

Submitted to Bail and release from custody arrangements in Scotland
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Questions 1-9 (page 1 of 4)

1 Which of the following best reflects your view on the changes proposed regarding when judges can refuse bail?

I agree with the proposed change, so that judges can only refuse bail if there are public safety reasons for doing so.

Please give reasons for your answer:

The Scottish Association of Social Work (SASW) is part of the British Association of Social Work (BASW) the largest professional body for social workers in the UK. BASW UK has 22,000 members employed in frontline, management, academic and research positions in all care settings. There are over 10,000 registered social workers in Scotland around 1,500 of whom are SASW members. This comprises staff working in local government and the independents sector, across health and social care, education, children and families, justice services, as well as a growing number of independent practitioners. SASW's key aims are:

- Improved professional support, recognition and rights at work for social workers.
- Better social work for the benefit of people who need our services.
- A fairer society.

In preparing this response we consulted with members of the Association, particularly social workers with extensive experience of working in justice services. Our comments reflect the views of frontline social work practitioners. SASW wishes to stress our overall support for the suggested changes to Bail and Release from Custody arrangements in Scotland. We support the focus on rehabilitation and community support for reintegration.

While reforms to bail and release from custody are crucial, we believe that they alone are not sufficient to reduce the prison population, reduce future offending and therefore further trauma to victims. The whole system requires close inspection, both within prisons and communities, to review how every part of the justice system works together for maximum benefit. Furthermore, the real solution to reducing crime and the prison population lies in addressing the reasons people offend, addressing poverty and inequalities and providing community supports so that people can live fulfilling lives without resorting to criminal activity.

We believe that if a person is on bail pending trial there must be a time limit on how long they and the victim(s) are obliged to wait for a resolution. Given concern about current long waiting times, granting of bail without time limit would raise concern. There should be consideration of a time limit on bail, and what will happen if the case has not been dealt with fully within that time.

Consideration must also be made of the way trials have evolved during the pandemic and the increasing use of online court cases. Our members have noted inconsistencies across parts of Scotland, with long term delays in some areas. Any changes to process around bail and custody must take account of the likelihood of continued hybrid measures to hear cases.

Since covid there has been a greater reliance on duty solicitors. This raises more concern if there are going to be trials going ahead without the accused being present. People should be able to get the best possible, consistent representation. Being allocated a duty solicitor every time there is an intermediate diet, or a continued trial does not give the accused the best opportunity for to defend themselves.

Our members have reported seeing increasing delays in trials because of difficulty obtaining legal aid. Even when situations look straightforward, complications seem to emerge which delay the process. These additional factors must be taken into consideration in any proposed changes to bail and remand.

Currently the complexity of cases and the number of people who fall through gaps seems to be growing. The people living in the most complex situations are the ones most likely to be refused bail, and everyone involved in the system must have a clear understanding of that and work in a joined-up way for the system to be effective. Social workers may already be involved doing with other issues facing the accused, for example homelessness or issues around substance use.

If this change is to go ahead it must be accompanied by a fundamental change throughout the whole justice system. There is opportunity to improve the whole picture of justice for both offenders and victims.

2 Which of the following best reflects your view on the changes proposed regarding how judges consider victim protection when making decisions about bail?

I agree with the proposed change, so judges should have to have particular regard to the aim of protecting the victim(s) when making bail decisions

Please give reasons for your answer:

In every part of the judicial process the impact on victims must be considered. There is a perception amongst our members that victim's voices are often lost within the system. Victims are often traumatised, and unsure about the process of the justice system and who to ask for support. When bail is granted there should be a mechanism to ensure victims are kept informed as to the reasons, the length of time and of how the case progresses to trial. As cases increasingly appear to be postponed, it becomes more imperative that victims are kept informed and offered appropriate support to understand the process. The lack of information victims currently receive, including those on the vulnerable witness scheme, remains of concern.

3 To what extent do you agree or disagree that the court should be empowered to make decisions on the question of bail in all cases using a simplified legal framework?

Somewhat agree

Please give reasons for your answer:

The framework should be expanded to consider timescales and contingency arrangements if those timescales are not met. Would a significant delay mean that the case would collapse, or would the person then be able to apply for bail, for example?

