The Committee will meet at 1.30pm in Committee Room 4.

1. **Items in private**: The Committee will consider whether to discuss items 2, 5, 6, 7 and 8 in private. The Committee will also consider whether to discuss its draft reports for its regulation of the legal profession inquiry, the Protection of Children (Scotland) Bill and the Title Conditions (Scotland) Bill in private at future meetings.

2. **Prisons**: The Committee will discuss lines of questioning for the witness.

3. **Convener’s report**: The Committee will consider the Convener’s report.

4. **Prisons**: The Committee will take evidence from—

   Alec Spencer, Director, Rehabilitation & Care, Scottish Prison Service.

5. **Alternatives to custody inquiry**: The Committee will consider its approach to the inquiry.

6. **Council of the Law Society of Scotland Bill**: The Committee will consider its approach to the Bill.

7. **Witness expenses**: The Committee will consider whether to approve travelling expenses for witnesses.
8. **Regulation of the legal profession inquiry:** The Committee will consider a draft report.

Alison Taylor
Clerk to the Committee, Tel 85195

The following papers are attached for this meeting:

**Agenda items 2 and 4**
Note by the Clerk (private paper) J1/02/34/1
‘Making a difference’, introductory documents regarding the Scottish Prison Service, (Available to Justice 1 Committee members only, available from the Scottish Prison Service) J1/02/34/3

**Agenda item 3**
Correspondence from Convener of Justice 1 Committee to Standards Committee regarding Justice 1 Committee’s report on the Prison Estates Review (original correspondence from Standards Committee attached) J1/02/34/4

**Agenda item 5**
Note by the Clerk and the Adviser (SPICe briefing attached) J1/02/34/5
Note by the Clerk and the Adviser (private paper) J1/02/34/6

**Agenda item 6**
Note by the Clerk (private paper) J1/02/34/7

**Agenda item 7**
Note by the Clerk (private paper) J1/02/34/8

**Agenda item 8**
Note by the Clerk (private paper) J1/02/34/9
Disciplinary Rules, Faculty of Advocates J1/02/34/10
Summary of Complaints Procedure, Faculty of Advocates J1/02/34/11

**Papers not circulated:**

**Agenda item 6**
The Council of the Law Society of Scotland Bill (and Explanatory Notes and other accompanying documents for the Bill) are available from Document Supply or on the Scottish Parliament website at: [http://www.scottish.parliament.uk/parl_bus/legis.html](http://www.scottish.parliament.uk/parl_bus/legis.html)
Dear Mike

JUSTICE 1 COMMITTEE – LEAK OF DRAFT REPORT ON PRISON ESTATES REVIEW

I am writing in reply to your correspondence of 12 September regarding the consideration by the Standards Committee on 11 September of the leak of the above report which appeared in the Scotland on Sunday newspaper.

I note your comments regarding the reservations of the Standards Committee to request the Standards Adviser to investigate the leak due to uncertainty on whether the newspaper had a copy of the report.

When the Justice 1 Committee examined the issue at its meeting of 18 June, Committee members did not have any further information other than stated in my initial letter of 1 July, i.e. that an inaccurate leak had taken place which undermined the trust and integrity of the Committee and the Parliamentary process. Unfortunately it was not possible for members to know whether the newspaper actually had a copy of the report or not and it is unlikely that any further information will be forthcoming on the matter.

It is therefore, with deep regret, that I consider that I will have to close the matter unless any further subsequent information is received by the Committee.

Yours sincerely

Christine Grahame MSP
Convener, Justice 1 Committee
Justice 1 Committee

Mike Rumbles MSP
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26 September 2002

Dear Mike

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Yours sincerely

Christine Grahame MSP
Convener, Justice 1 Committee
Ms Christine Grahame MSP
Convener
Justice 1 Committee
Room 3.11
Committee Chambers
Edinburgh
EH99 1SP

Dear Christine,

At its meeting on 11 September 2002, the Standards Committee considered the request from the Justice 1 Committee for an investigation into the alleged unauthorised disclosure ('leak') of the draft Report on the Prison Estates Review.

The Members of the Standards Committee were supportive of the views in your letters. As you point out, any unauthorised disclosure of confidential material could lead to a loss of mutual trust between Members and a breakdown of confidence in the operation of a Committee. This view is underlined by the rules laid down in the Code of Conduct, paragraph 9.4.4 of which states:

"Given the potential damage that the unauthorised disclosure of confidential Committee material can do to the standing and integrity of a Committee it is essential that all members respect the[se] rules."

However, I refer to your letter of 1 July 2002 in which you say "This makes it unclear whether the newspaper actually has a copy of the draft report...". Without any clearer indication of whether a 'leak' has occurred, the Members of the Standards Committee had reservations about committing the Standards Adviser to carrying out a full investigation at this point in time.

If you wish to pursue this matter further, the Standards Committee agreed that the Justice 1 Committee should carry out an initial investigation into the 'leak'. The subsequent report and its findings should be sent to the Standards Committee for consideration. If the findings of your initial investigation support the allegation of a 'leak', these would enable the Standards Committee to consider exercising its discretion under paragraph 10.2.2 of the Code and refer the matter to the Adviser.

Standards Committee

Tel: 0131 348 5177
E-mail:mike.rumbles.msp@scottish.parliament.uk

Fax: 0131 348 5088
The Official Report of the Standards Committee’s meeting will be available on Tuesday 17th September should you wish to read the full discussion on this item.

Yours sincerely,

Mike Rumbles, MSP
Convener, Standards Committee
Introduction

1. On 24 July 2002 the Justice 1 Committee issued a call for evidence for its alternatives to custody inquiry. The Committee requested views regarding the use and effectiveness of community sentencing as an alternative to imprisonment. The deadline for responses to the inquiry was 17 September 2002.

Background

2. The inquiry forms the next stage of the Committee’s work on Scottish prisons and surrounding issues. The Committee has already commissioned and published research into public attitudes to sentencing and alternatives to imprisonment which was carried out by NFO System 3 Social Research. Following this, the Committee held a civic participation event in Glasgow in March 2002 where members of the public participated in workshops and an open space event to give their views on these issues. The report on the outcomes of this event has been published on 23 July 2002. The Committee has also recently published its report on the Scottish Executive’s consultation on the Prison Estates Review Volume 1 and Volume 2 on 2 July 2002.

3. SPICe have published a briefing paper (02/61) (attached) on alternatives to custody on 24 May 2002 (which will be updated soon). It is recommended that members utilise this paper as background reading for the inquiry. This paper outlines the current range of sentencing options available and includes recent statistics on the use of these disposals. It is not intended to duplicate this information in this summary document, but to focus on views expressed by respondents that fall into the remit (see Annexe A) for the inquiry set by the Committee.

Submissions received for the inquiry

4. At time of writing, the Committee has received a total of 51 responses to the call for evidence. Respondents include the Scottish Executive, the Scottish Prison Service, HM Chief Inspector of Prisons in Scotland, legal organisations, prison visiting committees and independent and public sector providers of non-custodial sentences including local authorities, charities and voluntary organisations.

Support for alternatives to custody

5. Overall, submissions to the inquiry were supportive of alternatives to custody especially for female prisoners, fine defaulters, young offenders (YO’s) and short term (‘revolving door’) offenders, e.g. those serving sentences of 12 months or less.
Several responses highlighted that prisons would always remain for public safety but should be viewed as a sanction for only where there was no other option.

6. A number of respondents thought that sentencers should be provided with more support. This ranged from the provision of information about costs and effectiveness of different sanctions, to greater clarity about the criteria for passing a sentence of imprisonment, greater use of guidelines sentences from the High Court (suggested by SACRO), extension of sentencing information system to lower courts, abolition of custody for summary convictions. The Howard League and the Scottish Consortium on Crime and Criminal Justice (SCCCJ) recommended that there should be a test for sentencers to ensure that custodial sentences were used only when there was no other option. These responses often also highlighted that prison was an expensive option compared to community sentencing. Peter McKinlay stated that prisons only work whilst the prisoner is incarcerated. He also believes the parliament should legislate so those serving sentences of 12 months or less are not sent to prison, and that the Executive should agree targets for reduction of prison numbers and publish these numbers regularly.

