Women for Justice
Justice for Women

A Report of the ‘Justice Watch’ Initiative
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Scotland has the highest rate of imprisonment of women in all of the countries of the UK, all of which imprison substantially higher rates of women and men than other comparable countries in Europe.

Are Scottish women really more violent or dangerous than women in England, or in Ireland or other countries? Or are other factors determining the high rate of women’s imprisonment?

We went into our courts to see for ourselves how and why women are sent to prison in Scotland. This is the report of what we found.
“Cornton Vale is not fit for purpose. Overcrowding has caused significant problems for the management and staff, and has inhibited opportunities to rehabilitate women and reduce their re-offending on release. The mental health needs of women are not being addressed adequately. There are high levels of self-harm and there is a lack of constructive and meaningful activity. Staff working in Cornton Vale also find it very challenging due to the nature and complexity of women’s needs.”


“The Sheriff asked what direction she wanted to be going in life and she replied ‘normal life, college’. He continued the order till a later date but he threatened a lengthy custodial sentence. Then he repeated in a threatening voice ‘Cornton Vale’.”

-Glasgow Sheriff Court, 2017

Introduction

In January 2015 the Scottish Government announced that they had decided not to proceed with plans for a new women’s prison in Inverclyde, south of Greenock. This U-turn had been largely brought about by a Women for Independence led campaign. Expectations for a new and more just Scotland were high in the wake of the referendum on independence, and the SNP Government was not able to defend the case for building the prison. The new prison had been planned to accommodate the ever-increasing number of women committed to prison in Scotland. Plans for the prison were so far advanced at the start of the campaign in December 2014 that the contract to build it was about to go out to tender, and several millions of pounds had already been spent in planning and consultancy fees.

The plan for what was dubbed a ‘super prison’ had been pursued over several years despite the reasoned and evidenced arguments put forward by Howard League Scotland and other reform groups that it would merely repeat and reinforce a failure of government and of justice that had seen a relentless rise in the numbers of women in prison, to the point that Scotland had and still has the highest rate of imprisonment of women of all countries in the U.K. (http://howardleague.scot/news/2014/december/inverclyde-new-years-resolution).

There have been several inquiries over the years into the causes and consequences of this high rate of imprisonment, the latest being the 2012 report by the Commission on Women Offenders which was led by Dame Eilish Angiolini

The report recommended the complete closure of Cornton Vale Prison as ‘not fit for purpose’, but had not recommended that it should be replaced with an even bigger prison in an even less accessible location than outside of Stirling in central Scotland. On the contrary, the Angiolini Report’s recommendations recognised that diversion and prevention and community based provision were the key to cutting the women’s prison population (http://www.gov.scot/Resource/0039/00391828.pdf). This recognition is not new. It was included in a report A Safer Way (Loucks 1998) commissioned after a series of suicides of mostly young women, when the number of women in Cornton Vale was still under 200 women. This was considered excessive at the time but has been over 400 and is now still almost twice that 1998 figure. But the recommendations of this and subsequent reports have led to nothing, except even higher numbers of women in prison. Community sentences have expanded but so have prison numbers too. But community sentences are nevertheless a much smaller part of the justice budget that prison.

The figures show that the cost of the prison service at £313.8m is nearly three times the £109.3m cost of criminal justice social work services. These include not only community sentences, but supervision of serious danger offenders after release from prison, parole applications, resettlement of offenders, and also the pre-sentence reports to the courts.

Concern for victims does not seem to be reflected in how we spend our money. At £18m, criminal injuries compensation is the smallest of any budget heading. Funding for recovery and support services for people who have been the victims of crime is so insubstantial that it is included under ‘miscellaneous’. What is justice for if not about righting wrongs? About concern for the human harm caused by offending?

The costs of criminal justice system do not include the costs imposed on other areas of expenditure – the costs of care of children of parents in prison, or of homelessness caused by loss of housing while in prison. Every year more children in Scotland are affected by the imprisonment of one of their parents than by divorce (https://www.familiesoutside.org.uk). These are children who may have witnessed the arrest of a parent, or who may have suffered the sudden shock of a parent not coming home, and who have to cope with not only stigma and shame but perhaps of homelessness, or of moving to relatives to be looked after, or of coming into care. Care costs for one child per annum are estimated at between £60- £300k per annum. The cost to the public purse of a failed tenancy was estimated in a 2015 publication at £20,000 (http://scotland.shelter.org.uk/news/news_archive/july_2015/support_for_young_offenders).

The case for change is strong. The campaign led by Women for Independence (WFI) in late 2014 proved a decisive turning point on the issue, as WFI launched an online petition and got favourable press coverage and public opinion that effectively put pressure on the government to abandon plans for the new prison.

We celebrated the victory, but knew that there was a lot more to do if Scotland’s high rate of imprisonment was to be reversed. And so it was agreed that Women for Independence establish the ‘Women for Justice - Justice for Women’ campaign. Read about the campaign manifesto and aims here: (www.womenforindependence.org/_justicewatch).

The official policy is that community sentences should be used as much as possible instead of prison for minor offending and there has been a presumption against short sentences of less than three months for some years. But the statistics show that while there has been an expansion of non-custodial sentences, there has been no corresponding reduction in adult prison numbers either on remand or on sentence. So it seems that more people, men and women, are being brought into the criminal justice system with all the consequent costs and consequences of that.

Women for Independence believes we need to ‘turn off the tap’ that fills the prisons, and wastes not only lives but also public money on what has for many years been a failed system. We believe in diversion at every opportunity and will be challenging choices about prosecution, about remanding and sentencing women to prison for trivial offences, particularly those arising from manifest problems of mental health, victimisation, and trauma.