People who have not been convicted of a crime should not be kept in custody without limit of time. A framework must be based in human rights and fair treatment. Currently, when someone has precarious housing situation, our members report they seem much more likely to be remanded. It appears they are being treated more punitively on the basis that they do not have a home. This builds discrimination into the justice system.

Often these people are represented by duty lawyers with whom they do not have an ongoing relationship. This may be problematic where a person's history and circumstances are complex, SASW members are concerned that legal and civil rights may be eroded in the judicial process if someone does not have a fixed address or has insecure immigration status.

Social workers often have information about people in these circumstances which is not currently routinely sought when making decisions.

4 Judges must give reasons when they decide to refuse bail to an accused person. Which of the following best reflects your view on how those reasons should be communicated?

I agree with the proposed change, so judges must give reasons both orally and in writing

Please give reasons for your answer:

Having decisions clearly presented and recorded will help increase transparency and public confidence in the justice system. Having data recorded will also help with analysis of decisions on bail and perhaps go some way to improve consistency. A formal record of decisions will also support better information being available to victims.

5a When a court is considering bail decisions, which of the following options do you consider preferable.....in cases where the prosecution opposes bail?

The court must ask for information from social work. Social work must provide it

Please give reasons for your answer:

Social workers often hold information which should be considered as part of any assessment of bail. Some of our members were surprised to hear that providing information to the court in these situations was optional.

Developments in this area, however, will need adequate resource to avoid additional pressure on already stretched social work teams. Our members asked whether extra money that was available during covid will be targeted at this and at bail supervision.

There are examples of that money being used in some areas to employ staff in areas such as diversion, which is reported as helpful. For example, there is a new Enhanced Bail Team in Fife Council. An enhanced assessment is carried out on everyone who might be considered for bail and a recommendation made as to whether bail is suitable. Support is then provided to those who are granted bail. Schemes such as this present increased opportunity to reduce numbers of people on remand.

5b When a court is considering bail decisions, which of the following options do you consider preferable.....in cases where the prosecution is not opposing bail?

The court must ask for information from social work. Social work may decide whether to provide it

Please give reasons for your answer:

If the prosecution is not opposing bail, the court is comfortable with the person being bailed. As in our answer to 5a, social workers often hold information useful to decisions about bail.

If bail should only be refused where there are issues related to public safety, there is an implication that responsibility for opposing bail lies with the Procurators Fiscal. As courts may be asked to note the rationale for opposing or otherwise, it seems reasonable that Fiscals should be required to also state clearly why they are or are not opposing bail. There is no reference to the role of the Procurator Fiscal in the consultation document. All parts of the decision-making processes should be transparent including recommendations around public protection and the upholding of human rights for victims and people who are accused.

6 To what extent do you agree or disagree that courts should be required to consider electronic monitoring before deciding to refuse bail?

Strongly agree

Please give reasons for your answer:

SASW agrees with the requirement for courts to consider electronic monitoring, in line with the principle of keeping the prison population to a minimum and reducing the negative impacts of time spent on remand. However, such a consideration would require a robust assessment of suitability and there is a danger this could result in delays in court processes.

There are other considerations that need to be taken into account. For example, in certain homeless accommodation the EM equipment cannot be used. Would this mean people using such accommodation would not then be deemed suitable for bail? We would not like to see situations where people were

refused EM based on it not being practical because of their disadvantaged circumstances. Places of work might also not be able to accommodate the equipment, for example shifts or offshore. We would want to avoid situations where an assessment of EM being not appropriate is the same as saying 'therefore they should be remanded.'

7 When a court decides to refuse bail, to what extent do you agree or disagree that they should have to record the reason they felt electronic monitoring was not adequate in this case?

Strongly agree

Please give reasons for your answer:

SASW agrees that a record should be kept, in the interests of transparency and accountability. However, there would be concern if the record was to follow someone throughout future dealings with the court. An assessment should relate only to the case at hand, and not be automatically applied if the person finds themselves back in court. Assessments which inform the decisions must always be current.

8 To what extent do you agree or disagree that time spent on bail with electronic monitoring should be taken into account at sentencing?

