



Law Society
of Scotland

Briefing

Scottish Parliament

Justice Debate on Remand – 3 October 2018

1 October 2018



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

We have provided an earlier briefing on the topic of remand to the Justice Committee¹ following the Committee's interest in exploring issues around the use of remand in Scotland as well as the experience of prisoners held on remand².

We provide the following comments in relation to Justice Debate on Remand which is to be held on 3 October 2018 by way of assistance for the debate.

Comments

Concerns have been expressed over the number of remand prisoners in Scotland. The Annual Report 2016-2017 by HM Chief Inspector of Prisons for Scotland, David Strang whose responsibilities include the inspection and monitoring of prison conditions reflected that:

"[remand] was a clumsy, careless use of imprisonment. Remand should only be used in serious cases. Many people held on remand do not receive a custodial sentence. It is almost as if remand is being used to ensure they turn up for their trial³."

Extent of the problem: Overall, the Scottish Government has indicated that the Scottish prison population is decreasing having fallen 8 per cent from 8179 (2011) to 7552 (2016-2017). This decrease has been

¹ http://www.parliament.scot/S5_JusticeCommittee/Inquiries/Remand-LSS.pdf and http://www.parliament.scot/S5_JusticeCommittee/Inquiries/R-LSSsupplementary.pdf

² <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/107390.aspx>

³ <https://www.bbc.co.uk/news/uk-scotland-41818119>

largest for remand prisoners which has fallen by 14 per cent. The prison population in 2016-17 is the lowest since 2007-08⁴.

However, a significant number of prisoners are being held on remand. Referring to the most recent figures provided by the Scottish Prison Service as 21 September 2018,⁵ this shows the total population in custody in Scotland as 7786 prisoners. These figures can be broken down as follows:

- 1221 untried prisoners awaiting trial (including those liable to deportation). Men/Women make up 1154/67 respectively.
- 310 prisoners are awaiting sentence (including those liable to deportation). Men/woman make up 281/29 respectively awaiting sentence.
- 73 untried prisoners are aged between 18-20. 24 are awaiting sentence.
- 21 untried prisoners are aged between 16-17. 7 are awaiting sentence.

However, from these figures, those held on remand continue to stand around the figures outlined in Mr Strang's report as being in excess of 1100 or almost 15% per cent of the total Scottish prison population⁶. 21 per cent of women are held on remand.

Reasons for remand: There are two reasons why prisoners will be held on remand. These include those that are:

- awaiting trial or
- pending sentence.

At any time, prisoners will be held on remand for differing periods of time. That will depend, when untried, on the type of court procedure that they are facing which can be either summary or solemn. In respect of remand when awaiting sentence, it will tend to reflect however long it takes to obtain the requisite reports that the court has requested.

There are statutory safeguards to ensure that untried prisoners do not remain indefinitely on remand.

These time periods are not abused and do provide protection for the accused that are remanded that such periods are limited.

With the increasing threat posed by criminal gangs⁷ reflecting "ongoing feuds, violence and firearms incidents" and increased number of those accused of sexual offences, this may be having an effect on remand numbers.

⁴ <https://www.gov.scot/Topics/Statistics/Browse/Crime-Justice/TrendPris>

⁵ <http://www.sps.gov.uk/Corporate/Information/SPSPopulation.aspx>

⁶ <https://www.bbc.co.uk/news/uk-scotland-41818119>

⁷ <https://stv.tv/news/scotland/1414910-organised-crime-gang-threat-increasing-in-scotland/>

There may be a tendency for those accused of serious organised crimes to be remanded for longer given the time required to investigate and bring such complex cases to trial if a remand in custody has been deemed to be the appropriate safeguard. The time periods for solemn trials can be extended if the defence and Crown need more time to prepare. The above figures do not show the periods that individual prisoners have remained on remand.

With historic sexual offences, these remanded in prison may well be older which bring a complexity of medical needs for the prison service to deal with.

There is perhaps little that can be done regarding reducing the numbers of those that may be remanded awaiting sentence as that decision to remand is ultimately a judicial decision. There are various factors such as the inevitability of a forthcoming custodial sentence (which may be backdated to the date of the first remand). It may reflect an absconding issue on previous occasions.

Research would assist in determining why prisoners may have been remanded **and** who do not go on to receive a custodial sentence. If there are consistent factors arising there, that would merit exploring what could have been done to avoid this, such as greater use of bail conditions, electronic tagging or raising judicial awareness, if any of these should prove to be relevant. As the Scottish Government implements its intention to change the presumption against short sentences from three to twelve months, the figure of those on remand would be anticipated to fall further.

Untried prisoners: This is the category where there has been the greatest concern in reducing the number of prisoners. There are issues with the use of remand in these circumstances and especially, with the use of remand for women. Though issues arising in respect of women are substantially similar to those affecting men, some issues tend to be more women-focused such as childcare, caring roles, limited social time and transport (especially in rural areas). Despite the effort at reducing the number of women in remand, this has tended to continue to increase from 316 in January 2016 to almost 380 in April 2017⁸.

Use of remand: There are several factors which we would highlight about the use of remand.

All crimes are bailable, so the use of remand can be considered in each case. The court in deciding to remand must respect transparency in stating why a remand is the outcome. That decision is subject to appeal which will be heard at the first instance by the Sheriff Appeal Court. It has not published any appeal decisions to indicate how often it is granting bail and why where bail was refused by the original court.

Bail can be granted subject standard⁹ or special conditions¹⁰ which must be proportional as the imposition of bail conditions may represent an interference with a person's rights under Article 5 (1) of the European

⁸ <http://www.parliament.scot/Inquiries/Remand-LSS.pdf>

⁹ Section 24 (5) of the Criminal Procedure (Scotland) Act 1995

¹⁰ This includes a range of conditions such as a prohibition to contacting or approaching a person, surrender a passport, use of a computer except under supervision.

Convention on Human Rights. This provides for the right to liberty and security except in certain prescribed circumstances.

Bail reviews are also competent where the accused's circumstances change.

There is a presumption in favour of the courts granting bail. There will always be cases where bail should and will not be granted.

The Criminal Justice (Scotland) Act 2016 came into force on 25 January 2018. It is too early to have seen the full effect of that legislation as it introduced a number of additional powers to the Police Scotland including the right to grant investigative liberation. This has reduced the numbers of those accused being reported in custody which should have an effect on the numbers of those being reported in custody to court and thereafter being remanded.

Alternatives to Remand: There are a range of alternatives to remand which can be deployed which include:

- Bail supervision which is available as an enhanced bail provision. It provides monitoring and supervision in the community. It can support other issues such as debt, addiction and housing issues. The use of this as an option may have declined as these schemes may not be available throughout the Scotland. There needs to be information provided as to the availability of such schemes so that the defence solicitors can be aware as well as the judiciary to allow this option to be used where appropriate. This is not an option which should be used to provide women with safety in abusive relationships.
- Mentoring can provide practical support as a designated reference point and provision of support.
- Community Justice centres such as the Inverness Justice Centre may become a model to offer a range of digital and other justice services. This provides "a unique opportunity to bring organisations together, focusing – where practical – on problem-solving approaches to reduce re-offending and increase the opportunity for community sentencing¹¹."
- Electronic Monitoring is available for offender management in Scotland. There are various types of electronic monitoring available which use emerging technologies such as satellite tracking and trans-dermal alcohol monitoring. These could be explored further in due course.

None of these are solutions but a combination of measures could potentially be used to reduce the use of remand. But this depends on the person subject to remand being willing to co-operate. Many have complex and chaotic lifestyles which may require changing behaviour while there is a need to continue to protect victims.

¹¹ Eric McQueen Chief Executive of the Scottish Courts and Tribunal Service <https://www.inverness-courier.co.uk/News/Justice-centre-work-marks-countdown-to-castles-opening-09032018.htm>

There is a need to keep under review the numbers of the those accused on remand for whom English is not their first language or are vulnerable. Vulnerability does need to be recognised and handled appropriately. The implications for these groups being placed on remand are considerable. Prisons are not well equipped to handle these issues. Where remand of such person is required greater awareness of dealing with the issues that inevitably arise seems essential.

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