Scottish Executive future proposals

7. The Executive state in their submission that the 3 key objectives for the Executive are to:

- reduce the use of short prison sentences with a particular focus on women offenders and young offenders;
- promote community disposals which reduce drug related crime, and
- improve the effectiveness of community disposals by introducing a system of accreditation.

8. The Executive highlight provisions in the Criminal Justice (Scotland) Bill to:

- promote the greater use of structured deferred sentences as an alternative to short prison sentences;
- introduce new style Supervised Attendance Orders (SAOs) as an alternative to imprisonment for fine default;
- establish a Time Out centre in Glasgow as an alternative to custody for women offenders, and
- set up bridging pilots for 16 and 17 year old minor offenders to ease the transition from the children’s system to the adult system of justice.

9. The Executive has also announced its 10 Point Action Plan on Youth crime including the setting up of a feasibility study to consider the piloting of youth courts for 16 and 17-year-old persistent offenders.

10. The Executive also intends to allow access to treatment facilities by accused/offenders at all stages of the criminal justice process, by:

- making provision in the Criminal Justice (Scotland) Bill to fund arrest referral schemes;
• identifying drug misusing individuals as one of 4 target groups for diversion schemes;
• retaining the option of courts making treatment a condition of probation;
• at the top end of the tariff scale, rolling out Drug Treatment and Testing Orders (DTTOs) to a further 7 sheriff courts, and
• piloting the use of the drug court approach in Glasgow and Fife.

11. The Executive is establishing an Accreditation Panel for criminal justice social work to accredit programmes, which will support community disposals, especially probation. An announcement will be made shortly on the chair and membership of the Accreditation Panel with the intention that 3 programmes might have received full accredited status by 2004.

12. In addition, there are plans to revisit Community Service Orders (CSOs) to promote their greater use by developing their restorative approach, especially in relation to young offenders and the elements which prepare offenders for work. The Executive also recognises the need to increase the confidence of the public and the courts in the use community disposals.

Effectiveness of prison

13. Several submissions highlighted that imprisonment has little effect on short term offenders, and some responses highlighted that isolating short term offenders from family, friends, employment, accommodation, etc by imprisonment could actually create a more detrimental situation for when the offender was released. Families Outside highlighted that imprisonment can also have an adverse effect on the families of the imprisoned causing financial pressures and child care problems as well as psychological problems and sometimes family break-ups. Families Outside intend to produce a comprehensive survey of this area. The Aberlour Trust stated that there was little service provided to fathers and mothers in particular to enable them to cope. The Trust was concerned particularly that women were likely to default on the requirements in the early stages of their community sentence and this could lead to a reluctance to sentence to any disposal other than custody.

14. Several responses from providers of services highlighted that if these offenders were removed from the prison system, the ensuing resources could be redeployed into courses and counselling for more serious long term offenders. SACRO support this arguing that a major investment in community disposals will lead to significant savings in the long term subject to relevant targeting of funds. One respondent highlighted that prison is the most expensive sentencing option.

15. One respondent questioned whether the threat of prison was effective as a general deterrent, stating that many crimes recorded by the police either do not reach the courts or result in no further proceedings. The respondent also argued that increased severe sanctions will lead to the sanctions becoming less meaningful as they do not reflect the severity of the offence.

16. The Commission for Racial Equality (CRE) raised the concern that those convicted of racially motivated offences did not receive sufficient structural personal change programmes.
Appropriateness of use for alternatives to custody

17. Several respondents made the point that alternatives to custody are not appropriate for those convicted of death through dangerous driving, violent or sexual offenders\(^1\) and that the inquiry should focus on those convicted of very short custodial sentences.

What currently exists?

*Which community penalties are available to the courts in Scotland?*

18. It is not intended to either name or describe all community penalties available to the courts in Scotland in this document. Committee members are recommended to refer to the SPICe briefing mentioned above for this purpose.

19. The Executive have outlined the community sentences currently available in Scotland in their submission and perceive the following five to be the five principal sentences:

- Probation orders
- Community Service Orders (CSOs)
- Restriction of Liberty Orders (RLOs)
- Drug Treatment and Testing Orders (DTTOs)
- Supervised Attendance Orders (SAOs)

20. Providers of community and restorative programmes gave examples of the many wide ranging programmes they run such as Bail Schemes run by Includem and SACRO or the residential schemes run by the Airborne Initiative. Some of the schemes are run in tandem with other organisations, an example being Includem’s Bail Initiative programme which works with the Church of Scotland which offers accommodation and intensive support.

Provisions for alcohol and drug related offences

21. The JFABCJ recommended that the Committee consider the causes of offending which it considers to be often alcohol and drug related which they consider to be particularly pertinent in the cases of female offenders. The Scottish Drug Enforcement Agency (Scottish DEA) also highlighted drugs as cause of crime and the pilot arrest referral schemes in which point of arrest is identified as a method where offenders can be targeted by professional drug workers. The Scottish Drugs Forum state that probation orders, arrest referrals schemes, DTTO’s and Drug Courts are welcome additions to the non-custodial sentences on offer and that DTTO’s should be available everywhere in Scotland. The Scottish Drugs Forum believe that the system in the rest of the UK where DTTO’s have replaced probation orders for problem drug users is less effective and should be used in Scotland. The Forum also welcomes SPS’s contract with Cranstoun Drug Services to provide a range of services in both prisons and for those released from prison.

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\(^1\) Although Professor Bill Marshall of Queen's University, Canada suggested that ‘nuisance’ types of sex offenders, e.g. obscene telephone callers, internet sex-site users, etc, seem to respond better to community rehabilitation than prison programmes subject to appropriate funding.
What are the restrictions on their use?
22. The restrictions outlined by the Executive on the five options they have highlighted are as follows:

- Probation orders are available for use by all courts in Scotland with no minimum age requirement;
- CSOs can be imposed by all sheriff courts and the High Court. In addition, Glasgow Stipendiary Magistrates Court and the District Court in Dundee are able to impose CSOs. The order is restricted to offenders aged 16 and above;
- RLOs are available for use by all sheriff courts and the High Court but not district courts. The order is restricted to those aged 16 and above;
- DTTOs are available to sheriff courts in Glasgow, Fife and Aberdeen/Aberdeenshire. In addition, they can be used by the Stipendiary Magistrates Court in Glasgow and by the High Court when dealing with cases where the offender is a resident of a local authority area where there is a DTTO scheme in operation. DTTOs are being extended to a further seven sheriff courts in Edinburgh, Dundee, Arbroath, Forfar, Perth, Paisley and Greenock. The order is restricted to those aged 16;
- SAOs are available for use by all courts. They are currently restricted to use with those who have defaulted on their fines. This provision is restricted to those aged 18 and over. Existing legislation also provides for SAOs to be used as a disposal of first instance for those aged 16 and 17 but following piloting, which proved unsuccessful, this provision is not currently being applied. The Criminal Procedure (Scotland) Act provides for the mandatory use of SAOs as opposed to the option of a custodial sentence for those who have defaulted on their fines up to level 2 (£500). This latter provision has not been applied to date.

23. Many non-custodial sentences are available nationally or in many areas (as stated by the Scottish Executive), however the programmes which form the substance of many of the sentences, particularly probation, are often provided on a local basis by an NGO. So while the Scottish Executive is correct in saying that most sentences are available nationally, the provision of the programmes which make up many of these sentences in practice is not uniformly available across the country and the disposals will not be used evenly by different courts. This can lead to restrictions in provisions of service and lengthy waiting lists as highlighted by various respondents.

24. The British Association of Social Workers (BASW) are concerned that a shortfall in their practitioners is restricting the quality and quantity of the service being offered to offenders for community penalties. The Scottish Drugs Forum share this concern. They are also concerned that there is lack of continuity with funding as initiatives often begin with short term funding and then continue erratically with different sets of such funding. They argue that money should be deflected from the SPS into community initiatives which would give pilot schemes a better chance of succeeding and result in less people in custody.
Which community sentences are not available in Scotland? Should these be introduced?