Somewhat agree

Please give reasons for your answer:

SASW, in consultation with members, can see the merit of time spent on bail on electronic monitoring (EM) being considered at sentencing. However, we would warn against the creation of a mindset whereby if a person has been bailed on EM then a custodial sentence becomes more common. EM itself does not provide any social supports to address the offending behaviour.

If someone is on bail with EM for 6 months and then receives a 3-month sentence, in this scenario the person is released from the justice system. However, no support has been given to address the risks related to the decision to use EM. This relates back again to robust social assessment reports to make clear the support the person could benefit from.

9 If time on electronic monitoring is to be taken into account at sentencing, to what extent do you agree or disagree that there should be legislation to ensure it is applied consistently?

Somewhat agree

Please give reasons for your answer:

Consistency is an issue across the justice system in Scotland. Legislation is only one way of ensuring this. SASW believes that legislation should not generally be used to manage guidance that is not followed as there may be harmful and unintended consequences. However, we note that guidance to date has not been able to deliver consistent decision-making.

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10 Please use this space if you would like to make any comments about the idea of a law in Scotland that would prevent courts from remanding someone if there is no real prospect that they will go on to receive a custodial sentence in the proceedings.

Please provide your comments:

While we can understand the rationale behind this, it is difficult to envisage how this could be legislated and whether that would have the intended benefit. Ideally there should be enough guidance, checks and balances within the courts to ensure this does not happen. In addition, there is concern that such legislation could reduce the Court's range of decision making which might serve to increase risk for some victims of certain types of crime, for example domestic abuse. Transparency about decision making and clear records may be enough to promote a more consistent approach.

11 To what extent do you agree or disagree that legislation should explicitly require courts to take someone's age into account when deciding whether to grant them bail?

Strongly agree

Please give reasons for your answer, if you agreed, how do you think age should be taken into account when deciding whether to grant someone bail?:

SASW is keen that the age of a person should absolutely be considered. This would be in keeping with the UNCRC and The Promise. Cognitive maturity of young people must be taken into consideration in an assessment that looks at the social supports the person may benefit from. ('The development of cognitive and emotional maturity in adolescents and its relevance in judicial contexts'
<https://www.scottishsentencingcouncil.org.uk/media/2044/20200219-ssc-cognitive-maturity-literature-review.pdf>)

Courts already must request a comprehensive assessment if they are considering a custodial disposal for a young person. The same ought to apply for young people when bail is under consideration. Assessment needs to address community resources, including a safe place to live and the need for family support and connection for young people.

12 In principle, to what extent do you agree or disagree that courts should be required to take any potential impact on children into account when deciding whether to grant bail to an accused person?

Strongly agree

Please give reasons for your answer. Do you have any comments on how such a requirement could best be brought in?:

Impact on children must always be considered. SASW hopes this is being done anyway. A robust assessment process will consider public protection, the nature of the offence, and how it impacts on any children involved. It could also open a wider opportunity for support for children.

This impacts particularly women remanded to prison but assessments should be inclusive of all parents, including fathers and single fathers. Assessment should also consider the supportive role played by other adults involved in children's lives, for example grandparents or family friends. This is where a comprehensive social work assessment could be particularly useful. We know family situations are complex, and, if we are to deliver The Promise, we must look at the whole family in considering the best course of action for children.

In the interest of considering all perspectives, we should also consider situations where it might be in the child's best interests for bail to be refused, for example in a domestic abuse situation where imposing bail might increase trauma and risk for the child(ren).

Such a requirement would need to be accompanied by clear guidance. It would require engagement with Sheriffs and courts, so they are fully aware of why this is necessary.

The welfare of children should be paramount in all public decision-making.

13 To what extent do you agree or disagree that, in general, enabling a prisoner to serve part of their sentence in the community can help their reintegration?

Strongly agree

Please give reasons for your answer:

We agree with this. However, it raises questions about the developments this would require in terms of system change and increased resource. This would involve fundamental change to how sentencing looks and works, and how the current sentencing framework is understood and implemented.

In terms of long-term sentences, people are already able to serve part of their sentence in the community. However, our members note that spending part of a sentence in the community alone does not necessarily promote reintegration. For this to be a mechanism which actively supports reintegration, it will need to be accompanied by services and supports which are readily available to people. Members raised concern that currently such supports are not readily available, with particular challenges in rural and remote communities.

