

SACRO Lecture, 4 November 2010:

“Getting the Balance Right”

- Thank you Esther (*Roberton, Chair of SACRO*).
- Ladies and gentleman. I am proud of what Scotland is achieving in criminal justice.
- Crime in Scotland is at the lowest level it has been for over 30 years.
- In the last three years Scotland has taken steps forward towards a system that will do both those things. Those steps are an achievement by the entire criminal justice sector. They will I believe help transform our justice system over the years to come.
- Often we focus on the nastiest crimes and the hardest cases, for obvious reasons. But they are not what touches most people’s lives directly as far as criminal justice is concerned. After all, almost three quarters of the prison sentences handed down by Scottish courts are for six months or less.

- So tonight I want to look at how we deal with those who are guilty of less serious offences, who start by being a nuisance and a bother to communities but who can become in time a threat and a danger to them.
- What are our aims, as a government, in dealing with these minor offenders? It is not to be soft on criminals or to give them privileges and opportunities others do not enjoy. Though I am yet to meet an individual queueing up to enter these institutions.
- As an extension of that, I do not think we should focus on punishment at the expense of rehabilitation.
- Our detailed aims for dealing with offenders are set out as outcomes of the Scottish Government's reducing reoffending programme. Here are some examples:
 - First: we aim to ensure the availability of effective community disposals across Scotland, to improve public confidence in these disposals, and to reduce reoffending.

- Second: We aim to ensure the effective management of offenders who get custody, including rehabilitation, and appropriate arrangements for risk management to reduce prisoner numbers and reoffending.
- Third: we aim to ensure effective re-integration into the community by ensuring that the employment, health, accommodation and other needs of offenders are being met.
- That is not a complete listing of the programme's aims. But it shows that, in short, our aim is to stop offenders from reoffending.
- To achieve that we will do whatever experience and professional expertise suggest we should do, and whatever resources allow us to do.
- What has been shown to work is community sentencing. The statistics are well known but bear repeating: 72% of those sentenced to short prison sentences are subsequently reconvicted within 2 years. Only 42% of those sentenced to

a community service order during the same period are reconvicted within two years.

- These statistics are not one-offs. They are consistent - in Scotland, and in other countries, it is well established that making an offender work in the community, for the betterment of that community and of him or herself, is a much better option than putting that same individual in jail for a few weeks.
- It is not often, or traditionally has not been often, that I agree with Kenneth Clarke on justice matters. But he was dead right when he announced the UK Government's review of sentencing in June this year and he said, "...we're looking at sentencing, not starting just from let's have more people in prison, let's have fewer people in prison..... but what actually works."
- Let's be clear. Prisons are necessary. For serious offences and offenders it is the right place. Even for less serious offenders there may be particular circumstances which indicate that a short spell in prison is the only appropriate option. That is a matter for the bench and we

have always been clear that we will leave sentencers that option.

- Nevertheless I believe that our success in getting a presumption against short sentences onto the statute book in Scotland is one of this government's significant achievements.

- To be more accurate, it is a significant achievement by the criminal justice sector in Scotland. Many of you have been involved in this debate and have given support at crucial moments. It is only because we have been speaking as one that we have been able hold our nerve, and to make the progress we have.

- The outcome - a presumption against sentences of three months or less - is not exactly what we wanted and is not I imagine what some of you wanted either. A presumption against sentences of six months or less would have been preferable. But politics is the art of the possible, and it seemed that the six month presumption was not possible, for now.

- I do believe that in future, with experience of the presumption and improved community sentencing, we will return to Parliament and argue again for something stronger.
- In the meantime, we have done what we can do, and even this modest step is leading the way in the UK. Key members of all the main political parties and professional bodies have acknowledged it. England and Wales may follow along the path we have opened up - we shall see.
- But Scotland has given a lead and I believe that these reforms reflect the changing views of Scottish society, which now acknowledges that locking people up for short periods is not the best way to make our society safer.
- It is a common misunderstanding that we introduced the presumption against short prison sentences because we thought that courts would stop sending people to prison and so it would have the effect of reducing the prison population.
- That is not true. I do think we could have a better justice system with a smaller prison population - but I am not naive

enough to think that the presumption against short sentences will in itself reduce the prison population, or not by that much.

- It's about a coherent penal policy. Our aim is to reduce the prison population by reducing recidivism. We do that by getting better outcomes for offenders and communities before they get established in offending careers. We get those better outcomes by using what works. And what works is community payback.
- As you will all I hope know, we have created an alternative to short prison sentences for courts in Scotland to use: the community payback order.
- Indeed, I know that many of you are keenly waiting – it says here - to know when the community payback order will be brought into operation.
- During the political debate about short prison sentences and about the community payback order, some people were keen to accuse us as a government of being too much about rehabilitation, and not enough about punishment.