Executive views
25. The Executive has expressed a wish to focus on encouraging sentencer confidence in the greater use of what is currently available. Currently, the Executive’s strategy is to pilot new disposals with pilot scheme before roll-out on a wider level. Provisions in the Criminal Justice Bill would add electronic monitoring as a condition of a probation order (or a DTTO).

26. The Executive recognises that there is further scope to develop the support programmes used principally with probation to promote a greater consistency of provision. It is also planned to restructure criminal justice social work services into groupings to assist this process through increased opportunities for sharing good practice and establishing programmes for specialised groups of offenders, e.g. for sex offenders.

Consideration of extension to current provisions
27. Several organisations including various councils argued community penalties currently restricted by being on pilot schemes or for other reasons, e.g. DTTO’s, restorative justice options and Suspended Sentence Supervision Orders should be available in all areas. It was felt that greater use could be made of SAO’s and structured diversion intervention which is available to the Procurator Fiscal. SAOs were advocated as a method for reducing prison numbers if used as a first sentence. The SWRC stated that a formal social work assessment is not required for a SAO which may explain its lack of use by sentencers. South Lanarkshire Council requested that CSO’s should contain some provision so that work could be done with offenders to examine why they cannot comply with requirements. They welcome the various provisions made within the Criminal Justice (Scotland) Bill to address various shortfalls.

28. Structured Deferred Sentences and Suspended Sentences\(^2\) were suggested as an option for those who have problems with the requirements of other alternatives to custody in order to give the offenders a full chance of rehabilitation. The Tayside Councils group and SACRO supported the development of Structured Deferred Sentences. SACRO believes that deferred sentences give the offender the opportunity to prove custody unnecessary. SACRO supports the moves by the Executive to give offenders opportunities to tackle offence related issues over a short period and recommends that both these and restorative justice be available during deferment.

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\(^2\) Deferred sentences and suspended sentences are similar in appearance and some respondents believe them to be identical and so it may be of benefit to explain the differences at this juncture. A deferred sentence offers the offender an opportunity to demonstrate the motivation to change and thus (possibly) avoid the need for an intrusive sentence. A suspended sentence (which is not currently an option in Scotland) passes a custodial sentence which is suspended and not invoked unless the offender is returned to court for typically an imprisonable offence. In many European jurisdictions this is known as a conditional sentence and has community based conditions attached breach of which may result in the imposition of the original custodial sentence.
29. Several organisations believed the current range of alternatives to custody options was adequate or should not be increased. Some organisations were of the opinion that there would not necessarily be benefit from introducing new community penalties as any new disposals might merely displace existing ones and recommend that the best approach is to ensure that existing community sentencing options are properly targeted, resourced and administered. Conversely, the Criminal Justice Northern Partnership and the Association of Chief Police Officers in Scotland (ACPOS) believe that an extension of the options may well have a benefit in reducing offending.

Restorative justice
30. Many service providers highly recommended restorative justice as an alternative to custody that they felt should be used more widely. Restorative justice is a relatively new idea in the UK, having begun in the 1980’s. A definition provided by the Restorative Justice Consortium is:

‘(restorative justice) sees the harm done by crime as an offence against a person or organisation, allows victims the opportunity to participate, brings victims and offenders together with an impartial mediator to consider from all points of view what has happened and find out what can be attempted to help put it right.

Restorative Justice can do this in a number of ways, either within a criminal or civil justice framework, or outside it. In the justice system it generally works by using an independent mediator or facilitator to bring the parties together for victim-offender mediation (or) community conferencing.’

31. The Restorative Justice Consortium believes that there is currently no material provision for restorative justice to be implemented in the Courts. ACPOS mentioned several restorative justice schemes currently in progress in Scotland involving the police and organisations such as SACRO and Barnado’s, and emphasised the positive impact of such schemes on YO’s compared to the alternative of young persons institutions and possibly prison at a later stage. SCCCJ argue that a rethinking of sentencing aims is required with more of a focus on restorative justice as they believe this to be a proven best practice for reducing re-offending. Several Councils mentioned that restorative justice options were not open to them.

Approach to community penalties and sentencing
32. The Howard League are concerned that the concept of alternatives is not being approached with the right attitudes. They believe community service should be restorative rather than a punishment. Peter McKinlay stated that sending offenders to prison is a punishment and not intended as rehabilitation. He also believes that Scottish society (as defined by the actions of the media and the Courts) sees imprisonment as the preferred punishment. The Consortium stated that it is currently possible to institute restorative measures through deferred sentence via probation order. The Association of Visiting Committees for Scottish Penal Establishments expressed concern that the current system of sentencing revolves around unpaid fines and breached SAOs which costs the taxpayer money and does not achieve much.
The Howard League stated that the judiciary believe that only custody is appropriate for many cases and it was a problem persuading the judiciary to consider alternatives. Peter McKinlay and SACRO believe that sentencers require education regarding the potential of non-custodial sentences, e.g. cost implications, chance of recidivism, etc.

Several providers of services and the Scottish Police Federation (SPF) expressed the view that non-custodial sentences are seen as ‘soft’ by criminals and the public and that the public are not well informed about such sentences. The SPF also expressed concerns that financial considerations were placed ahead of overall public interest with reference to the particular area of what they perceived as a growing trend to ‘plea bargaining’ for charges of assaulting the police.

Other suggestions for change

Many organisations made several suggestions for change to alternatives to custody that they would like to see introduced. The Visiting Committee for HMP Inverness suggested that consideration be given to extending the remit of community sentencing to District Courts, the provision of ‘halfway houses’ (although it was recognised this was expensive) and extension of the tagging system. The Howard League suggested the abolition of imprisonment for fine default and early release for non-dangerous prisoners on electronic tagging, as already happens in England and Wales.

Suggestions for change – integrated approach

There was a great deal of support from individuals and organisations involved in tackling re-offending for an integrated approach within the justice system to reduce crime and re-offending. Peter McKinlay highlighted the lack of integrated approach between the various areas in the justice system, e.g. courts and SPS, central and local government, etc. He believes that government should also take a more holistic approach to overall policy stating that social and economic factors cause crime, or in other words, many people commit crime in the hope of a better life. ACPOS stated that the police should remain independent of any sentencing provisions but also suggested that a combined approach with the voluntary and business communities would lead to continuity and more effective sharing of information which would benefit the limited resources and communities involved in community sentences.

Use of alternatives to custody by the Parole Board

The Parole Board stated that it was involved with alternatives to custody at two stages after an offender has received a custodial sentence. Firstly, if the Board believed that appropriate risk management resources are available, it will grant early release on license. The Board stated that there can be a long waiting list for drug counselling which leaves the licensed individual unsupported and puts a strain on the community involved although the situation has improved since National Standards were introduced for community based supervision. Secondly, the Board is concerned at the lack of options that are available when it deals with alleged breaches of license conditions and finds the only option is to revoke the license and undo any progress made with the individual concerned. The Board would like to see development of intensive supervision and Drug Treatment and Testing Orders (DTTOs) as alternatives to custody for the Board in such situations.
Level of service provision

What levels of resources are deployed in the provision of community programmes?

Executive views

38. The Executive have stated that funding of alternatives to custody is provided through section 27 (1) of the Social Work (Scotland) Act 1968. This provides ringfenced arrangements for the funding of criminal justice social work and sets out the specific functions of the local authorities, for which funding is being provided. The Executive state that there has been a 52% increase over 3 years in this area.

39. The Executive state that ‘Ministers have not received any representations in recent years from members of the judiciary that they are being constrained, because of a real or perceived lack of capacity on the part of the local authority to service the order, from imposing a community disposal.’

40. However, they also state that there can be short term fluctuations at a local level in the numbers of orders being imposed by courts perhaps as a result of a change of sheriff. The Executive are confident that there is a degree of flexibility within the funding arrangements to assist local authorities in coping with any short term pressures.