Release from prison can be a time of great stress and many people find themselves in crisis shortly after their release. Given that we know that 30% of people leaving prison end up in homelessness services this change could result in a stronger throughcare approach which could reduce crisis and the risk of further offending. Currently people have to request throughcare support (unless on sentences of more than 4 years or less for some sex offences) which puts the onus on them. If sentences were finished in the community, this might provide an opportunity to recognise that a prison sentence without social support is a significant and disruptive event which can exacerbate the conditions for further offending rather than reducing it over the longer term.

Additional points to note are:

- Making this kind of decision at the point of sentencing would add another dimension to the justice social work report. It would be difficult to try and envisage what support might be available to someone at, say, a year down the line when they become eligible to return to the community. This would mean that future updated assessments would be necessary.
- Justice social work teams do not have the capacity and resource to provide additional assessment or support services currently. If these measures were introduced without appropriate resource, this would lead to a huge increase in workload and consequently a deterioration in the quality of service and in worker well-being and retention.
- The links between justice social work and adults' social services should be explored to ensure that people in the justice system are really supported to move away from future offending. Mental health, substance use, homelessness, neurodiversity and learning disability all feature highly in the justice system. Governance in local authorities and health and social care partnerships that splits justice and adults into effectively separate organisations does not always support an integrated and effective approach between departments.
- The role of the Third sector should be considered as part of any adjustments to this part of the justice system
- Clarity is needed about what support systems for reintegration would look like and who would be eligible for it.
- Local authorities will require an efficient mechanism for knowing about people being released in good time, in order to prepare. Currently social workers do not always know who is being released back into their area. Even when they are aware, people are not obligated to return to that area, and may go wherever they choose.
- Release from prison can be a time of great stress and many people find themselves in crisis shortly after their release. We know that 30% of people leaving prison end up in homelessness. Anyone can request voluntary throughcare but the reality appears to be that very few do.

14 What mechanisms do you think should be in place to support a prisoner's successful reintegration in their community?

Please provide your comments:

In the spirit of successful reintegration, thereby reducing re-offending and increasing public safety, SASW believes that throughcare should not be voluntary but should be part of sentence and part of every process of release. As a minimum, people should leave the prison setting with a clear home defined for them, benefits or work and a reliable pharmacy prescription and access to primary health care. A community sentence plan would look holistically at the social and wellbeing needs of the person and link with adult social services where that would be helpful. This has significant resource implications but would be the best way to reduce post-release crisis and return into the justice system which so often happens.

See Q13 above.

15a Do you agree that through good behaviour, or completing education, training and rehabilitation programmes, prisoners should be able to demonstrate their suitability for.....early release?

Yes

Please give reasons for your answer:

SASW agrees with this in line with the principle of people only being in prison if it is absolutely necessary. However this would need to be considered alongside other aspects such as residual risk and capacity to engage with services that will reduce re-offending.

A significant concern about the completion of education, training or rehabilitation programmes being a foundation for demonstrating suitability is that prisons are not currently able to provide programme work to everyone who might benefit. There needs to be more clarity about the expectations of the provision of programmes in prison and how they can be made consistently available to everyone who might benefit. SASW members note that when long-term offenders currently appear before the Parole Board, they often are not released as they have not been able to complete programmes.

15b Do you agree that through good behaviour, or completing education, training and rehabilitation programmes, prisoners should be able to demonstrate their suitability for.....the ability to complete their sentence in the community?

Yes

Please give reasons for your answer:

As with our answer to 15a, in line with the principle of people only being in prison if it is absolutely necessary, this should certainly this should form part of the assessment for serving the remainder of a sentence in the community. However, this would have to be as part of an a holistic assessment which includes other aspects such as residual risk and capacity to engage with services that will reduce re-offending.

As in 15a, a significant concern about the completion of education, training or rehabilitation programmes being a foundation for demonstrating suitability is that prisons are not currently able to provide programme work to everyone who might benefit. There needs to be more clarity about the expectations of the provision of programmes in prison and how they can be made consistently available to everyone who might benefit. SASW members note that when long-term offenders currently appear before the Parole Board, they often are not released as they have not been able to complete programmes.

