judges were the three co-directors of the Scottish Centre for Crime and Justice Research, Professors Burman, McIvor and Sparks.

The Rt Hon Elish Angiolini QC, Lord Advocate, chaired the main conference on Saturday and Sunday. Keynote addresses were given during the first morning. The first, which also established the SASO Memorial Lecture, was dedicated to honour the memory of Lord Philip Caplan QC (1929-2008), SASO Honorary President and Life President. This was given by Professor Dirk van Zyl Smit on *European Penal Policy and National Penal Practices – Lessons for Scotland.* The Second was delivered by Professor Bill Whyte on *The Future of Children's Juvenile Justice in Scotland.*

Researchers provided a session – Professor Fergus McNeill on *Recollecting the Past, reforming the Present: Lessons from oral histories of Scottish Probation* (in which, due to audio technical problems Fergus provided his own 'voice over' to a video). Professor Lesley McAra talked on *The Future of academic research in Scotland.*

In the afternoon this was followed by an interactive workshop on the issue of "*Media, crime and punishment in contemporary Scotland"*. Professor Mike Nellis led the workshop, with help from Lucy Adams of *The Herald,* Reevel Alderson of *BBC Scotland TV,* Elizabeth Cutting from the Scottish Courts Service and Tom Fox of SPS.

The final session on Saturday was a Round Table Discussion "*Sentencing: whose business is it anyway?* This was chaired by Baroness Veronica Linklater. Panel members were Professor Neil Hutton, John Scott, Sheriff David Mackie, Paul Morron and Dan Gunn. Elish Angiolini then closed conference for Saturday.

The final morning, Sunday, saw three keynote addresses: John Dunn on *Direct Measures:Options available to the Procurator Fiscal*; Jane Martin on *Payback and the future of Criminal Justice Social Work;* and Chief Constable Stephen House on *The future of crime and policing in Scotland.* In conclusion, Elish Angiolini then briefly summarised conference.

Although this was a successful conference, there were concerns about the quality of catering, the conference hall and audio visual matters, and a general feeling that the venue was 'tired'. Neither was it central and easily accessed. The Council, which had continued the tradition of Peebles for many years decided that a new venue and format might be more appropriate. The 2010 Conference will implement this.

Branches

The national conference at Peebles is our single largest event, but throughout the year our local Branches provide a wide variety of lectures, debates and day conferences. These events provide an important local meeting place for those involved in the criminal justice system.

Glasgow's Branch continued to do exceptionally well, starting the year with an excellent debate on *This House Believes that a safer Scotland requires more Police Surveillance*. Then holding a series of 4 lecture evenings and concluding with an excellent one day conference on *Is Scotland Protecting its Children?* in May. All these events are well attended and well organized and Sheriff Rita Rae, Jackie Robeson, Donna Redfern and their team are to be congratulated.

The Edinburgh Branch under Sheriff David Mackie has also met on a number of occasions, with well attended meetings. It now has new organisational support and has a full programme.

The Fife Branch has continued to be very active with the support of Bill Kinnear and Sheriff Brian Donald, now Sheriff Peter Braid.

In the south, the Dumfries and Galloway Branch also continued with an excellent programme of 8 meetings. Bill Milven and Amanda Armstrong run the Branch and arranged an interesting range of topics during the year. A further programme is underway.

The Lanarkshire Branch with new Chair Sheriff Shiona Waldron, Deputy Chair Bill McKinlay and Jim O'Neill are also active.

In Perth under new leadership of Chief Superintendent Matt Hamilton continues to do well. The Branch held some meetings last season and continues to attract audiences with a varied diet of lectures. Elidh Murray retired as Branch Secretary due to declining health, and there is a vacancy for this post.

Dundee Branch is now operational and supported by Chairman Sheriff Alistair Duff, and Jane Martin.

Niall Campbell is working with members in Aberdeen to re-vitalise the Branch there. Progress has been made and a programme is expected for the next year.

All Branches are to be praised for the excellent work they undertake locally in providing events and a venue for those working in the criminal justice system to meet. I apologize for not listing all events.

Council

Since the last AGM Council met at Conference in November 2009, and on 4 occasions (January, April, and May at SCRA in Glasgow, and in October in Edinburgh) to undertake the work of SASO and to plan for the November 2010 Conference. I am grateful for the support I have received from council and its office bearers. Irene Cameron, our administrator attends council meetings. Our regular attendees are Niall Campbell, Dan Gunn, Eilidh Murray, Alasdair McVitie, Margaret Small, Elizabeth Carmichael, Bill Milven and Cyrus Tata. Fergus McNeill and Sheriff Rita Rae have also attended. The work of Conference organisation is now undertaken by most members. Elidh Murray attended regularly representing Perth Branch. Unfortunately declining health has meant that Eilidh has ceased to attend, although she still supports our work. We wish her well.

Finance

Our finances continue to be very healthy, and last year we were fortunate in 'washing our face' from the conference. The conference is our principal source of income and we need to ensure that we cover the running costs of the organization. We were also fortunate to receive a small grant from the Scottish Government Justice Directorate to enable us to help reduce costs for those wishing to attend conference who come from the voluntary sector or are involved with the CJS or SASO in a voluntary capacity (and not in full time employment). Without it we would have made a loss. We are pleased that a similar arrangement, to subsidise some places, will be available to us for 2010. As ever, our Treasurer, Alasdair McVitie, manages our financial affairs and reports to Council on our accounts. I am very grateful to him for his prudent financial management.

Journal

Volume 16 of The Scottish Journal of Criminal Justice Studies was published by SASO in July 2010. It continues to be an excellent publication under the new editorship of Professor Michele Burman. Professor Jason Ditton took over the task of editing the Journal in 1990. We thank him for a tremendous job over a 20 year period. The Journal is gaining in reputation and has an

Editorial Board of Scottish academics to support its work and maintain standards. My thanks to the Editorial Board as well for their excellent work. The current volume contains the conference paper given by Professor Dirk van Zyl Smit as the Memorial Lecture to Philip Caplan. It reproduces the winning student essay by Fiona Jamieson, and two original articles, one by Furzana Khan and Bill McKinlay, the other by Professor Mike Nellis. Our thanks go to the editor and her team.

Website

The website of SASO is an important window through which others can find out about the organisation, its aims and the activities of Branches. This was developed in 1996-7 by Mary Munro, and she has continued to support our work by keeping it up to date and referencing in links through her own CJScotland web site. We continue to sponsor their 'events' page and we have our logo and hyper-link placed on this page. SASO welcomes ideas for the web site, and Branch Secretaries and Chairs can submit direct to Mary Munro and Irene Cameron items for inclusion. We are continuing to think about how we can improve the site – and our public image.

Alec Spencer
Chair, SASO Council
16 November 2010

- To encourage and promote **study and research** into the causes, prevention, effects and treatment of, and respond to delinquency and crime.
- To promote **co-operation** between bodies, or persons engaged in any research or work or activity having objects similar to those of the Association.
- To **create a common meeting ground** for all professional, statutory [and YOl] groups and individuals involved in crime and Criminal Justice.