Are resources available adequate for the local needs brought to court? If there are any shortfalls, how much is needed and where will these resources will come from?

41. The Executive are content that their programme is sufficiently wide ranging. On this basis, the priority has been given to developing the framework of community disposals. The plan is to achieve a greater consistency of support programme provision and wider geographical coverage of DTTOs. These will however be subject to the outcome of the current Spending Review.

Resourcing levels

42. The importance of adequate resourcing and funding from central government was emphasised by many respondents. SACRO states that due to under-resourcing, the courts demand outstrips the capacity to provide alternatives to custody and believes the resourcing to be ‘patchy’ which in turn can effect the credibility of community sentencing. Various Sheriffs’ organisations emphasised that any disposal that is not imprisonment should be available quickly otherwise sheriffs are reluctant to use such a disposal, and that inadequate resources and thus long time delays frequently made existing community disposals such as community service an unattractive disposal choice for sheriffs. SACRO highlight the lack of adequate resourcing for community sentences compared to resourcing for the prison service.

43. ACPOS emphasised that any extension to current levels of alternatives to custody would mean extra responsibilities for the police and therefore have resource implications. BASW are concerned that community sentences can take longer than initially thought and the funding then runs out leaving the offender unsupported. BASW believes that the relations between local and central government are key to solving this problem. The Scottish Drugs Forum stated that many social work groups...
were spending a large proportion of their resources on dealing with offences related to drugs.

44. Overall, council submissions requested more funding in several different areas. South Lanarkshire Council argue that central funding is not flexible enough to allow more imaginative approaches to work and does not reflect new statutory responsibilities, e.g. allocation for throughcare does not reflect increased responsibilities. They also feel there is lack of a strategic overview which leads to insufficient local resources. They suggest that short-term custodial sentences be reviewed to address problems.

45. The Criminal Justice Northern Partnership argue that more populated areas had better service provision as providers in less populated areas had to cover wider geographical areas. The Northern Partnership has also raised an issue in relation to funding arrangements. There are some concerns regarding the distinction between core and non-core funding in that if this distinction were to be removed, the partnership feel that Local Authorities would be in a better position to make decisions regarding the effectiveness and efficiency of service delivery. Currently if a service level agreement is withdrawn the funding will almost certainly be withdrawn also unless there is an alternative provider within the independent sector. It was stated that in some parts of the Partnership it can be a real challenge to secure the services of the independent sector in order to develop specialist provision.

Effectiveness

*How effective are community penalties in Scotland in addressing recidivism?*

Executive views

46. The Executive accept that no long-term data is yet available regarding the impact of more recent community disposals (DTTOs, RLOs and SAOs) but feel that these disposals are demonstrating positive results in various evaluations.

47. The Executive highlight their Getting Best Results initiative, a partnership between the Scottish Executive, local authorities and the voluntary sector to promote the effectiveness of community penalties in reducing crime. In particular, it is encouraging local authorities to develop programmes based on “What Works” principles to address offending behaviour. The Scottish Criminal Justice Development Centre, a joint venture between Edinburgh and Stirling Universities, funded by the Executive, has been established to disseminate best practice and to support the evidence-based approach to service provision. All of this work is central to the task of building credibility with the courts and public.

48. Overall, in the first of a series of Scottish Executive statistical bulletins, presenting information on reconvictions on offenders in Scotland, a 2 year follow up study of the reconviction rates of those sentenced to custody and those given non-custodial sentences found that:

- 56% of those placed on probation were re-convicted within this period
- 40% placed on community service were re-convicted
61% of those discharged from custody were re-convicted

The study found that those discharged from a custodial sentence (67%) or given probation (63%) were on average more likely to be reconvicted within 2 years than those given a community service order (50%). However, these differences were not pronounced once the age, sex and number of previous convictions of offenders were taken into account.

**Measuring effectiveness**

50. Many respondents agreed that it was very difficult to gauge effectiveness of alternatives to custody and that insufficient research had been done. The Social Work Research Centre (SWRC) at the University of Stirling outlined various difficulties with establishing effectiveness including the difficulty in assessing the small numbers involved in a pilot study which is the status of several new community sentences, and the difficulty in identifying a suitable comparison group of offenders for recidivism. Peter McKinlay suggests that the SPS should measure its success by the reduction of recidivism and monitor ex-offenders’ behaviour via organisations which offer community programmes and restorative justice such as APEX, SACRO and social work departments.

There is also a question here about what it is reasonable for the Scottish public to expect sentencing to achieve.

51. SWRC, SACRO, Howard League and SCCCJ all make the point that there is no agreement on what constitutes effectiveness which makes it difficult to know what to try to measure. SACRO expressed concerns that the matter of assessing effectiveness is complex due to many factors such as the wide range of eventualities that may befall an offender and the different manner in which data is kept, e.g. reconviction does not always equate with re-offending. They believe data on recidivism to be limited and based on the short term.

**Effectiveness of various sentences**

52. Several organisations supported SAOs and CSOs as particularly useful but thought that suspended sentences used in England were only useful as a last resort measure. Others were concerned regarding the extent to which CSOs and RLO’s were breached and some thought that more meaningful services could be devised. The Scottish DEA and JFABCJ felt that the pilot Drug Courts were performing well.

53. Both the SWRC and SACRO highlighted the Executive data from 2001\(^3\) which shows alternatives to custody to be at least as effective and possibly better at reducing recidivism than custody. This mirrors what has been found elsewhere in the UK. The SWRC also highlights that various other studies have shown that adult offenders believe that probation supervision has been beneficial for them, and that programmes for young people have proven effective in reducing recidivism, e.g. the Airborne Initiative and the Glasgow partnership Community Justice project.

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Effectiveness of community penalties to support rehabilitation and reduce recidivism

54. The Sheriffs’ Association questioned the effectiveness of community penalties as a credible sentence. The Association raised the point that often offenders may have already tried alternatives to custody and not co-operated and so imprisonment was felt to be the inevitable choice. It was raised that cost-effective programmes and some alternatives such as DTTOs can support rehabilitation and reduce recidivism but respondents were not in agreement over whether hard evidence existed to support this claim. Overall, providers of the services were more positive than sentencers. Both anecdotal and research evidence was quoted. It was argued that there was pressure not to sentence offenders to prison due to overcrowding and that this put excessive strain on the agencies providing the alternatives. One respondent raised concerns that the benefits of community penalties are never apparent to the community.

Young offenders
55. A great deal of submissions were sent from providers of community disposals who deal with YO’s, e.g. Includem, Barnados, etc, and the point was made that this group of offenders were committing a grossly disproportionate portion of crime and were likely to move quickly up the crime scale unless effective consideration of their needs was met via intensive support and supervision programmes. It was felt that reparative and restorative justice was the most effective means of solving the problem of persistent YO’s and that custody and CSO’s were therefore not viewed as an effective method of reducing recidivism for this group. Conversely, the Joint Faiths Advisory Board on Criminal Justice (JFABCJ) stated that in the case of uncooperative YO’s, custody was the only suitable means of protecting the public.

56. Fairbridge in Scotland focus on YO’s and have carried out various reviews of youth crime recently which show that young people do not think prison stops them from re-offending but are more positive about CSO’s. The young people questioned by Fairbridge in Scotland expressed a desire to stop re-offending but stated that they required support to do this in various ways including education, training, employment, provision of good accommodation, psychological support, etc. The Prince’s Trust Scotland supports Fairbridge in Scotland’s view and highlights that the needs of the individual offender need to be met.

Domestic abuse cases
57. Scottish Women’s Aid (SWA) do not believe CSO’s, Fines, Diversion or Compensation Orders to be appropriate in sentencing for domestic abuse cases as they do not believe these are sufficient for the offender to address their behaviour. SWA also question the use of Probation or supervision based sentences for the same reason and feel that the Executive should monitor programmes more to gauge effectiveness. RLO’s were perceived as having more potential. However, SWA recognised that alternatives to custody had benefit for certain women offenders.