16 Do you have any comments on how you envisage such processes operating in the Scottish justice system? Who should be able to earn opportunities in this way? What risks do you see with either of these approaches, or what safeguards do you feel would need to be in place?

Please provide your comments:

As stated above (question 15) there is concern about the capacity of prisons to provide these programmes. If they are provided and a person serving a sentence completes them, the impact on the person must be thoroughly assessed by an appropriate professional to determine whether the person needs to undertake further programmes. Clarity about decision-making and accountability will be core to this. Again, there would be resource implications.

Public protection and risk management are complex areas and will need to be considered. The impact on victims should not be underestimated particularly for crimes of domestic or sexual abuse. Transparency of decision-making and clear lines of communication and accountability will be important for victims.

Any change in policy regarding early release needs to be communicated properly to the public. Clarity about the processes and safeguards in place will help ensure public confidence in the justice system is not undermined. Human rights impact assessments could contribute to ensuring the rights of victims and their families are protected and upheld when considering early release.

We know risk assessments can be completely different when done in prison compared to when back in the community. Domestic and sex offenders tend to score low on certain risk assessments often are seen to behave quite well in prison. Some members suggest that there should be a caveat of no early release for domestic and sex offenders. This would be similar to the caveat during the pandemic in relation to reduction in unpaid work hours.

A great deal of effort and time goes into effectively supporting someone to settle back into the community. In rural areas, there is little in the way of third sector support for this. Even if it's a short period, this means a lot of work for the social workers in rural areas. Increasing the numbers of people released early will impact on workloads.

Financial resource for social work and social care services will be necessary for assessment, support services, case management and oversight and for managing breaches of sentence. This may require an increase particularly in the social work workforce which would require planning over a number of years to train and induct recruits. There are already difficulties filling social work posts in many areas.

17 Which of the following options in relation to automatic early release for short term prisoners would you say you most prefer?

Automatic early release changes to earlier in the sentence, but the individual is initially subject to conditions and monitoring, until the half-way point

Please give reasons for your answer:

According to social work principles and values, people should not be in prison unless they need to be. If a person is thoroughly risk assessed and subject to conditions and monitoring, SASW could support early release changes as a means to promote successful community reintegration.

However, our members raised some concerns about this, namely:

- Individual cases need to be assessed thoroughly on their own merit, taking victims needs and views into account.
- Again, issue of resources – for assessment and for monitoring. GPS monitoring has been in the pipeline for a long time but has not been rolled out.
- There needs to be a mechanism for breaching these types of community sentences. The consequences of breach or re-offence need to be explicit.

18 Currently long-term prisoners can be considered for release by the Parole Board for Scotland once they have completed half of their sentence. Which of the following options would you most prefer?

Change to allow some long-term prisoners to be considered by the Parole Board earlier if they are assessed as low risk

Please give reasons for your answer:

SASW believes this is less a consideration of the time than of the principle. If a person is not deemed to be a risk to the public, and could be successfully supported in the community, then that is what should happen.

SASW supports the principles of ensuring that once people have served a punishment element of a custodial sentence, they only remain in prison if there remains risk to other people. People serving long sentences have committed crimes of a very serious nature, usually with significant public protection concerns. However, there may be circumstances in which the multi-disciplinary team within the prison assesses a person as low risk.

There are long waiting times for rehabilitation programmes in prisons. There are assessment processes before beginning a programme and often a period of assessment in an open estate prison. All these processes would need to be aligned and modified if there is a change in timescales for the consideration for release. At whatever point release is considered, there must be evidence that behaviour and attitudes have changed and that any residual risk is recognised within decision making.

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19 Do you agree that the Scottish Government should ban all prison releases on a Friday (or the day before a public holiday) so people leaving prison have greater opportunity to access support?

Yes

Please give reasons for your answer. If you agree, what wider changes would be needed to ensure people leaving prison have access to the support they need?:

The challenges and frustrations around Friday releases have long been a concern. Avoiding Friday releases would go some way in improving the likelihood of being able to access community supports which are crucial to successful reintegration. It would also assist in the planning for release of people who pose public protection concerns and continue to require a level of monitoring.