We called for an end to prison sentences of under one year: if an offence is violent and serious enough for prison, and only prison will do, then a short prison sentence is neither just nor rehabilitative. Read more about this here (www.womenforindependence.org/response_to_scottish_govt_consultation_on_short_sentences).
The Scottish Government has now committed to introducing a presumption against prison sentences of less than 12 months. This will present a great opportunity to cut the numbers of women and men in prison. 90% of sentenced women in prison are on sentences of less than 12 months. However there needs to be an equal commitment to presumption against remand into custody for offences which would merit less than a 12 month prison sentence. Women are more likely to be remanded than men. In October 2017 23% of the women’s prison population were on remand compared to 18% of men. (Prison Reform Trust Briefing October 2017)

**We need to win public support for change**

We agreed that any progressive strategy to reduce imprisonment and improve outcomes for the justice system has to win public support in order to strengthen the political will to act. This meant we needed wider public engagement and to secure cross party agreement on the necessary actions to reduce the number of women in prison. That is where the WFI Justice Watch project came from.

**Justice Watch**

We decided on a ‘mass-observation’ style initiative, aimed to capture women’s experiences of justice in our courts, and to bring these out to a wider audience of women and to everyone interested in justice. Why were women in Scotland sent to prison? What were their experiences in court? How was justice being done? We set out to watch justice in practice in the courts in Scotland.

At the very start of our Justice Watch initiative, in April 2016, and four years since the Commission on Women Offenders it was reported that an Angus mother-of-three has been jailed for ten months for £30,000 benefit fraud over 4 years (BBC Scotland 6 April 2016).

On 7 July 2017, five years after the report of the Commission on Women’s offending a 27-year-old Thurso woman who stole £28 worth of wine from an Inverness store was jailed for 60 days. Defence lawyer Neil Wilson said his client could be dealt with in the community where she would get social work and psychological help. But Sheriff Gordon Fleetwood rejected the appeal, telling Drummond: “You do need help but you do not seem willing to take it” (Press and Journal 8 July 2017).

Were either of these cases so serious or so violent that only prison would do to safeguard the community? Was prison really the best use of money when public expenditure is being cut to the bone, and we are supposed to be focussing on prevention?

**Watching justice in the courts**

Women observers visited Sheriff courts in Edinburgh, Glasgow, Stirling, Forfar and the Borders, Kilmarnock, Paisley, Greenock, Aberdeen, Inverness. We also watched the media for reports of women appearing in courts and other relevant information.

**The Justice Watchers**

Most women who took part in Justice Watch had never been in a court before. Some had
“Why were women in Scotland sent to prison? What were their experiences in court? How was justice being done?”
backgrounds in business, or in academia and research, some in the media, in the arts, and other creative work, or in teaching, and in health and social work or in the law. Many if not most of us who set out to watch justice in our courts were retired or semi-retired – who else has the time to go into courts to watch justice in action, and to talk to people about their experiences and report on what they have found? Many if not most of us were ourselves mothers and grandmothers and all of us of course are daughters of a mother and we all had experience of good and bad luck in life. All of us had been inspired by the possibility of creating a new and better Scotland – and felt that a responsibility to help make a more just and fairer Scotland a reality.

What we found: the things that struck us most about our criminal courts

Poverty

People who are prosecuted in our courts are nearly all poor and many are clearly in poor physical and mental health. Their poverty and economic and social disadvantage is obvious. Many women and men showed signs of poor nutrition and most were poorly dressed in cheap, poor-quality clothes and footwear. Many people appearing as accused in courts showed signs of disability, many were visibly affected by poor health, including missing or diseased teeth, and having only partial or restricted mobility. Almost all the women whose financial and family circumstances were reported were reliant on benefits, some on zero hours or insecure employment. The contrast between their circumstances and of their friends and relatives who accompanied them and those of the sheriffs, fiscals, lawyers and clerks of the court is impossible to ignore.

Punishing poverty: The woman who was sentenced had pled guilty to a charge of theft of an item or items of a value given at £140 approximately. There had been full recovery – she was caught leaving the store and the goods were recovered in full and intact. Her lawyer told the sheriff that she had an 18-month old child and an 18-year old son and that both were dependent on her. This meant that she could not undertake a community payback order as these require attendance to perform work activities as she had no one to care for baby. It was reported that the family relied on benefits of £300 per week, which was to pay for rent, council tax, food, fuel, and all other expenses. The sheriff concluded that he would fine her £300 to be repaid at £10 per week. He remarked to her that she should reflect that a fine of this level represented twice the value of the goods that she had tried to steal and show her that ‘it was not worth it’. I wondered how she would go about finding the £10 per week without going into debt with rent, or doing without food or whatever. This punishment penalised the whole family including an 18-month-old child. So in this way, a whole family already in poverty – most probably the reason behind the offence - suffers more poverty.

We saw that most of the people who are prosecuted in these impressive palaces of justice come from poor areas, are in impoverished circumstances, and that their lives have been marked by disadvantage and often by disaster. The prosecution of minor crimes and misdemeanours that are essentially a consequence of poverty often seems disproportionate to the costs involved.
Wigs and gowns and Latin

…my immediate impression was very much a sense of us and them with the way the lawyers and judge etc. were dressed and the glass barrier in between. Find myself writing ‘person accused’ as the whole process is so dehumanising that calling someone ‘the accused’ seems to just add to it.