- At the same time, I know that the focus on reparation in the political and media debate made some people, professionals in criminal justice social work, uncomfortable as they sensed that punishment, in particular unpaid work, was likely to be the focus of future community sentencing.
- But the Scottish Prisons Commission led by Henry McLeish was clear, as we are clear, that payback is about both reparation and rehabilitation.
- The best kind of payback should benefit communities and rehabilitate offenders: that is the philosophy of the community payback order.
- And the approach of the community payback order should be a source of reassurance to community justice professionals. Because one of the changes which it will implement will be to ensure for the first time that punishment is never the sole option for a case manager dealing with someone on a community sentence.

- Professionals will always be able to propose rehabilitation as part of a community payback order, and whenever an order is imposed as a punishment, there will be the explicit opportunity for the case manager to pursue elements of rehabilitation too.

- I have had the chance over the last year to visit some great examples of community service and unpaid work. From snow clearing last winter to gravestones in Liberton to beach cleaning in Stranraer and most recently the Almond Valley Heritage Centre in Livingston just a couple of weeks ago, Fergus Ewing and I have been seeing ourselves what unpaid work can do for communities.

- I spent a fantastic hour with folk at a community centre in Greenock last month hearing about how they had benefited from having community service teams come and do work for them.

- We all understand that unpaid work is the punishment part, the reparative part, of a community sentence. That is fine. But I have seen a lot of what unpaid work can do for offenders themselves as well as for communities.

- When I was in Livingston, just two weeks ago, a grandfather who was close to finishing the community service order he had received for stealing a car said that he was getting new skills and job satisfaction from the work – that he could bring his grandchildren there and show them what he had done to help the community.
- Not every offender reacts that way. But the lady who says thanks to a squad of offenders who paint her hall, or the youth group which does the same when a community service team fixes up their hall, may be offering these offenders a word or sign of appreciation and self-worth that comes to them only rarely. That can be a valuable part of rehabilitation too.
- It's important that we recruit people like I met in Greenock, among the wider Scottish public, to be advocates for community sentencing. We have been doing a bit better at publicising the benefits of community service. If we are going to increase public awareness of, and understanding and confidence in, community sentencing, then we've got to get a lot better at it.

- Unpaid work can often be made visible to the community. It is genuinely harder for the public to see and for professionals to demonstrate the success of other interventions designed to rehabilitate an offender. We've got to get better and bolder about demonstrating the value they provide.

- Whether it's improving employability, or starting people on the road to literacy, or addressing alcohol or social problems for the first time: this is vital stuff.

- Unless social workers and others do these things, we will just be cultivating future long term clients for our prisons. And we will be abandoning minor offenders - a not insignificant proportion of our society - to chaos and waste.

- Where we want them is not in jail, where they are a financial and social burden to society, but playing their part as productive, responsible citizens.

- This is one of the areas where the third sector can play its most valuable role. The third sector provides specific skills

and knowledge to enable these interventions. It can be sometimes a trusted contact for an offender when the face of authority doesn't work. It can provide rapid responses and flexibility that's harder for government to do when circumstances change and new challenges emerge.

- As we are being hosted by SACRO this evening I turn to them first when I offer plaudits for what they do; but others should not feel offended - our appreciation is no less to others in the sector.
- Now, it is easy, some of you will be saying under your breath, to hand out warm words: but we need a guarantee that the resources are going to be there to back that up - to make sure the community payback order is a success and that the third sector has its full chance to participate in implementing it.
- I know that the uncertainty about future financing is difficult for you and your organisations. We are moving as rapidly as we can to translate the outcome of the UK Spending Review into a Scottish budget, and will be publishing that draft budget later this month.

- The process of arriving at a budget involves serious and difficult discussions with officials and ministerial colleagues. It is not lost on me as I conduct those discussions that there are major challenges facing community justice professionals.
- There are new outcomes and standards to be implemented, a new community sentence to put into practice, new processes to put in place, and new systems to effect.
- All this comes at a resource cost, in people and money. A criminal justice manager in Inverclyde told me last month that Scottish Government training for her staff was in effect going to have them all out of the office for around two weeks between then and Christmas. We don't underestimate these demands, and we are doing our best to support the sector.
- I am personally committed to making sure that in the Scottish budget we get the best outcome possible for this sector.

- And to making sure that the resource of skill and commitment that possess remains part of all our work.
- As well as getting the best deal we can, though, we also have to make the best of whatever deal we get.
- We need to do things differently at all levels. We cannot simply ask you to do more for less. If we carry on doing what we've always done, in the way we've always done it, we won't get any change.
- We are willing to look at what flexibilities there might be in the system to make it easier to spend money on local community justice priorities.
- I know you recognise that in many cases there are process improvements and efficiencies to be had in the criminal justice system too: ways to make things more efficient and more effective. We need to identify those opportunities and get them implemented.

- Much of that will happen in the context of the community payback order, and I return finally to the philosophy of that order.
- You might not have realised it if you'd simply read the media coverage and the parliamentary debates, but the new legislation tells its own story, which is that Scotland wants more of what you do.
- The community payback order will call on social workers, third sector workers, unpaid work supervisors, and other practitioners to use their professional skills and judgment more than ever in identifying what might be the right interventions for an offender and in carrying out the court's disposals in the way you think right.

The community payback order is a vote of confidence in community justice.