However, there was some doubt amongst members about whether a blanket ban requires to be imposed, or indeed would be helpful in every situation.

There are some instances when it might suit a prisoner and their family for release to take place on a Friday, at the beginning of a weekend, and pose no difficulty. In which case to not allow that would seem obstructive, and unaccommodating of nuances. Again, this is about no 'one size fits all' approach. Rather than an outright ban, perhaps the language could be modified to reflect a recommendation that Fridays be avoided, but that flexibility must exist to suit individual needs.

20a Prisoners must actively apply for Home Detention Curfew (HDC). Should HDC be considered automatically for some categories of prisoners instead?

Yes

Please give reasons for your answer or share any comments you would like to make on which categories of prisoners you think might be automatically considered:

For some categories of people in prison, automatic consideration is a viable option, with an element of choice, if an individual did not wish to be considered. It is the experience of members that some people do not want HDC. There are limitations on some categories for example domestic abuse perpetrators, or those who are homeless, as temporary accommodation cannot be accessed for the purpose of HDC. Robust assessment must accompany such a decision, with account taken of individual choice and circumstance.

20b The maximum length of time allowed on Home Detention Curfew (HDC) is 6 months (or one quarter of the sentence). Do you think this should...

Be made longer

Please give reasons for your answer, or share any comments you would like to make on how long you think is appropriate.:

Members have concern about the value of being on HDC for longer than 6 months. It places certain restrictions on factors such as employment, especially in rural areas where travel is involved. However, in the interests of successful re-integration, there would be merit in increasing the time but only if HDC was tailored specifically to individual support and rehabilitation needs, accompanied by a robust risk assessment.

20c The minimum sentence for which Home Detention Curfew (HDC) can be considered is 3 months. Should this limitation be removed?

Unsure

Please give reasons for your answer, or share any comments you would like to make on what sentence length you think is appropriate:

Short sentences can be extremely disruptive, for minimal impact. In principle SASW supports the limitation of 3 months being removed, in line with keeping the time people are on sentences to a minimum. However, this raises the wider issue of why someone would be sentenced to less than 3 months, as opposed to a community sentence, given what we know about the disruption and implications for rehabilitation of a sentence.

20d There is currently a list of exclusions that make someone ineligible for Home Detention Curfew. Should this list be reviewed with the intention of expanding eligibility for HDC?

Yes

Please give reasons for your answer, or share any comments you would like to make on what criteria are relevant to whether someone should be eligible for HDC:

While SASW is in favour of reviewing exclusions for HDC, with the aim of expanding eligibility, this should be done with public safety at heart. Particular conditions for certain types of offences, such as domestic or sexual abuse, would have to be in place, with procedures for management of risk. As this would be the responsibility of justice social work to manage, there would be resource implications.

20e Currently, the Scottish Prison Service make decisions to release prisoners on Home Detention Curfew (HDC) following a risk assessment and engagement with community partners. Do you think this responsibility should remain with SPS?

Unsure

Please give reasons for your answer, or share any comments you would like to make on the role of SPS in determining release on HDC:

For lower risk offending, short-term sentences, SPS could retain this responsibility. However, if eligibility is expanded and includes offenders who have committed crimes of sexual or domestic abuse, the responsibility should be a multi-agency one, with consideration given to specific tailored assessments carried out by justice social work.

20f Do you think decisions on whether to release prisoners on Home Detention Curfew (or similar) should be taken by the Parole Board for Scotland in the future - even for those prisoners serving less than 4 years?

Unsure

Please give reasons for your answer:

For those serving short-term sentences, assessment from social work and SPS are sufficient. However, for long-term sentences, the decision of the Parole Board is required before a decision can be made about HDC, so it would appear appropriate for the Parole Board to also make the decision about HDC. This will potentially raise have implications for resourcing of the Parole Board.

20g Do you think decisions about the length of time an individual would serve in the community at the end of their custodial sentence should instead be set by the court at time of sentencing?