Although both Edinburgh and Glasgow and some other sheriff courts are in modern buildings, what goes on in a 21st century court room does not seem to have changed much since the 19th century. Judges and fiscals (prosecutors) and defence lawyers alike wear curly woolly wigs and voluminous black gowns. We did wonder why and to what purpose?

Cases are conducted in legal language using terms and processes which are simply not possible for the layperson to understand. This makes justice often seem to be the property of an exclusive club which does not need to explain itself. The wearing of wigs and gowns only increases the exclusive nature of what goes on in our name and at our expense in the courts.

“It was a bit of a mystery as to who all the official people were.”

People who appear as the accused are not included in the discussions of their own cases in court, and are indeed reprimanded for trying to be involved or even for trying to correct errors and give accurate information about their own lives.

“The atmosphere was good when someone had been seen to have done well and the sheriff was pleased. But it could change again quickly at any point. The language and attitudes in court seemed outdated (m’lord, your ladyship), as did the wearing of wigs and bowing before the Sheriff.

“The power dynamic (between sheriff and defendants) was like that of a parent or school teacher with a child. This was echoed among the court officials.”

The accused are excluded from taking part in proceedings

Those who appear in the dock are clearly not expected or allowed to take part in their own trial or in explanations about the offence or even about their personal circumstances in discussion about bail, or remand, or sentence.

“The lawyers generally appeared to be only doing a job and didn’t reflect the trauma that the women were going through. On occasions there was a jovial atmosphere among court officials, cracking jokes between themselves which seemed insensitive and at odds with the gravity of the situation for those appearing in court, especially the women who had so much at stake over relatively minor offences.”

It is evident that the accused had often not had the advantage of preparation with their representative in advance of the hearing and the lawyer supposedly representing them would appear to be reading about the case as they were standing to speak. Sometimes people who seemed relatively inexperienced in the ways of the courts would attempt to take part, trying to offer information about their circumstances or their cases but were quickly silenced by either the sheriff or their own solicitors. Some people seemed to be purposely trying to ignore the proceedings and
discussion, perhaps because of experience that they could not influence anything at all about what would happen.

For instance, some women in the dock might attempt to correct errors in their lawyer’s summary of their circumstances but were told or motioned to be quiet. However, some women seemed to be quite resigned to accept whatever happened to them or whatever was said to them or about them without showing any reaction or emotion.

“Angie, 36 yrs old - In custody after arrest on warrant over weekend. Several times not turned up to answer charge of smuggling heroin in to prison in her mouth. Lawyer said she was strong willed and had conflict with Social Work, but no other trouble while on current order, though various spells in custody. The Sheriff shouted at her at the end when he asked if she understood and there was no or little reply. She seemed indifferent to what happened in the court.”

Sometimes, the accused seemed to have a learning difficulty, or even a serious physical illness or disability or mental illness, and not be able to fully understand what was happening for some reason.

“Angus Court – an elderly lady was brought into court from custody in a wheelchair. It was stated by the Fiscal that it was believed that she was suffering from dementia and was awaiting a social work assessment. Her ‘crime’ was not made clear but it could only be assumed it was related to her dementia.”

“Edinburgh – a boy with evident learning disability – and of (to the justice watcher) an apparent age of reasoning at about eight or nine years of age - was brought into court from police custody on a charge of breaching bail conditions. It transpired that he had been charged with harassment of a former girlfriend and bailed on condition that he should not return to his home town in West Lothian. He had been turned away from Edinburgh’s homeless service where he had carelessly or wrongly been directed to go, and not knowing what to do, had gone home to his mother. She had paid for an hotel for the night for him out of town, but his presence was made known to the police and he was arrested.”

“Glasgow - a man obviously mentally disturbed and/or with learning difficulties gesticulating as he took his place in the dock was sent down in handcuffs, for his apparent disrespectful behaviour.”

The difficulties of comprehension were rarely acknowledged openly, unless there had been, for example, post-conviction reports prepared by social work, which would include an account of any diagnosed illness or condition.

(In)equality before the law?

We are all innocent until proven guilty, but it seemed to our watchers that the presumption of innocence did not lead to people in the dock being treated as equal to everyone else. When people have been charged with an offence should they really be treated as if they are not worth the same respect and dignity as everyone else?

“Though I’ve experienced the courts before I was still struck by the grovelling, pleading manner the lawyers had in front of the judge and the way he was always addressed as ‘your Lordship’. The woman (sheriff clerk) who gave instructions to the accused once the judge had finished spoke in a very robotic way, addressing the
person by their surname whilst writing.”

“Sheriff reprimanded two lawyers for talking. This was backed up by the security staff woman who watches the public gallery. But unlike when it is those in public gallery it was all jovial and a bit of a joke. Double standards seem to be acceptable. A woman prison officer sorting her hair in court seemed to cause no reaction whereas a woman waiting in the public gallery doing the same thing was severely scolded by the Sheriff. My fellow justice watcher made me aware that I wasn’t allowed to drink in the court so my water stayed in my bag but I noticed bottles of water around the desk on the other side.”

“One woman’s female defence lawyer called her name but she wasn’t in the gallery on the first occasion but was there on the second. But her lawyer had got her name wrong, which implies there hadn’t been much contact between them and so this mustn’t have filled the woman with confidence at all. The lawyer also didn’t recognise her in the gallery. Thankfully the Sheriff pointed out that she was there— he recognised her. Though he said her situation was improving and she looked better, he wanted to know why she was late. When she replied that her phone wasn’t set to the right time he responded with “wee lies and excuses don’t go down well”. I wondered at how much she was dealing with and how hard it would be for her to get here at all. She appeared indifferent at it all and as if it’s to be expected.”