Suggestions for improving effectiveness
58. ACPOS question whether providers of services are allowed enough innovation and experimentation within the current disposals system. Many providers of community disposals, e.g. NCH Scotland, recommended more specialist bail support schemes like the ones they currently run which would give the courts the confidence
to use these schemes. ADSW suggest removing the short term sentencing option from both District and Sheriff Courts as they do not deem this effective.

What data should be available?
59. The Executive accepts that research access to reconviction data has been historically quite difficult and they rely on access to SCRO data. At present the Scottish Executive is looking at ways in which this information can be made available for the purposes of evaluation and accreditation of programmes for offenders.

Integrated data source for monitoring
60. Several respondents highlighted that although local systems were in place to gauge effectiveness of community penalties, a centralised, suitably resourced data source developed by skilled individuals to monitor recidivism and all community penalties and a method of obtaining the data would be required to give the full picture. Another respondent raised the point that most research records only the crime reported and not the level of crime. ACPOS also highlighted the lack of research into effectiveness of community penalties and their impact on recidivism which they felt would be useful to those involved at court disposals. It was also stated that the range of sentencing options has been increased but funding and staff training were still an issue. SACRO recommended that the Executive annually publishes the data received from local authorities regarding extent and cost of existing community disposals and gaps in services as identified by the Criminal Justice Strategic Plans.

What comparative evidence is available?
61. The Executive point out that statistical comparisons between Scotland and the rest of the UK must be treated with caution and can be misleading owing to differences in legal systems, procedures and crime classifications. The data from England and Wales from the Executive is as follows:

- 59% of those placed on probation were re-convicted
- 52% of those placed on community service were re-convicted
- 58% of those discharged from custody were re-convicted.

62. BASW suggested that more comparative research was required with the rest of the UK and also from Europe and the rest of the world. BASW stated that Scotland could learn much from the systems in Scandinavia and the Netherlands which they state are more flexible. Several councils also argued for further comparative research between providers of community disposals and requested access to SCRO information.
Allocation of community penalties

How are community penalties allocated?
63. The Executive state that Courts have an ability to impose any form of community penalty subject to the restrictions outlined previously but without regard to financial considerations. The Executive’s responsibility is to make available a sufficiently wide range and capacity of sentencing options.

64. The Executive highlight the Criminal Procedure (Scotland) Act 1995 which provides for the preparation of Social Enquiry Reports by local authority social workers in order to assist sentencers in determining the most suitable method of dealing with a case. For example, prior to imposing a first prison sentence on an adult, or any sentence of detention on an offender between the ages of 16 and 20 and also prior to imposing a probation order or community service order, the Social Enquiry Report will set out relevant details of the offenders’ background and include an assessment of the risks of further offending. The report will set out the range of sentencing options and the likely impact on the individual. The report is purely advisory and sentencing remains a matter for the judge.

65. The Executive also outline that most local authorities are using structured tests to assess offenders based on factors most closely associated with risk of reconviction. These provide an indication about the likelihood of reconviction and profile those areas of the offender’s lifestyle and attitudes that require to be addressed to reduce that risk and/or assess risk. Reconviction prediction tools issued as part of the Scottish Office Risk Assessment Guidance Framework are commonly used. The aim is to help ‘match’ specific offenders with a tailored programme designed to address risk and need. The Criminal Justice Northern Partnership explained that they used a Scottish Executive risk assessment tool to allocate community penalties where sentencing options are based on risk and need, e.g. medium and high risk offenders take priority. They felt that this tool required review. They thought that the Courts possibly took this approach also.

66. The SWRC made the point that the attitudes of sentencers towards alternatives to custody were likely to be a major factor influencing their use. BASW state that the main problem in this area is that there is no overall policy and that this makes the process particularly confusing to the offenders and especially YO’s.

Are the right kinds of cases/offenders receiving appropriate community penalties?
67. The Executive proffer court statistics to answer this question. They state that over the past decade the total numbers of probation and community service orders has increased by 34% and the use of custody by 17%. At the same time the number of fines imposed has decreased by 43%. These movements are against a backdrop of a 33% drop in the numbers with a charge proved over the decade to 2000.

68. The Executive argue that they are committed to ensuring that community sentences are properly targeted. However, the main problem and key target identified by the Executive for community sentences is that the use of short-term prison sentences in Scotland is too high. Scotland imprisoned 121 people per 100,000 of population in the year 2001, third in Western Europe after Portugal (where the numbers are declining) and England. The Executive believes that
community sentences are cheaper and just as, if not, more effective than the use of custody where public protection is not an issue.

69. South Lanarkshire Council argued that more information should be available to help providers of community disposals decide which programme is best for offenders, e.g. nature of the offence, offender’s offending history. They also argue for opportunities for formal discussion with sentencers to consider best practice and effectiveness of disposals. The Association of Directors of Social Work (ADSW) question whether Probation and CSO’s are being used effectively given that both they and custodial sentences have increased. ADSW argue that CSO’s are perceived as a sentence rather than an alternative to custody.

Appropriate allocation
60. It was commented that whether community penalties are allocated appropriately was difficult to gauge. Respondents highlighted that there are mixed views, e.g. sentencers are content with their sentencing but the popular public view is that people are not being given the correct and/or insufficient sentences. The question of whether lawyers and defending counsel argue against the best interests of the offender to order to gain a lesser sanction was raised. It was also felt that changing political views led to fluctuations in sentencing patterns and could lead to inappropriate sentences. It was generally felt that more work was needed to understand what programmes would work for YO’s and the younger demographic of offenders who were felt generally to be the most difficult to communicate with and achieve success at recidivism.

What are the obstacles which hinder the process of getting the right sanctions to the right offenders?
61. The Executive is concerned that the media take a punitive view and influence public opinion and the courts and support a culture frequently opposed to the greater use of community sentences. The Executive highlight the Committee’s recent survey of public attitudes to sentencing which supports the view that, with the right information, the public can support greater use of community sentences.

Recent developments/suggestions for change
62. Several councils are developing a process where offenders receive interventions appropriate to their levels of risk and need and offence related programmes are being introduced. Resources are being revised as a result.

63. It was suggested that custody as a sentence could be taken away from District Courts and that alternatives to custody options could be increased to include Supervised Attendance Orders and Fines. ACPOS and the Scottish DEA suggest that the area of Find enforcement and collection required some reassessment as non-payment of fines was an issue. SACRO argue that the fine is currently not matched to the offender’s income and recommend that the Executive examine this area. SACRO also suggest compensation orders are under used.

64. SACRO made many suggestions including that sentencers should be given a bigger role in the implementation of the sentence itself and that Courts should be encouraged to consider the repeat use of community disposals and to drop the current practice of the repeat use of periods of custody. SACRO also makes many
proposals for change including a statutory requirement for sentencers to show that all fine enforcement measures have been tried and other community sentences actively considered before imprisonment.
ANNEXE A

REMIT OF ALTERNATIVES TO CUSTODY INQUIRY

The Committee wishes to investigate the use and effectiveness of community sentencing as an alternative to imprisonment. The Committee wishes to address the following specific questions:

What currently exists?

Which community penalties are available to the courts in Scotland? What are the restrictions on their use? Which community sentences are not available in Scotland? Should these be introduced?

Level of service provision

What levels of resources are deployed in the provision of community programmes? Are resources available adequate for the local needs brought to court? If there are any shortfalls, how much is needed and where will these resources will come from?

Effectiveness

How effective are community penalties in Scotland in addressing recidivism? What data is available? What data should be available? What comparative evidence is available?

Allocation of community penalties

How are community penalties are allocated? Are the right kinds of cases/offenders receiving appropriate community penalties? What are the obstacles which hinder the process of getting the right sanctions to the right offenders?
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PART I

DISCIPLINARY PROCEDURE

Application of rules

1. (1) These rules shall apply:
   
   (a) where any complaint is made in writing to the Dean, or
   
   (b) where the Dean of his own accord initiates disciplinary proceedings,

   in respect of the conduct of a member of Faculty (hereafter in these rules referred to as "the member").

   (2) The initiation of disciplinary proceedings by the Dean under paragraph (1)(b) above shall, for the purposes of these rules, be treated as if it were a complaint made to him under paragraph (1)(a) above; and these rules shall, with any necessary modifications, apply to such initiation as they apply to such complaint.

   (3) Where the Dean is at any time of the opinion that a complaint is vexatious, unreasonable or unjustified, or that no further action is appropriate, he shall refer the complaint to the Complaints Committee, which may, if in agreement with the Dean, dismiss the complaint.

   (4) At his discretion, the Dean may direct that the Vice-Dean or another Faculty Officebearer shall handle a complaint in his place and exercise all relevant powers.

   (5) The Dean may delegate the administration of a particular complaint, or complaints generally, to another person or persons who may or may not be a member of Faculty, and when acting as such, that person shall be referred to as the "complaints administrator".

   (6) No complaint shall be entertained if it is received more than six months after the last of the events giving rise to the complaint unless the Dean is satisfied that exceptional circumstances exist which justify the making of the complaint outwith that time.
Interim suspension from membership

2. (1) The Dean may, if he thinks fit, suspend the member ad interim from membership of Faculty pending the determination and disposal of the complaint.

(2) As soon as may be practicable the Dean shall invite the member to make written or oral representations on the matter of his suspension and shall thereafter review the position.

(3) In the event of the Dean determining that a member should be suspended in terms of rule 2(1) above, he shall, on the application of the member, further review the position at intervals of not less than six months, and report to the member the result of any such review.

(4) The member may appeal the matter of his suspension to the Disciplinary Tribunal within a reasonable time of any review under paragraph (2) or (3) above.

Intimation of complaint

3. (1) The Dean shall as soon as may be practicable inform the member in writing as to the nature of the complaint, and shall afford to the member an opportunity to provide a written response to the complainant’s allegations.

(2) Thereafter the Dean shall have power to make such further enquiry as he may think fit with a view to (i) identifying the issues to be addressed, and (ii) ascertaining whether or not any material facts bearing on those issues are substantially in dispute between the parties.

Action where facts not disputed

4. (1) Where the material facts bearing on the issues identified under rule 3(2) above are not substantially in dispute between the parties, the Dean shall remit the matter to the Complaints Committee which may:

(a) dismiss the complaint in terms of rule 1(3) above;

(b) uphold the complaint in whole or in part and impose, if it thinks fit, one or more of the penalties set out in rule 6 below;
(c) with the consent of the member, uphold the complaint in whole or in part and remit it to the Disciplinary Tribunal for the imposition of one or more of the penalties set out in rule 12 below; or

(d) remit the complaint to the Tribunal for determination and disposal.

(2) Before giving any consent under paragraph (1) above, the member shall be informed by the Complaints Committee that it intends to act in accordance with that paragraph; and notified of the facts on which the Committee intends to uphold the complaint, in whole or in part.

Action where facts disputed

5. (1) Where the material facts bearing on the issues identified under rules 3(2) above are substantially in dispute between the parties, the Dean shall remit the matter to the Complaints Committee which may:

(a) dismiss the complaint in terms of rule 1(3) above;

(b) subject to such directions as it may specify, remit the matter to an Investigating Committee to ingather evidence or further evidence bearing upon the facts of the case; or

(c) remit the complaint to the Disciplinary Tribunal for determination and disposal

(2) The member shall be informed as to:

(a) any remit of the complaint to an Investigating Committee under paragraph (1) above; and

(b) the membership of the Investigating Committee;

and the Investigating Committee and the member shall be provided with such information as is in the Faculty’s possession in relation to the complaint.

(3) Subject to any directions given by the Complaints Committee, the Investigating Committee shall:

(a) invite the member at his discretion to make written or oral representations as to the complaint;
(b) make such other investigations as they think fit.

(4) Without prejudice to the generality of paragraph (3) above, the Investigating Committee may at their discretion interview or take statements from such witnesses (including the complainer, the member and any third party), and ingather such documents or other evidence, as they consider may bear upon the facts of the case.

(5) On completion of their investigations the Investigating Committee shall report in writing on such evidence as they have ingathered to the Complaints Committee. In so doing, the Investigating Committee may, if they think fit, comment on the credibility and reliability of any such evidence, and shall set out the facts which they find admitted or proved.

(6) Thereupon the Complaints Committee shall afford to the complainer and the member an opportunity to comment on the substance of the Investigating Committee’s report.

(7) Having considered the report of the Investigating Committee and any comment thereon, the Complaints Committee may:

(a) dismiss the complaint in terms of rule 1(3) above;

(b) with the consent of the member, uphold the complaint in whole or in part and impose, if it thinks fit, one or more of the penalties set out in rule 6 below;

(c) with the consent of the member, uphold the complaint in whole or in part and remit it to the Disciplinary Tribunal for the imposition of one or more of the penalties set out in rule 12 below; or

(d) remit the complaint to the Tribunal for determination and disposal.

(8) Before giving any consent under paragraph (7)(b) or (c) above, the member shall be informed by the Complaints Committee that it intends to act in accordance with that paragraph; and notified of the basis on which the Committee intends to uphold the Complaint, in whole or in part.

(9) Notwithstanding any remit to the Investigating Committee under this Rule, the Complaints Committee may at any stage, at its discretion, revert to dealing with the complaint in terms of rule 4 if the facts bearing on the issues identified under rule 3(2) above cease to be substantially in dispute between the parties.
Imposition of penalties by Complaints Committee

6. (1) Subject to paragraph (2) below, the penalties which may be imposed on the member by the Complaints Committee under rule 4(1)(b) or 5(7)(b) above are as follows:

(a) verbal admonition;
(b) formal written reprimand;
(c) severe written censure;
(d) order for cancellation or repayment in whole or in part of any fees exigible in respect of the work which has given rise to the complaint;
(e) a fine not exceeding £7,500;
(f) suspension from practice, with or without conditions, for a specified period not exceeding one year.

(2) Before imposing any penalty referred to in paragraph (1) above, the Complaints Committee, shall invite the member at his discretion to make written or oral representations as to such imposition.

(3) In deciding on the appropriate penalty, the Complaints Committee may take into account any period of intermin suspension imposed under rule 2 above.

7. (1) Any decision of the Complaints Committee under rule 1, 4, 5 or 6 above may be unanimous or by a majority.

(2) For the purposes of any such decision, each member of the Complaints Committee shall have an equal vote.

8. (1) With leave of the Complaints Committee, which shall only be granted on cause shown, the complainor or the member may appeal to the Disciplinary Tribunal against the dismissal or final disposal (including determination) of the complaint.

(2) Any application for leave, specifying the grounds on which it is sought, shall be made in writing within fourteen days of intimation of the dismissal or final disposal (including determination) of the complaint as the case may be.
(3) On an application for leave being received, the other party or parties shall be afforded an opportunity to make written representations as to why leave should not be granted.

(4) The decision of the Committee to grant the application shall be final.

(5) The decision of the Committee to refuse the application shall be final, unless, within seven days, the matter is brought before the Disciplinary Tribunal on review and, on cause shown, the Tribunal grants leave to appeal.

(6) A review hearing under paragraph (5) above shall be heard by a Committee of the Tribunal, comprising one Senior and one Junior Counsel, and one lay person appointed by the Chairman from the panel of lay persons nominated by the Scottish Ministers for the purposes of these procedures.

(7) The procedure to be followed in an appeal where leave is granted will be as set out in rule 11.

(8) The Tribunal shall not allow an appeal unless it is satisfied that the decision of the Complaints Committee was wrong in law, or that the Committee proceeded on a basis of fact contrary to the weight of the evidence.

Remit to Disciplinary Tribunal

9. (1) Where the Complaints Committee remits the complaint to the Disciplinary Tribunal, the member shall be informed of:

(a) the remit; and

(b) the membership of the Tribunal.

Remit for imposition of penalties

10. In the case of a remit to the Tribunal for the imposition of penalties -

(1) The Dean shall:

(a) provide the member with such information as is in the Faculty's possession in relation to the complaint;
(b) instruct a solicitor to pursue the complaint, and the solicitor shall in turn instruct counsel from a panel of three counsel of at least 10 years standing approved by the Faculty for the purpose. The solicitor and counsel may arrange for such assistance to be engaged in relation to the complaint as they think appropriate.

(2) The procedure to be followed will be that set out in rule 11(4) - (11) below.

(3) The Tribunal shall give its decision, together with the reasons therefor, in writing and such decision shall be notified to the Dean.

**Remit for determination and disposal**

11. (1) In the case of a remit to the Tribunal for determination and disposal, the Dean shall instruct a solicitor to pursue the complaint, and the solicitor shall in turn instruct counsel from a panel of three counsel of at least 10 years' standing approved by the Faculty for the purpose. The solicitor and counsel may engage such assistance in relation to the investigation and prosecution of the complaint as they think appropriate.

(2) The Dean shall provide the solicitor with such information as is in the Faculty’s possession in relation to the complaint.

(3) The solicitor shall instruct counsel to draft a formal Complaint which shall be intimated to the member who shall be entitled to lodge answers thereto. Such formal complaint shall set out the specific charges being made against the member and may on cause shown be amended at any time prior to the determination of the complaint.

(4) The procedure to be followed in the course of a remit to the Tribunal, and the conduct of any hearing, shall be at the discretion of the Chairman, but the Tribunal shall act in accordance with the principles of natural justice and observe the particular requirements set forth in the succeeding paragraphs of this rule.

(5) The Chairman may, at any time after the remit of the complaint to the Tribunal, hold such preliminary hearing or hearings as he thinks fit in order to address any procedural or other issues that may arise. For the purposes of any such preliminary hearing, the Chairman may, at his discretion, sit alone or convene a full or partial Tribunal.
(6) The parties to the case shall be given due notice of the date, time and place of any hearing before the Tribunal.

(7) In respect of a hearing, at which evidence is to be led or considered, the parties to the case shall, where ordered by the Tribunal:

(a) exchange lists of witnesses;

(b) lodge productions with the Clerk to the Tribunal; and

(c) exchange precognitions of witnesses.

(8) At any hearing, the case against the member shall be conducted by counsel referred to in paragraph (1) above, and the member may conduct his own case or have it conducted on his behalf by counsel or a solicitor.

(9) Any hearing shall be held in public unless on its own behalf or on the application of the complainer, the Dean or the member, the Tribunal considers that it would be appropriate for it to be held in private.

(10) Any incidental question of law arising in the course of the proceedings before the Tribunal shall be decided by the Chairman of the Tribunal.

(11) Subject to paragraphs 5 and 10 above, each member of the Tribunal shall have an equal vote in the determination and disposal of the complaint. Any decision of the Tribunal may be unanimous or by a majority.

(12) The Tribunal may determine the complaint by dismissing it or by upholding it in whole or in part.

(13) The Tribunal shall give in writing their decision as to the determination and disposal of the complaint, together with the reasons therefor, and such decision shall be notified to the Dean.

**Imposition of penalties by Disciplinary Tribunal**

12. (1) Where the complaint has been remitted by the Complaints Committee to the Disciplinary Tribunal:

(a) for the imposition of penalties, or
(b) for determination and disposal, and the Tribunal have upheld the complaint in whole or in part,

The Tribunal may impose on the member, if it thinks fit, one or more of the penalties set out in paragraph (2) below.

(2) Subject to paragraph (4) below, the penalties which may be imposed under paragraph (1) above are as follows:

(a) any penalty mentioned in rule 6(1)(a) to (d) above;

(b) a fine not exceeding £15,000;

(c) suspension from practice, with or without conditions, for a specified period not exceeding five years;

(d) suspension from membership of Faculty, with or without conditions, for a period not exceeding five years;

(e) expulsion from such membership.

(3) Before imposing any penalty under this rule, the Tribunal shall invite the member at his discretion to make written or oral representations as to such imposition.

(4) In deciding on the appropriate penalty, the Tribunal may take into account any period of interim suspension imposed under rule 2 above.

(5) The penalty of a fine under paragraph (2)(b) above shall not be combined with the penalty of suspension or expulsion from membership of Faculty under paragraph (2)(d) or (e) above.

Miscellaneous

13. (1) Where, in response to an invitation under these rules, the member chooses to make oral representations, he shall be entitled to be accompanied or represented for that purpose by counsel or a solicitor.

(2) In the determination of any complaint the member shall be given the benefit of any reasonable doubt.
Intimation of decisions, etc.

14. (1) The Dean or the Complaints Committee as the case may be shall, as soon as may be after the relevant event, intimate to the member and to the person who made the complaint:

(a) any interim suspension of the member under rule 2 above;

(b) any dismissal, determination or disposal of the complaint under these rules; or any action which has been or is proposed to be taken in the matter.

Publication of decisions

15. (1) (a) Where the Complaints Committee or the Tribunal upholds a complaint of professional misconduct, details of the relevant determination and of any penalty imposed, shall normally be published.

(b) Where the Complaints Committee or the Tribunal upholds a complaint of inadequate professional service, unless the member so requests, publicity shall not normally be given to the determination or dismissal of the complaint.

(c) Where the Complaints Committee or the Tribunal dismisses any complaint, whether of professional misconduct or of inadequate professional service, unless the member so requests, publicity shall not normally be given to that decision.

(2) Any publication under paragraph (1) above shall be made in a register kept by the Faculty for that purpose, which shall be available for inspection.

(3) Additional publicity in any form may be ordered at the discretion of the Committee or Tribunal if in their judgment the circumstances of the case so require.

Petition for removal

16. In the event of:

(a) the interim suspension of the member from membership of the Faculty under rule 2 above, or
(b) the suspension or expulsion of the member under rule 12 above, the Dean shall on behalf of the Faculty petition the Court of Session to remove the member from the public office of advocate.
PART II

CONSTITUTION OF COMMITTEES AND TRIBUNAL, ETC.

Complaints Committee

17. The Complaints Committee shall consist of three persons drawn from the Dean; the Vice-Dean; two other senior members of Faculty nominated by the Dean; and the panel of lay persons nominated by the Scottish Ministers for the purposes of these procedures. Either the Dean or the Vice-Dean shall be in the chair. Each committee shall include one lay person. The Dean shall have power to nominate a senior member of Faculty to serve on a Complaints Committee on an ad hoc basis.

Investigating Committee

18. (1) The Investigating Committee in a given case shall consist of one senior and two junior counsel selected by the Complaints Committee from a panel approved by the Faculty for the purpose.

(2) The Chairman of the Committee shall be the member of the Committee who is most senior as counsel, and the clerk to the Committee shall be the member of the Committee who is most junior as counsel.

(3) Where the member on cause shown objects within a reasonable time to any member of the Committee, or where any member of the Committee declines to serve on it, the Complaints Committee shall select another member of the panel to serve in his place.

Disciplinary Tribunal

19. (1) Subject to paragraph (3) below, the Disciplinary Tribunal shall consist of a Chairman and six other persons appointed as follows:

(a) the Chairman, who shall be a retired Senator of the College of Justice or a retired Sheriff Principal or other appropriate person, shall be appointed by the Lord President of the Court of Session for a period of three years and, in relation to a case remitted to the Tribunal within that period, for such further period as may be necessary to bring it to a conclusion.
(b) four counsel (including at least one senior counsel) shall be selected by the Chairman from a panel of twelve counsel (including at least five but not more than six senior counsel) approved by the Faculty for the purpose;

(c) two lay persons shall be selected by the Chairman from the panel of lay persons nominated by the Scottish Ministers for the purposes of these procedures.

(2) The clerk to the Tribunal shall be the Clerk of Faculty or such other counsel as the Dean may appoint.

(3) Where, in any particular case, the Chairman is of the opinion that it is appropriate that a solicitor should serve on the Tribunal, he shall select one solicitor from a panel of three solicitors of at least 10 years' standing nominated by the President of the Law Society of Scotland for the purpose and, in that case, paragraph (1) above shall apply in relation to the appointment of the Tribunal with the modification that, in sub-paragraph (b), for the word "four" there shall be substituted the word "three".

(4) Where the member on cause shown objects within a reasonable time to any member of the Tribunal, or where any member of the Tribunal declines to serve on it, the Chairman shall select another member of the same panel to serve in his place on the Tribunal or, in the case of the Chairman of the Tribunal, the Lord President of the Court of Session shall appoint another Chairman for the purposes of the particular case.

Further provisions as to panels

20. (1) Without prejudice to the continued service of panel members selected for particular cases, one-third of each of the panels referred to in these rules shall retire by rotation each year.

(2) A person shall not be eligible for re-nomination to any of the said panels within three years of retiring from it or, as the case may be, of completing a case requiring continued service beyond normal retirement date.
PART III

MISCELLANEOUS

Expenses

21. (1) Subject to the following paragraphs of this rule, all expenses reasonably incurred in connection with the handling of a complaint under these rules shall be paid by the Faculty.

(2) Where a complaint is upheld, expenses shall not be recoverable by the member unless, in exceptional circumstances, the Committee or the Tribunal so direct.

(3) The Complaints Committee or Disciplinary Tribunal may at their discretion limit or inhibit the recovery of expenses by any party whose conduct in relation to the complaint proceedings is held to be unreasonable.

(4) Where the conduct of any party in relation to complaint proceedings is held to be vexatious, obstructive or dishonest, the Complaints Committee or the Disciplinary Tribunal may at their discretion find that person liable to meet the expenses reasonably incurred by any other party, or by the Faculty, in connection with the handling of the complaint.

(5) Any dispute as to the reasonableness of any expenses payable under paragraph (1) or (4) above shall be remitted to the Auditor of the Court of Session whose decision shall be final.

Interpretation

22. In these rules, the following expressions shall, unless the context otherwise requires, have the following meanings respectively assigned to them:

"complaint" means a complaint such as is referred to in rule 1 above;

"Complaints Committee" has the meaning assigned to it in rule 17 above;

"counsel" includes counsel not in practice as such;
"Dean" means the Dean of Faculty;

"Disciplinary Tribunal" has the meaning assigned to it in rule 19 above;

"disposal", in relation to a complaint, includes the imposition of any penalty under these rules;

"Faculty" means the Faculty of Advocates;

"Faculty Office Bearers" means the Dean, Vice-Dean, Treasurer, Clerk, Keeper of the Library, and Chairman of Faculty Services Limited;

"Investigating Committee" has the meaning assigned to it in rule 18 above;

Citation and commencement

23. (1) These rules may be cited as the Faculty of Advocates Disciplinary Rules 2001.

(2) These rules shall come into operation on 21 March 2002 and shall apply to complaints initiated on or after that date.
Summary of Faculty of Advocates Complaints Procedures

Receipt of Complaint

1. All complaints against counsel must be in writing and signed by the complainant.

2. Unless there are exceptional circumstances, a complaint will not be entertained if it is made more than six months after the conduct which is the subject of the complaint.

3. When a letter of complaint is received, it will be acknowledged and the complainant told that it will be copied to the counsel concerned unless within 7 days the complainant expressly refuses consent to this.

4. Refusal of such consent will normally mean that the Faculty will not be able to look into the complaint.

5. The Dean has power to remit a complaint to the Vice-Dean or another Faculty Officebearer for determination in accordance with these procedures.

Preliminary Consideration by Dean of Faculty

6. The purpose of this part of the procedures is to clarify the issues and to ascertain whether there is a dispute on the facts. This procedure will normally begin within fourteen days of receipt of the consent mentioned in paragraph 2.

7. The counsel concerned will be asked to respond to the complainant within fourteen days. Thereafter the complainant will be contacted, usually with a request for further information or comments.

8. Depending on the complexity of the complaint, the process of clarification may involve correspondence with the complainant, counsel and possibly others over a period of time. In the absence of any special factor, it is anticipated that this part of the procedures should be completed within three months.

Procedure where the material facts are not substantially in dispute

9. The complaint will come before a Complaints Committee consisting of a Chairman, either the Dean or the Vice-Dean, one other senior advocate and one lay person. The aim is that this meeting will take place within six weeks of completion of the previous stage.
10. The Complaints Committee may proceed to determine the complaint itself and, if the complaint is upheld, impose a range of penalties up to and including a fine.

11. Alternatively the Complaints Committee may remit the complaint for determination and/or disposal to the Faculty’s Disciplinary Tribunal. This Tribunal is chaired by someone of the status of a retired Judge. It includes four practising advocates and at least two lay persons. The procedure before the Tribunal is more formal, and may involve the leading of evidence. The aim is to complete this stage within four months of the remit to the Tribunal.

12. The range of penalties open to the Tribunal where a complaint has been upheld is greater, and extends to suspension or expulsion of the counsel concerned from membership of the Faculty.

Procedure where material facts are disputed

13. In this situation, the complaints committee will exercise one of two options.

14. The first option is to remit to an Investigating Committee, consisting of three members of Faculty, to investigate the disputed facts and submit a written report. The Investigating Committee will normally proceed by means of interviews, and may call for documents to be produced. In the absence of special factors, the Committee will be expected to report within two months.

15. Where the dispute is resolved by the Investigating Committee’s report, the Complaints Committee can then proceed as outlined in paragraphs 9 and 10 above.

16. The second option is to remit the complaint directly to the Disciplinary Tribunal for determination and disposal, including resolution of the disputed facts.

Miscellaneous

17. It should be understood that the determination of a complaint does not affect the validity of prior Court decisions (such as convictions or sentences) or contracts, and is not a substitute for legal action where damages for alleged negligence are claimed.

18. Proceedings before a Disciplinary Tribunal will normally be held in public unless the Tribunal considers that this would be contrary to the interests of justice. The upholding of a complaint of professional misconduct will normally be published. Otherwise generally the investigation and disposal of complaints will be handled on a confidential basis.
19. The standard of proof required in relation to any complaint is proof beyond reasonable doubt.

20. At the conclusion of proceedings, both the complainer and counsel will be advised in writing of the facts found, and also of the action taken.

21. A full copy of the Faculty’s Disciplinary Rules is available on request.

Ombudsman

22. If a complainer is dissatisfied with the way the Faculty of Advocates has handled a complaint, you may write to the Scottish Legal Services Ombudsman, 17 Waterloo Place, Edinburgh, EH1 3DL, within six months of the date of the decision.
Summary of Faculty of Advocates Complaints Procedures

Receipt of Complaint

1. All complaints against counsel must be in writing and signed by the complainer.

2. Unless there are exceptional circumstances, a complaint will not be entertained if it is made more than six months after the conduct which is the subject of the complaint.

3. When a letter of complaint is received, it will be acknowledged and the complainer told that it will be copied to the counsel concerned unless within 7 days the complainer expressly refuses consent to this.

4. Refusal of such consent will normally mean that the Faculty will not be able to look into the complaint.

5. The Dean has power to remit a complaint to the Vice-Dean or another Faculty Officebearer for determination in accordance with these procedures.

Preliminary Consideration by Dean of Faculty

6. The purpose of this part of the procedures is to clarify the issues and to ascertain whether there is a dispute on the facts. This procedure will normally begin within fourteen days of receipt of the consent mentioned in paragraph 2.

7. The counsel concerned will be asked to respond to the complainer within fourteen days. Thereafter the complainer will be contacted, usually with a request for further information or comments.

8. Depending on the complexity of the complaint, the process of clarification may involve correspondence with the complainer, counsel and possibly others over a period of time. In the absence of any special factor, it is anticipated that this part of the procedures should be completed within three months.

Procedure where the material facts are not substantially in dispute

9. The complaint will come before a Complaints Committee consisting of a Chairman, either the Dean or the Vice-Dean, one other senior advocate and one lay person. The aim is that this meeting will take place within six weeks of completion of the previous stage.
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