No

Please give reasons for your answer, or share any comments you would like to make on what role the courts could have in determining the proportion of sentence an individual could serve in the community:

Individuals need to have an expectation of how long they are going to be in prison. On one hand we want to manage expectations but on the other, we must recognise that things can change.

There could be a significant amount of time between initial sentencing and consideration of a community sentence. An up-to-date assessment and risk assessment is required before deeming a person low risk enough to be released to serve the remainder of their sentence in the community.

Policy in this area must take into account public safety and confidence, and the capacity of people serving sentences and the multi-disciplinary team to engage in effective planning for release.

21 To what extent do you agree or disagree that the Scottish Government should consider whether information on individuals being released from custody can be shared with third sector victim support organisations, for example, to enable them to provide proactive support to victims and carry out safety planning?

Somewhat agree

Please give reasons for your answer:

SASW supports the principle that information about people should generally only be shared when they agree to it or there are reasons/exemptions from GDPR for sharing. We also believe that victims need to have some right to information that supports both physical and psychological safety.

This would have to be part of a clear and consistent offer to victims which would need clarity around:

- which offences this applies to
- what information must or can be shared
- ensuring that victim support organisations have the capacity to respond in a meaningful way.

This is likely to apply largely to domestic abuse and sex offenders. Currently MAPPA takes account of the risk sex offenders pose after release, but there is not a similar process for domestic abuse. Some members have suggested it might be useful to have a similar process, given what we know about the likelihood of re-offending and release creating trauma for victims. There is perhaps scope to manage domestic abuse offenders more rigorously after release, in a similar vein to sex offenders through MAPPA.

22 In addition to information on individuals being released, to what extent do you agree or disagree that victims and victim support organisations should be able to access further information?

Somewhat agree

Please give reasons for your answer. If you agree, please state what information should be provided and for what purpose.:

There needs to be absolute clarity about what information must be shared and what can be shared where risk indicates it should be. Having access to information about risk would help inform safety planning for victims. There is certainly scope for a more robust mechanism for survivors of abuse to get information and support about the release of perpetrators.

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23 Which of the following best reflects your view on public service's engagement with pre-release planning for prisoners?

Existing duties are not sufficient; public services should have a specific duty to engage with pre-release planning

Please give reasons for your answer:

Accessing pre-release support for mental health or addictions is described by members as a challenge. There is also significant concern about access to planning and support for older people or those with disabilities leaving prison who might need social care support.

Our members expressed concern that, whilst technically, public service duties appear adequate in offering all citizens health, social work, and social care service, those who keep returning into the justice system are those least able to access and engage with the services they need to lead more stable lives at less risk of re-offending. Generally, they are also those with problems of mental health, substance use perhaps overlaid on life challenges such as learning disability and neurodiversity that public services have previously failed to support.

SASW believes that throughcare should not be voluntary but should be part of sentence and part of every process of release. As a minimum, people should leave the prison setting with a clear home defined for them, benefits or work in place and a reliable pharmacy prescription and access to primary health care. A release plan would look holistically at the social and wellbeing needs of the person and link with adult social services where that would be helpful.

This has significant resource implications but would be the best way to reduce post-release crisis and return into the justice system which so often happens.

24 If public services had an additional duty to engage in pre-release planning for prisoners, which services should that duty cover?

Please list each service and what each should be required to do.:

Health, social work, and social care. Adult services should be crossing the boundary of the community and prison to look at health and social care provision for people in prison, especially those with physical and hidden disabilities and older people. This must include mental health addictions services and access to primary care and consistent pharmacy.

Housing and support for work and education is also vital.

25 To what extent do you agree or disagree that support should be available to enable prisoners released direct from court to access local support services in their community?

Strongly agree

Please give reasons for your answer. If you agree, please explain how you envisage that support would look and which bodies you feel should be involved:

People released directly from court should have equal access to support services as those who have served custodial sentences. For this access to be consistent would require a duty service to be in place, potentially a partnership between statutory and third sector services.

26 To what extent do you agree or disagree that revised minimum standards for throughcare should incorporate a wider range of services?