Inefficiency

The courts seem to be unable to cope with the challenge of organising evidence, witnesses, defendants, prosecutors and defending solicitors efficiently, and what goes on in court often seems to be a perpetual stirring and juggling of all these elements with only a rare coming together of them all to allow a trial.

“What I witnessed during seven mornings spent in court was a tedious number of many unresolved cases due to defendant or witness non-appearances, cases not ready by PF or defence agents, evidence items not available, problems with recordings and worryingly poor acoustics. At times it made me even think of an earlier Jarndyce and Jarndyce era, an interminable, confused, costly and extremely overloaded process that seemed to be creaking at the seams.”

While court staff and police officers were usually friendly and helpful to us and apparently also to others attending the courts as defendants, witnesses, or friends, the system seems very inefficient and inflexible. Cases are dragged on for months because of administrative delays, and by the non availability of legal aid, or of witnesses, or of the defendant: sometimes because the defendant was in custody somewhere else when called.

Some delay may be inevitable but often we heard that witnesses had not been called, or their evidence not properly obtained in advance, or because CCTV or other evidence has not been got in time, so that the prosecution found itself unable to proceed to trial. In the bigger sheriff courts in Glasgow and in Edinburgh, the procurator fiscals seem to be completely overloaded with cases, and sat with piles of files in front of them, seeming just to be reading them for the first time as the case was called.

“On one occasion the Procurator Fiscal (the prosecutor) expressed total astonishment and dismay that full sets of witnesses had turned for two separate trials due to happen in that court that morning. Clearly this was unexpected and unwelcome. The defence and the prosecution witnesses all there, two cases ready
for trial – but the PF was not ready and in any case the court would not have the time for two trials in the time available. When the Sheriff returned to the bench the PF reported to him that in one case she had not got the CCTV footage, and in the other she had not got the record of a 999 call that had been made. So all the witnesses were sent away. These would have included police witnesses, as well as civilian witnesses. I could not help wondering why, if this evidence was so important to securing a conviction, it was not in the PF’s hands from the time that they took the decision to prosecute?”

“In a smaller court in the Borders, a less chaotic picture - The Court Officer was calm and approachable, to me and the defendants. He seemed to know many of them. The legal reps seemed a bit chaotic but I guess that is the inevitable result of constantly trying to locate and be available to about 8-9 clients each on the day. When they spoke, when I could hear them as there were terrible acoustics, they seemed concerned and well prepared. The Sheriff, a woman, struck me increasingly as a woman with a good sized helping of compassion and common sense. No-one gave me any sense of being superior, disdainful or judgemental except in the inevitable sense to the defendants or anyone in the Court. Though the two policewomen were a bit grim.”

Inaudible and incomprehensible

We also found that while justice might be able to be watched, justice usually can’t be heard at all. The proceedings are mostly inaudible in the public gallery. This was a major problem for some justice watchers with compromised hearing. They could watch but found that proceedings were not possible to understand. But even if the courts were audible, they are often incomprehensible to anyone who is not a lawyer and is unfamiliar with Scottish law and with the customs and language of Scottish courts.

“Only space was in the middle of the front row which actually turned out ok as there was a space between the glass panels there, which was directly in line with the sheriff and the back of the lawyer and the person accused, making it easier to hear. When I remarked on the gap quietly to my fellow justice watcher between cases, pointing my biro at it, I looked up and saw the Sheriff apparently glowering at me. I looked away as it felt so intimidating.”

Often it was impossible to know what people were charged with. Often people were called to court for the progress on their cases to be checked. These appearances were not trials or sentences or even pleas, and the alleged offences were not read out. But even where there was some discussion and explanation, it was really difficult to hear what was being said. The people actually in the dock could hear it but they are not participants.

Therefore, even though criminal courts are mostly open to the public, justice cannot be ‘seen and heard’ to be done by the public.

“It was hard to hear with the door banging continually as people came in and out – you’d think they could invest in some soft door closers. The drugs team had particularly quiet voices and what with them having their backs to us and the glass partition it was difficult to make much out. Typing sounds added to the difficulty.”
“The impact of charge and trial often seemed so much greater than the offence.”
The impact of charge and trial often seemed so much greater than the offence

A considerable number of women who appear from overnight or weekend police custody or from bail were on held on very minor charges unrelated to public safety or on charges relating to treatable but untreated drugs and alcohol problems – shoplifting, breach of the peace, threatening behaviour, failure to appear. They had been arrested for breach of bail conditions or for failure to appear at a previous hearing. Many reported being responsible for children or of working, often against the odds, to get their children back out of care.

“Suzanne had tested positive for heroin but was adamant she had only used once since out of hospital. Her lawyer suggested this was because she was worried she’d lose her kids. She started to shake and put her hands over her face. She was crying. The sheriff acknowledged it was difficult for her in this situation and asked about her kids. They were with her mum. He told her children need parents that they can look up to and she began to shake more - maybe she didn’t need to hear that. He said he would continue the order and review in another two weeks, but she was ‘on the brink’ (of prison presumably). She said she had expected to be sentenced (to prison) and thanked him. She seemed to leave alone.”

‘Specialist’ courts

Domestic abuse

We found a surprising number of women in court for ‘domestic abuse’ related offending

Edinburgh has a court which mainly tries cases associated with domestic violence or abuse. To our surprise, this was a court where often most women’s names appeared on the list of cases, as they were charged with offences that were considered to come within or be associated with current definitions of domestic abuse.

Three women in one morning in the same court were granted bail on specific conditions of not being in contact with others. One was a child…. But the other two were women being prosecuted for ‘domestic abuse related’ offences. It seems that because the definition of this has been extended to more than physical violence and because a ‘zero tolerance’ position has been adopted by police and prosecution, significant numbers of women are being prosecuted for behaviour that did not seem to merit arrest or prosecution.

“None of the women I saw in front of the courts on this kind of charge look like thugs. In fact, many of the women I saw were not charged with anything more than a one-off incident, often of a reported threat to a man.”

“Joan appeared from overnight custody at about midday. Her husband and mother had been anxiously waiting all morning in court for her to be brought up from the cells. The court staff and police had been very helpful to them as they were so obviously without any knowledge or experience of courts. She was sobbing and very distressed. Her lawyer explained that there had been some domestic row that had led to police being called and somehow to her arrest. She had never been in trouble before. Her children had witnessed the arrest and were distressed. The woman sheriff was openly sympathetic, and freed her on bail without conditions, and also suggested to the Fiscal that “the interests of justice” might lead to the case not being
pursued. It seems that she was arrested not because of the seriousness of what happened but because it was “a domestic.”

“A young woman appeared from custody, accused of breaching bail conditions. She had been bailed not to go near her partner as she had been charged and bailed on an accusation by him that she had threatened him. This young woman looked to be 21 years or not much older, to be 5ft tall and to weigh no more than 7 stone. It was reported that her boyfriend had invited her round with their children after previously having her arrested and charged, but when she came he had called the police to report that she was in breach of the bail conditions. She was then arrested in front of her two small children and had spent the weekend in police custody. The Sheriff released her on bail again on the same conditions giving her a strong message not to respond to any future invitations.”

The statistics show that an increasing percentage of those charged with “domestic abuse related” offences are women.

- Incidents of domestic abuse recorded by the police in Scotland with a female victim and a male perpetrator represented 79% of all incidents of domestic abuse in 2014-15 where gender information was recorded. Since 2005-06 this percentage share has fallen from 87%.

- The proportion of incidents with a male victim and a female perpetrator (where gender was recorded) has increased from 11% in 2005-06 to 18% in 2014-15.

Source: Domestic abuse recorded by the police in Scotland, 2014-15

If the increase continues at this rate, women will account for 25% of accused by 2023. Will this mean more women in prison?

Drugs courts

“The Judge talked in an apparently understanding manner yet the whole scenario seemed to judge people as good or bad depending on the outcome of urine tests.”

This observation by one of the justice watch volunteers sums up the confusing messages we observed in what are called the “drugs courts”. These are criminal court that tries to take account of the specific addiction problems of those appearing before it for a variety of addiction related offences. One of the conditions of not being sent to prison is abstention from the illegal drug.
There is some offer of support to maintain abstinence on a methadone regime. Methadone is a mind-altering opioid, but it is legal. So it is apparently alright to be show up in court off your face on methadone but not alright to have consumed heroin or other drugs that show up in urine. Is a court really the place to manage the consequences of addiction?

Glasgow Justice Watch observers sat in the Drugs Court over six months and observed that the Drug Court Sheriffs were bending over backwards to progress cases but we still observed unnecessary delays; lawyers not turning up, not being there when the case came up, reports not available, lawyers not familiar with their clients. In some evaluation reports on the Drugs Court, much is made of the importance of the direct dialogue between the Sheriff and the client in court, instead of talking through the client’s lawyer [this is apparently called The Shrieval Dialogue]. This attempt at direct engagement between sheriffs and the accused is a step towards a less distant and inhuman justice. But whilst Sheriffs did make an effort to get to know the people involved, there were still patronising attitudes, seemingly a ‘them and us’ atmosphere.

The court room is intimidating for vulnerable people, and people in the dock are not allowed to drink liquids [e.g. water] whilst on the bench and for the lawyers and fiscals and clerks water is freely available. This is a criminal court which is trying to acknowledge vulnerability, addiction, illness.

“Tanya, 41 yrs old - Brought in in handcuffs. Male lawyer, think he said he had been representing her since she was 14/15 yrs old. Sheriff asked what makes her think she can do this (Drug Testing and Treatment Order). Lawyer replied that she can’t do it herself and explained terrible background of alcoholic parents and more but I couldn’t hear. Doesn’t take heroin but ‘street valium’. Sheriff then talked directly to the woman and she explained this was the first time she had ever had her own house. Lost her dad 16 years ago, her partner two years ago. Wants to try the DTTO. Drugs Team present said if they can have an address for her they can send her appointments. She seemed bright, attentive and confident rather than nervous.”

But disposals of custody for non compliance or repeat offending often seemed motivated by punishment alone. If the purpose of the drugs court is to try to help people to control their drug use and therefore to cut or stop offending the use of prison as a punishment is clearly counter productive. The person will merely continue to go in and out of the revolving door.

“Woman on a Drug Testing Treatment Order ( DTTO) Sept. 2016, who had generally been doing okay, and had tested negative for opiates and attended appointments, but had a ‘blip’ on the benzos [lawyer explained her mother had cancer]. She was told by Sheriff: ‘I’m not listening to your excuses - you’re at risk of being removed from DTTO, or back to Jail.’”

Short term sentences were resorted to for punishment for non compliance with a DTTO. That is prison was used as a default ‘last resort’. But all the evidence is that prison doesn’t work in reducing offending, and that offending will continue when the person is released. And round they will go again. So these sentences are just wasting public money, and actually increasing the problem as the person still comes out with all the same problems, usually made worse (see ‘Relinquish the Policy of Custody as last resort’ Prof. C. Tata March 2016. http://scottishjusticematters.com).

We found great difficulty in following the proceedings because of the difficulty hearing what was being said. Given this, it is likely that in some instances, the people up in court may also have been unable to hear. Justice might be seen to be done but couldn’t be heard. We discovered that what appeared to be bendy microphones were for recording purposes only.
“Katie, 27 yrs old - Very young looking woman. Had been sitting next to me in the gallery with boyfriend on other side, holding on to his knee from time to time. He also looked young. At one point as she was sitting there she must have been doing something with her hair as the Sheriff shouted at her suddenly ‘Don’t sort your hair in here. Sort your hair before you come in’. Because she was next to me I got a fright as I didn’t know if he was shouting at me. Later she noticed me taking notes and asked if we were from the papers. I said no and explained we were from a campaign called Justice Watch and we were here to see how the women were treated in court. I added that we were on the women’s side and a big smile went across her face.”

“Colette, 41 yrs old - Had been sitting in gallery from the start. Solemn, steady gaze. Lawyer explained that he had asked for a phone number for her last time but she did not have a phone and gave the number for another resident on the project and so she was not getting the messages. She hadn’t turned up for three appointments. There wasn’t much to go on but she was reported to be anxious for support. Sheriff said that he thought she was ‘at it’. And said ‘You’ll be back and I’ll decide what I’m doing’. I felt for her being spoken to like that, and how horrible that display of power is.”

“Teresa, 41 yrs old - Seems confident when brought in from cells with her hair all nice and dyed a nice colour. An assessment had been done despite her being in custody. She was on remand for a new offence and there was an old warrant. Lawyer explained he had spent some time with her in the cells and there had been difficulties between them which were now resolved. He told of health difficulties she had suffered in the way of a heart attack in Saughton Prison..., and added there was a family history of heart attacks. Sheriff asked if he had taken this at face value? And the lawyer replied that she had been told that it would be checked out and ‘not to embarrass him’. On her behalf he argued that for her it was a revolving door of six week spells in custody, then out and in again, and that now she could be facing two to three years and knows she will come out to nothing. She was engaging in 218 Project. She was bright in demeanour and dress. The Sheriff asked the Drugs Team if more time was needed and the woman from the Drugs Team spoke at length but as always was so quiet spoken that you don’t hear anything. The woman was remanded back to custody until new offence had been dealt with.”

“Sheila, 33 yrs old - Sheriff noted the Order was in the early stages and her progress was limited but improved. There had been an internal review for a care plan to deal with a breakdown in communication. She was attending Tomorrow’s Women including the support group on a Friday. She said she’d let herself down big time. Sheriff responded that she shouldn’t swear in court as it was disrespectful (I missed whatever swear word she had used). He went on to say that ‘you just talk rubbish and you said that the last time’. She said she was stronger in some areas and weaker in others. Sheriff asked if she’d been picking up her methadone. She explained difficulty with her sleeping patterns and had woken at 4am, missing the chemist. Sheriff asked if she was still with (partner) then shook his head and said this won’t do. She explained she had the Housing on her back also. He asked where she (wanted to be) going in life and she replied ‘normal life, college’. He continued the order till later a date but he threatened a lengthy custodial sentence. Then he repeated in a threatening voice ‘Cornton Vale’.”

“Jenny, 38 yrs old - Sheriff said she had ‘an improving report with negative results for drug tests’. Used the word ‘brilliant’ and you can’t help feeling more favourable towards him when this happens, and pleased for the woman. Then you can get a shock again when he is callous to men or women. Horrible feeling of it all being about pleasing the Sheriff and power. He said she’d picked herself up and that it had been down to her. She mentioned a few things/projects she was involved in but I wasn’t familiar with them. Sheriff asked about her son. Sounded like he was in care and there was a chance she’d get him back. She seemed upright and was hard to tell if she was nervous. Left alone.”
“Kerry 24 yrs old - There was general confusion over why a report had not been done, discussion going on in front of her. Social Worker said something about admin but could not hear anything else he said because of the glass panel. She had been in hospital. She looked confused as there was a quiet period while officials looked at paperwork. Her male lawyer had a word with her. She had tested positive for heroin but was adamant she had only used once since out of hospital. Lawyer expressed frustration at her lack of honesty and, though it was difficult to hear clearly, seemed to suggest it was because she was worried she’d lose her kids. She started to shake and put her hands over her face. She was crying. The sheriff acknowledged it was difficult for her in this situation and asked about her kids. They were with her mum. He told her children need parents that they can look up to and she began to shake more - maybe she didn’t need to hear that. He said he would continue the order and review in another two weeks, but she was on the brink. She said she had expected to be sentenced and thanked him. She seemed to leave alone.”

“Maura, 29 yrs old - Smuggled heroin into prison for someone. On DTTO Pled guilty Defence solicitor was female and said her client was willing to accept help. The defence realised normally for this offence there would be a custodial sentence. Sheriff went over the incident with the woman and asked if somebody had put her up to it. Asked her what drugs she was using and she replied methadone. She had a previous DTTO and had been clean since but since coming off methadone had started reusing. She was told to wait for her order and she seemed dulled on return to her seat. Asked for the woman with her to sit beside her. It was discussed between her lawyer and the sheriff that her progress was disappointing and that she had numerous health problems including respiratory and had been in hospital. Sheriff queried whether she had a Criminal Justice Social Work report and there seemed to be confusion around that. The discussion carried on as if she wasn’t there. The sheriff looked directly at her, having found the report and read out the requirements of a community payback order. She had no support, was there alone and left alone.”

“Defence Counsel, Male. Gave information that suggested the drugs team wanted to extend the order which was due to end on 17th Sep. Her report was disappointing after a series of positive reviews, but the drugs team had given a good report on the woman as a person and suggested she could return. She had also agreed to engage with Tomorrow’s Women. He explained she had gone through a period of great difficulty and proposed she be allowed to continue on the order. Contradictory information from Sheriff on opinion of drugs team. Sheriff only said that she was disappointed and that the drugs team wanted to work with her on an exit strategy. There was no reference to the nature of the woman’s difficulties or whether these were family, health, financial, or all three.”

Drugs Court 1B, Glasgow Sheriff Court:
“Sheriff S (woman) - Woman C.R. Absent. Had phoned lawyer to say she was running late due to obligations and then again to say she was unable to come. New case. Sheriff continued till 6th Sep with possibility of warrant for her arrest. How much more efficient and cheaper overall if she had been collected that morning?”

“The last woman Milly (28 yrs old) looked younger than that and had been sitting with her boyfriend holding his hand tightly, him with his arm round her, but she showed little expression in her face. After she was called up it was revealed that she was recently out of custody, and after a gap had self-referred to 218. A worker was also with her. There was a bit of confused discussion between judge, male lawyer, and drugs team about reports, bail, remand, and dates while she sat there. The drugs team member was given the report and was reading it there and then for the first time. The judge said he was a fan of 218 and that she would have an updated medical, begin a court structured deferred sentence and start attending appointments at Norfolk Street.”
Rural courts

Rural courts often cover large areas with small populations. Recent court closures have resulted in people being charged in these areas having to make long and expensive journeys to courts many miles away. Courts start at 10am and for women with children this causes a problem in having to get them to school at 9am before setting out for court. The bus journey in Moray, Highland, the Borders and Dumfries and Galloway may be 2 hours or more, and is expensive.

“Travelling in the Borders – getting to Selkirk Sheriff court: At the end of the session I spoke with the court Officer and the Clark of the Court, I told them about my expedition to Court and they agreed that two hour long journeys on infrequent buses was usual. At least I have a granny pass. One of our colleagues is a CAB volunteer and told us that not having funds to get to court was a frequently raised problem.”

“Selkirk Sheriff Court, November 2016 - EW, 40+, clearly had done her best to look smart, which she did. Also looked fragile and nervous. I realised only when she left the Court, that a 16-17 year old schoolgirl in school uniform, in the public gallery, who followed her out, was probably her daughter.”

“JB, charged with driving under the influence of drink - this was her third similar offence, the others dating from 2004 and 2010. Her legal rep stressed her fear of going to prison several times. He talked about her ‘troubled and complex past’ which had given rise to mental health problems. She was seeing or had been seeing a psychiatrist and a psychotherapist. She has had physical health problems but he stressed her achievements, completing a five year apprenticeship and that she was currently employed. In the last year there had been ‘a deterioration of circumstances’, which she had done nothing about, except drink more. Despite this, she felt her life was much more stable and she was delighted that her daughter was starting university next year. Sentence - Disqualified from driving for six years. Community payback supervision 150 hours to be done in six months. This was reduced since she pleaded guilty.”

“JL 50+, again successful effort to look smart. Very nervous. I’d sat near here in the waiting room during a break for a private hearing, and I’d have liked to talk to her since she was clearly on her own. But something in her look told me no. She was charged with attacking a policeman with a bottle. She’d called the police, drunk and told them she had no reason to live. When they arrived, she assaulted them. A criminal justice social work report has been requested but had not arrived. Context. She’d endured a physically abusive relationship with the father of her child. He’d been prosecuted and she had spent time in a secure unit to help with her alcohol addiction. However recently her daughter had been involved in an unspecified very serious offence and she’d started to drink again. Her rep requested that her efforts to sort herself out and her good behaviour be recognised. Sentence - admonished and dismissed. I refrained from going after her and hugging her and the Sheriff.”
Remand Courts

Two members of Justice Watch spent some time observing justice at Glasgow Sheriff Court. Like other members of Justice Watch our experience was fragmented because of the frequent changes to court arrangements. We would identify the Courts where women were supposed to appear by checking the Court information online and with the office but plans would often change with cases being postponed due to non-appearance of witnesses, changes to pleas etc. Even when we found a woman appearing in a Court the case would often be halted or postponed for various reasons. We decided therefore that we would focus on one Court and observe activity there for a week.

During a week observing in the remand court we observed 72 cases in total.

This Court deals with initial and interim appearance. Decisions are made on whether bail or remand is applicable and whether further information or reports are required. Dates for future interim hearings are set.

Sex and Age range of those appearing (ages estimated from observation or information provided):

- Of cases observed, 20 involved females and 52 males.
- Most of those involved were young (under 35), around 15 were middle aged (35-55) and six were old (55+).
- All but four of the females were young (under 35), the exceptions being one older drug user who funded her habit with shoplifting; two women appearing because of their children’s truancy; one woman charged with leaving her child unattended.
- No men appeared on charges relating to the care of their children.

Cases involved a range of offences including: driving offences, assault (or fighting), drug offences, theft including shoplifting, creating a disturbance, damaging property and making offensive/racist remarks. Many offences involved alcohol. Several appearances related to breaching bail.

Court officials were all extremely helpful and courteous. They were non-judgemental and treated everyone the same. The staff and reception helped those appearing identify which Court they should be in. Staff based in the Court also went out of their way to minimise the number of non-appearances by searching for defendants and lawyers. E.g. In one case, where the defendant’s lawyer hadn’t appeared, the sheriff asked ‘who’ his solicitor was. The defendant replied ‘the one just along the road, he rides a motorbike…’. Following discussion between court officials and other lawyers, the police officer based at the Court managed to identify who the lawyer was and to locate him, thus avoiding the hearing to be rearranged. We observed six sheriffs, three females and three males. All of them were considerate and focussed on achieving justice as quickly and efficiently as possible, while at the same time considering the best outcome.

Outcome/Disposal

Of the 20 female cases, six received disposals, none involving custody. Three were of offences connected to their role as mothers. Two were appearing charged with failing to make a child attend school and one with claiming benefits after failing to declare employment following maternity leave. None of these women were imprisoned on remand or on sentence. However it was noted that no man was tried for child-care related ‘offending’ out of a much higher man to woman ratio of those appearing. Is it only women who are responsible for getting children to school?
These were:

1. A woman who pled guilty to not paying a speeding fine. She had tried to pay it but didn’t have her driving license. She tried again but the Court was shut so she had left it. She was very nervous, represented herself, explained how the offence had occurred and why she hadn’t paid. The Sheriff (male) engaged sympathetically with her helping her tell her story. She was fined £100.

2. A young woman making a second appearance before the Sheriff. She had previously had issues with substance abuse but as she was continuing to ‘do well’ he discharged her.

3. A woman who had been on Remand over the weekend for making abusive and racist comments when refused entry to a club. The Sheriff (female) although stressing the seriousness of the charge felt that three days in custody had been punishment enough and admonished the defendant.

4. A mother who was appearing before the court because of the truancy of one of her children. Since her first appearance the attendance was much improved and so the Sheriff (male) admonished her.

5. A second mother appearing because of the truancy of her child. In this case the Mum had five children only one of whom (aged 15) she was having difficulty getting to school. She took the child to school and had stopped them having access to social media after 10pm and had removed a television from her room. Her lawyer suggested a deferred sentence or referring the case to the Panel. The Sheriff (female) chose the latter option. The defendant was very unhappy about this saying to her lawyer on leaving the Court that she hadn’t wanted or agreed to a referral to the Panel and that he should not have proposed it.

6. The final case involved a single parent who had failed to notify the DWP when she got a job after having her baby. She had pled guilty to the charge, had shown remorse and was paying off the £6000 over-claimed in benefit. She had paid £600 since last appearing but had a limited income so was not in a position to pay it off more quickly. Her lawyer suggested she was willing to do unpaid work but since she was already working 35 hours per week and was a single parent this did not seem feasible. The Sheriff decided to continue monitoring the case and set a six month return date.

In the cases where no disposal was given there were a number of reasons for them being continued. These were similar in both male and female cases. In some cases, the Sheriff required a Social Work or Psychiatric report. On a couple of occasions where lawyers suggested such a report may be required, the Sheriff asked what benefit the report would be and refused to delay the disposal when not convinced that it was necessary.

Delays were caused however by a number of factors:

1. Social Work Reports not being available on time
2. Non-appearance or the defence lawyer
3. Non-appearance or failure to find the defendant (sometimes popped out for a smoke or gone to the toilet, on occasions he/she appeared on recall).
4. The defendant still had to find a lawyer to defend them.
5. Information on bail options not being available in the file.

“In one case concerning a not so young man, the solicitor, in possession of the defendant’s good behaviour report, had failed to appear on the last three occasions. Fortunately, the sheriff recognised the man (‘Here we are again’) listened to his plea to defend himself and arranged for the quick delivery of paperwork so the man could fairly defend himself. Similarly, repeated failure on the part of Social Work to provide a timely report was also evident, causing repeated delay to the court, and successive appearances on the part of defendants.”
Further Reading:

Blogs by Justice Watchers were published online by Women for Independence and in Scottish Justice Matters.

Joan Skinner, retired social worker:

Several blogs on watching court by Maggie Mellon:
http://scottishjusticematters.com/author/maggie-mellon/

A short history of the treatment of women by the Scottish criminal justice system from the publication of A Safer Way in 1998 to the present day by Karyn Mabon:
http://www.justicewatchscotland.org
Our Manifesto: Achieving Justice for Women

Our six proposals are all aimed at cutting the supply of women into the prison system. This is the most effective way to shift resources not just out of prison, but out of the unnecessary and disproportionate costs of punishing rather than curing the effects of social and economic inequality and of the specific oppression of women.

We propose to remove prison as an option for remand or sentence for all minor offending, no matter how repeated the offences have been. We also want the impact of any remand or sentence decision on the women, her children and family, and the wider community to be acknowledged and taken into account in decisions. We believe that this will release substantial savings of £millions which can be used to invest in community solutions to offending and to the causes of offending.

Six clear proposals for creating a better system of justice:

- **By 2020** the number of women in prison in Scotland should be reduced to below 100 as a result of structural reform of our criminal justice system.
- **Solemn Procedure restriction**: Imprisonment should only be an option for sentence or for remand reserved for the more serious cases held under solemn procedure, and only then when there is a clear risk to others, or a risk of flight.
- **Impact Assessments**: There should be child, family and community impact assessments for women facing any sentence for crimes they have admitted or been found guilty of by trial.
- **Best Decision Principle**: No woman should be remanded or sentenced to custody because of the lack of better disposal or of the failure of health or social provision to meet her need for social, housing or health care, including drug and alcohol treatment and supported accommodation.
- **24/7 Arrest Referral** to women’s support services should be made available in every locality in order to introduce effective prevention and where possible to divert women from prosecution and further offending.
- **Women’s Justice Panels** should be established in every locality to make decisions and to require or commission community support and supervision services and any measures that promote justice, and are holistic, respectful of human dignity, and in the interests of the community, and society, including any victims of the crime committed.