Strongly agree

Please give reasons for your answer. If you agree, please list the services you think these standards should cover and what you think their role should be:

It would be hugely beneficial to have community-based, universal services proactively reaching into prisons to engage with people serving custodial sentences. The reality is that it is often difficult for people in custodial settings to secure necessary services at any stage. With the proper resources and will across agencies, this would be welcomed as a recognition of the clear connection between people who experience disadvantage and people who find themselves in the justice system. Scotland could then begin to be seen as a country leading a humane justice system that rehabilitates and protects all its citizens.

27 To what extent do you agree or disagree that revised minimum standards for throughcare should differentiate between remand, short-term and long-term prisoners?

Strongly agree

Please give reasons for your answer. If you agree, please state how you think these standards should differ for each cohort:

While we support a distinct set of standards, for the reason that people in the different situations will be subject to different levels of monitoring and supervision, our view is that there should be some blanket expectations for everyone leaving a custodial setting that enables them to get home safely. It is not so much the legal status of remand or sentence but the impact that being away from the community has had on someone's ability to pick up and get on with their lives. People must not be excluded from the support they might need due to the label of remand, short or long-term sentence.

Members cite examples of people being released from remand with no or little money or access to funds or transport, and/or inappropriate clothing, depending on the circumstances of their arrest. This causes difficulty with getting home, especially in remote areas where long journeys and even ferries are often involved. Currently there is a lack of clarity about responsibility, process, or resource to address these issues, which a specific minimum standard for throughcare for remand should help to alleviate.

Any instance of custody should be seen as having a potentially traumatic impact on wellbeing and on life circumstance. People on remand and short sentences may find themselves without safe accommodation and having lost work. Ensuring that, whilst in custody, attention is paid to maintaining social supports where possible is vital. If they have not been maintained, on release, everyone should get support to achieve these basics.

28 To what extent do you agree or disagree that revised minimum standards for throughcare should be statutory?

Strongly agree

Please give reasons for your answer:

Minimum standards for Throughcare must be statutory to ensure consistency across the prison estate, health, social work, social care and housing services. This cannot be a postcode lottery.

29 Do you think other changes should be made to the way throughcare support is provided to people leaving remand/short-term/long-term prison sentences?

Yes

Please give reasons for your answer. If you think other changes should be made, can you provide details of what these changes could be?:

Release planning is a key lever by which Scotland might reduce re-offending. Wholescale change is required in the way Scotland remands, sentences, punishes and releases people. We have an extremely high rate of imprisonment and of reoffending. It might be said that for many people who come into its sphere, the justice system is fundamentally a system of failure from universal services from childhood to adulthood.

30 Should other support mechanisms be introduced/formalised to better enable reintegration of those leaving custody?

Yes

Please give reasons for your answer. If you think other mechanisms should be introduced, can you provide detail of what these could be?:

See answer to Question 29. Comprehensive release planning for every person who receives a custodial sentence is key to successful reintegration. This requires services to work together with those in custody, across the board, from the earliest possible stage, to ensure reduced offending and greater public safety.

31 To what extent do you agree or disagree with the introduction of an executive power of release, for use in exceptional circumstances?

Somewhat agree

Please give reasons for your answer:

There are acknowledged benefits of a power of release in terms of physical and mental health of those in prison during a time of a national emergency such as a pandemic.

However, SASW members asked for more details about what would constitute an 'exceptional circumstance' and a detailed procedure for enacting this power. Such procedures would need to detail how the risks of such a move are to be assessed and to plan any release programme of large numbers of people with the full range of transport, housing, health and social work systems. Local areas would need to develop contingency plans to ensure community support for those released at short notice. Plans must include all aspects of release, including difficulties around public transport, especially if in the face of another pandemic.

32 If an executive power of prisoner release was introduced for use in exceptional circumstances, what circumstances do you consider that would cover?

Please provide details:

Unforeseen circumstances where the prison estate is unable to function safely and effectively. This might even include serious overcrowding. To be useful, the executive power has to be broad and defined in terms of risk and outcomes rather than specific circumstances.

About you

What is your name?

Name:

Sarah McMillan

What is your email address?

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sarah.mcmillan@basw.co.uk

Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Scottish Association of Social Work

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response only (without name)

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

I confirm that I have read the privacy policy and consent to the data I provide being used as set out in the policy.

I consent

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Please enter comments here.:

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Please enter comments here.: