



# **RULES FOR THEM AND RULES FOR US**

First-hand experiences of the  
justice system in Scotland

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## **Acknowledgements**

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## **Content warning**

Please be aware that this report contains material relating to mental distress and substance use.

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## Executive summary

### Background to research

This report collates and summarises the findings of qualitative research conducted by Community Justice Scotland from September to November 2019.

The research was proposed as a response to a lack of existing qualitative research that uncovers individuals' experiences of the Scottish justice system as a whole, from entry to exit point. The aim was to increase the breadth and depth of information available about people's experiences of the system, and add context and meaning to the justice pathways highlighted by the Community Justice Scotland [Navigating Scotland's Justice System](#) digital resource.

Community Justice Scotland recognises that the prioritisation of a person-centred approach to justice processes and services is key to the realisation of an effective community justice system in Scotland. As part of this, the research focuses on the perspective of the individuals interviewed, in order to understand the impact that engaging with the system has had on them.

### Methods

- 15 qualitative depth interviews were conducted by a researcher from Community Justice Scotland. Individuals were based across Scotland and had completed, or were still navigating, the justice process.
- Interviews were semi-structured and borrowed techniques from narrative inquiry approaches. All stories were accepted as truth.
- All research was underpinned by the trauma-informed principles of safety, trust, choice, collaboration and empowerment.
- Data were audio-recorded, transcribed and analysed using narrative and thematic techniques.

### Key findings

This report relates real-life experiences that have been mapped against the step-by-step processes of the justice system in Scotland. This report aims to uncover the multitude and complexities of pathways taken by people, and how they experience and make sense of these.

#### Universal themes across the justice process

- Multiple and complex needs permeated nearly all participants' experiences of the justice system. This ranged from impacting people's perceptions of events, to playing an active role in the ultimate outcome of these events.
- Gaining access to timely and appropriate treatment or support for health and wellbeing needs was a significant challenge. This was particularly difficult

when complex needs intersected, such as mental illness and substance misuse.

- The complexities of the justice system as a whole presented difficulties for every research participant. This was regardless of demographic background, knowledge (professional or personal) of the justice system or alleged crime.
- As part of this, several people made references to what they perceived to be the luck or chances involved in the outcome of their case, rather than the effective application of justice procedures.
- Feelings of marginalisation and 'otherisation' were synonymous with engaging with the justice system for many people, whether this was through specific interactions with agents of the system or more general issues around the problematic identities associated with being an accused person.

### **Impact of past experiences on the perception of events**

- Experiences of deprivation, trauma and crime early in life meant some participants viewed their entry to the criminal justice system as an inevitability, with no alternative life path available.
- Previous experiences of homelessness or financial instability endowed meaning and value to people's lives once they had achieved stability. Many showed significant commitment to maintaining this having exited the justice system.

### **Start of justice journey; investigation and charge**

- For some, coming to terms with being a person accused of a crime was challenging, particularly due to concerns around social stigma and the implications for future prospects such as employability.
- Experiences of interacting with the police during the investigation stage were varied. While some had done it before and knew what to expect, others found the process confusing and wanted more information to be provided.
- Experiences of being held in police custody suites were generally poor, with issues around access to medication and the physical conditions of cells compounded by the complexities of people's personal circumstances.

### **Case marking**

- Long waits for information relating to the progress of cases caused stress and frustration. This was particularly acute for individuals with multiple outstanding charges which were not necessarily co-ordinated within the case marking system; it was unclear when they may progress to the next stage.
- Lengthy, complex information in notices issued in writing by the Crown Office and Procurator Fiscal Service (COPFS) were described as hard to understand by many individuals, particularly those with literacy issues.
- Experiences of remand raised complex questions around balancing the need for mitigating risk with the levels of harm caused to some individuals while held. Issues around physical and mental health problems, substance misuse, housing and financial stability were often compounded by time spent indefinitely in prison, with limited support available upon release.

### **COPFS direct measures**

- Those with experience of completing a fiscal direct measure tended to speak highly of the disposals. Tailored, one-to-one support provided by criminal justice social work and the constructive activities included as part of disposals were regarded particularly well.

### **Court**

- Experiences of court varied based on location and type of court.
- The psychological impact of the stress and uncertainty of the process was significant among nearly all those who attended court.
- At times this was worsened by the limited legal support available to individuals due to time or resource constraints, and the sense of isolation caused by a sense of navigating the process alone. Those who received support from family or friends during the process cited this as very valuable.
- Repeated court appearances and experiences of repeat offending impacted the nature of some people's engagement with the court process. Coping mechanisms ranged from choosing to disengage from the process entirely, to attempting to build positive relationships with the judiciary.

### **Sentencing**

- Whether justice had been ultimately achieved carried different meanings for most participants. Some who were found guilty accepted their sentence as fair, while others had reservations about the process by which their judgement had been made.
- For those found not guilty, there was frustration and disappointment that the case had had to go to trial in order to reach justice.

### **Serving sentence**

- Experiences of supervision while on community sentence were discussed, with tailored, individualised support viewed as the most effective means of addressing existing issues and avoiding re-offending.
- Some participants had experience of failing to complete a community sentence, and reflected that this tended to be the result of unaddressed support needs or not being 'ready' to make the necessary changes in their lives.
- Substance misuse and addiction issues dominated the accounts of those who had served, or were still serving, prison sentences. Access to drugs in prison, along with a limited range of drug treatment programmes, had introduced or worsened drug addiction issues for several participants.
- While despondency and feelings of hopelessness marked many people's prison sentences – particularly those on indeterminate sentences – the prospect of release sparked high levels of motivation for self-change in order to re-enter the community and re-connect with friends and family.
- Restrictions imposed by licence conditions upon release had been, or were expected to be, prohibitive and likely to increase the risk of re-offending.
- The support of family through prison visits was crucial for several of those interviewed, with family stated as one of the biggest drivers for working towards release.

### **End of sentence**

- Those who had served short-term prison sentences discussed the challenges of limited support upon liberation for issues such as finances, housing and substance misuse.
- Those still serving longer term prison sentences had in some cases spent so long in custody, or cycling in and out of custody, that they lacked many life skills such as knowing how to open a bank account or apply for personal ID.
- All participants that had received a sentence referred to their desire for a positive future through simple means such as finding happiness, reconnecting with friends or family, securing housing and financial stability.
- Many stated a desire to give something back and help others by using their experiences of the justice system in a professional or voluntary role in future.

### **Conclusion**

- This report highlights the complex and unstable realities of life for many people navigating the Scottish justice system, and the ways in which engaging with the system can have wide-ranging impacts on people's lives.
- The chance to actively engage in the justice processes to which they were subject had a significant impact on people's overall experience of the system, and in many cases contributed to a motivation for change and desire to reach positive destinations.

# 1. Introduction

## Background to research

In 2019, Community Justice Scotland (CJS) developed a digital resource, [Navigating Scotland's Justice System](#), which outlines the key stages of the Scottish justice system as experienced by an accused individual. It was developed with the aim of providing a tool to community justice partners in the planning, delivery and evaluation of community justice-related activities.

There exists a baseline level of quantitative data which corresponds to many stages of the map, primarily through publicly available national statistics. CJS has collated a [data manual](#) that summarises the key sources of this national, local and demographic data that aim to quantify the numbers and types of people engaging with each stage of the justice system.

However, this information reflects isolated stages of the justice process. Moreover, the qualitative literature it is complemented by also largely focuses on individuals' experiences of specific stages of the system, by type of crime committed, or by outcome (eg. disposal received). While there is also the field of 'offender autobiography', much of which brings valuable context and meaning to individuals' lives within the justice system, it does not always keep a narrow focus on the specific experience of individual justice processes.

CJS is keen to develop the evidence base further by uncovering individuals' experiences of the system as a whole, from entry to exit point (often via system re-entry). This will increase the breadth and depth of information available about people's experiences of the Scottish justice system, and add context and meaning to the justice pathways highlighted by the process map that already exists.

The focus of this research is on the perspective of the individuals interviewed with experience of the justice system, rather than that of the agencies or institutions with which they have engaged. The aim is to reflect on the impact that engaging with the system has had on people, and in so doing, recognise that the prioritisation of a person-centred approach to justice processes and services is key to the realisation of an effective community justice system in Scotland.<sup>1</sup>

## Research objectives

The approach to the research was rooted in the chronology of the CJS digital justice map, with the following objectives:

- provide real-life examples of the journeys illustrated by the justice map
- understand what people's needs were at, and between, the points of the process they went through

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<sup>1</sup> Scottish Government, 2016. Community Justice Outcomes, Performance and Improvement Framework.

- generate a bank of qualitative data that can be mapped against a visual representation of the justice system in Scotland.

## **Purpose of this report**

This report collates and summarises the wealth of data collected during fieldwork. Individuals' real-life experiences of justice have been anchored in the step-by-step processes of the justice system, in order to provide context and meaning to those processes.

Every individual that took part in this research began at the same entry point to the justice system: being an individual accused of a crime. However, this report aims to uncover the multitude and complexities of pathways taken by people, and how they experienced and made sense of these. A focus is maintained throughout on the people involved, not the alleged crimes committed. Longer term outcomes are also not discussed, as the research focus was on the immediate and recent experiences of individuals rather than a longitudinal study of longer term impacts of the justice system.

The main findings of the research are presented in this report to reflect the overarching stages of the justice process map:

- pre-crime contextual factors (supplementary to map)
- crime
- investigation and charge
- case marking
- fiscal direct measures
- court and sentencing
- serving sentence
- end of sentence

Within each stage, common or significant themes that emerged are discussed. Other 'universal themes' are explored – those which emerged throughout the course of interviews and did not correspond to any specific stage of the justice system, but were significant to people's stories as a whole.

## 2. Methodology

### Interview methods and analysis

#### Interview techniques

The research took the form of in-depth, semi-structured qualitative interviews with 15 individuals between September and November 2019. Interviews were conducted by a researcher from CJS. A topic guide was used as standard, to ensure key areas were covered in each interview, but questions were not pre-defined. While the topics specified were rooted in the justice process in order to follow its chronology, interviews were loosely structured in order to allow for organic storytelling.

Aspects of this interview style used a ‘narrative inquiry’ approach. The interview space was re-framed as one where the interviewer worked alongside the interviewee, rather than in opposition to them (Caine et al, 2018). This allowed for conversational interaction, rather than a binary question-and-answer form of interview. This was particularly valuable as an approach as it moved away from an interrogatory style of questioning which may have had negative associations for people with lived experience of justice. It aimed to change the participants’ perceptions of the interviewer from one of an agent of the justice system, to an impartial individual. As part of this approach, all stories told have been accepted as truth; the experiences recounted in this report have not been fact-checked with any third party.

#### Analysis

A hybrid approach was taken to analysis, using both narrative and thematic techniques. This report presents research findings thematically, with themes drawn from a cross-section of interviews to present key findings according to each stage of the justice process (Braun and Clarke, 2006). Interview transcripts were reviewed, with codes identified and entered into an analysis framework which dissected content by both justice stage and individual case. Data were then further reviewed and broader themes generated.

Narrative approaches were also applied during the analysis process by reviewing individuals’ entire stories as the unit of analysis. This ensured that any themes that were identified – and the meanings generated from these – were grounded in the full context of people’s experiences past and present (Kramp, 2004). This contextual information is included where relevant throughout the report, most notably where individuals refer to previous interactions with the justice system and how this has influenced their perception of more recent experiences.

Some minor details are obscured in this report in the interests of protecting individuals’ anonymity. However, this is not done in such a way that the meaning or significance of any facts are altered or compromised.

### Trauma-informed research principles



The planning and delivery of all research activities were underpinned by the trauma-informed values of safety, trust, collaboration, choice and empowerment (NHS Education for Scotland, 2017).

### Safety

- Interviews were conducted in a neutral, central location known to the research participant. In many cases this was within the building hosting a service that the individual was already engaged with. In most cases, interviews were arranged to coincide with pre-existing appointments or meetings so additional travel costs were not incurred.
- Interviews were held in a quiet space, usually a room separate from any communal spaces where interruptions or background noise could compromise confidentiality or a comfortable interview environment. Participants were asked if they were happy with the proposed interview space or if they would like changes made, such as doors left open or closed, and the provision of refreshments.
- Given the sensitive nature of many discussions, time was allowed at the end of interviews for reflection, and to ensure any concerns following the conversation could be addressed.

### Trust

- All interviews were arranged through an individual known to the interviewee. In most cases this was a worker involved at the service through which the interviewee had been identified.
- Participants were provided with a copy of a consent form and information sheet, which included details of the rationale and nature of the research, and contact details for the CJS researcher they had met.
- Interviews were only conducted upon receipt of voluntary, informed consent.
- Participants were assured of anonymity in the reporting process.

### Collaboration

- Copies of research findings and products will be shared with participants where possible.

### Choice

- The researcher ensured that each participant's contact would be available before, during and/or after the interview if support was required. The choice of whether the participant wanted a supporter present during the interview was always offered.
- Breaks and check-ins were regularly offered during the course of interviews, to ensure research participants were happy to continue.
- Participants were reminded of the option to withdraw from the research at any point.

### Empowerment

- Research participants were offered a £10 supermarket voucher as a token of thanks for their time. This was with the exception of those interviewed in prison, for whom it was recommended this was not appropriate.

## Sample

A total of 15 individuals took part in interviews. Most were engaging with a service, having been identified through third sector services, local authority criminal justice social work or similar.

The interviews achieved do not cover every possible journey through the system, but provide insight into each over-arching stage of the justice process. Please see Appendix C for the full sample profile achieved.

### Sample profile

Characteristic	No.		
<b>Gender</b>		<b>Region</b>	
Male	11	Glasgow City	8
Female	4	North Lanarkshire	3
<b>Age</b>		Perthshire	3
18-24	4	East Lothian	1
25-30	2	<b>Justice exit point</b>	
31-40	3	Case marking	1
41-50	3	COPFS direct measure	3
51-60	1	Court	3
60+	2	Community sentence	6
		Custodial sentence	2

## Barriers and limitations

### Sample bias

The primary focus during sample recruitment was ensuring that those taking part were ready and able to recount and reflect on their experiences of the justice system. Some individuals initially offered to participate, but did not end up being interviewed as it was evident they were not in a position to do so due to unstable or chaotic personal circumstances. We must be aware in our interpretation of findings that those presented here are representative only of a specific group of individuals, largely at a later stage in the justice process than many that populate the system as a whole.



While as broad a range of geographies was covered as possible, not every area in Scotland is captured in the achieved sample. Limits to the timescales and resource available for fieldwork meant that a realistic approach to capturing an adequate sample size had to be taken. In particular, this research did not hear from people living in the most remote areas of Scotland. The social and economic challenges of access to services in remote locations brings a unique perspective to the experience of community justice and it is recommended that this is explored in future research.

### Reliability

The stories in this report are self-reported and have not been fact-checked or validated with other parties, as this was a key element of researcher-participant trust. The researcher was previously unknown to participants, and it may have been evident to those interviewed that the researcher did not have lived experience of the justice system. While it is possible this had an impact on the nature or content of some stories told, it did not present itself as a barrier to data collection. At times it created a space in which themes or content could be discussed from new perspectives. This has been explored in other methodological research which discusses the opportunities afforded by the differences in researcher-participant identity or background (Dwyer and Buckle, 2009). There was an implicit transfer of trust in many cases through the researcher's and participants' common relationship with the contact that facilitated the interview.

CJS recognises that the experiences reported in this document are not necessarily representative of all individuals with experience of the justice system. This report aims to provide examples of the range of complexities and challenges faced by individuals navigating the Scottish justice system.

### 3. Navigating the system

#### Pre-crime and contextual factors

By rooting people's stories in the process of the justice system, we conceive of their trajectories as a linear journey from one point to the next. However, these interviews uncovered factors outside of the immediate justice process that affected people's perceptions of, and responses to, the situations in which they found themselves. Personal experiences play a significant role in the formation of attitudes and responses towards any subject or situation. In the context of this research, they could play a part not only in the likelihood of justice system entry (or re-entry), but also the manner in which participants regarded certain justice processes they had been through.

#### Impact of early life experiences

Experiences of poverty, crime, trauma, unstable relationships and destructive coping mechanisms were interwoven with many – although not all – of the stories told. Reflections of this nature were commonly made among those who were slightly older in age, as well as those who were serving longer term prison sentences. It is possible that with age, or the experience of imprisonment, individuals had been afforded the time to reflect on their past, their (often multiple) journeys through the justice system, and the situation they had come to be in. Childhood experiences of material deprivation, educational exclusion and what some described as a 'criminal element' (social ties with people, including family and friends, engaging in offending behaviour) were seen as the precursor to a near inevitable involvement with the justice system.

Research shows the links between living in poverty and having a greater likelihood of not trusting people in one's neighbourhood (Social Metrics Commission, 2019). Living in this type of environment can impact the nature of relationships formed with family and friends, and the subsequent behaviours these can precipitate. This was described by some, with the environment they grew up in making it difficult to conceive of how they could have taken any other path.



*"I can even remember as a wee 14, 13 year old boy... the heroin epidemic just hit Glasgow. You're the product of your environment. I looked up to the people... We used to stand on the corner – that's all you done, stood on the corner cause you're not goin' tae get a job, you never done anything in school, so what chances, what options, or aspirations have you got? None. So my real role models was people coming out of prison, after doing 18 month sentence and they looked... attractive. And they were getting respect. But how can you change all that? You cannae."*

Male, 42, Completed short-term prison sentence



There was also an inter-generational aspect linked to this perception of the inescapability of offending behaviour and involvement with criminal justice. This was not necessarily viewed in a negative light, rather, that it was simply the way things had always been and would continue to be.



*"I was from a run-down area, running about taking drugs, selling drugs, involved in gang fighting. Well, school, started [skipping] school, get involved in stealing to make money. Involved in fighting with all the areas about my area. It was just something I done it, the older team done it before me, the older team done it before them... It was just something that you done."*

Male, 46, Serving life prison sentence

### Shock of first interaction with justice system

On the other hand, for the people for whom this was their first interaction with the justice system, feelings of fear, confusion and unease were recounted. This was the result of a combination of unfamiliarity with – and a lack of understanding of – justice processes, as well as the implications of being a person caught up in the system (for the latter, see section: 'Crime'). For someone whose background and past experiences had never brought them near criminal justice, it was a shock.



*"I was quite shook. I'd been left a little notecard, just saying to contact the name of a police officer who'd been round. I was freaking out immediately... I'd never been in a police station before"*

Female, 24, No action taken

## Crime



### Process in numbers

**897,170** Number of incidents reported to Police Scotland (year to date)

**246,480** Number of crimes recorded by Police Scotland, 2018-19

Please see section 8 for references for all statistics quoted.

The reporting and recording of an alleged crime was the justice entry point for every individual interviewed. It was rare that the details of how the crime was reported to



Police were recounted spontaneously. The events that followed arrest were more salient (see section: 'Investigation and charge').

Where the person accused knew who had reported the crime to Police, there were instances where it had been done by a friend or family member present at the time of the crime – even if they were not the victim. Despite the events that ensued, resentment was rarely held towards them, with an acceptance that firstly they had been guilty of the crime, and secondly that it had been done with due caution for the preservation of order or others' safety. For those that either were found not guilty of the alleged crime or continued to claim their innocence, naturally there were mixed feelings of indignation and unfairness towards the situation.

### Realisation of being accused

The realisation of the impact being accused – or found guilty of – a crime would have on people's identity or future prospects was significant. This included compromised employment prospects as the result of the criminal disclosure process, which was a particularly challenging prospect for younger people who had not yet started their careers in earnest. However, this also applied for those already in employment, who feared losing the job they already had.

More generally speaking, being reported to Police was felt to have wider ranging implications for personal identity and social standing. For some, this was because of the stigma associated with certain types of crime, particularly those of a sexual nature. For others it was simply the apprehension that being accused of a crime, and potentially being found guilty, could undermine everything they had built for themselves.



*"I could have lost my job, and it was the one thing that I had worked all my life for... the one thing that I thrived on was suddenly being hammered, chiselled, smashed, from every different angle that I knew.*

*"...the charges, the police, the courts, potentially losing my livelihood, my job, my career, my home, my respect from my colleagues, my family, my friends. It was my whole life, basically."*

Female, 53, Not guilty at Sheriff Court

For many, this fear or apprehension was accompanied by feelings of helplessness. One individual was particularly marked by the experience, as she had for many years worked as a professional in social care within the justice system. Being transferred into the position of being a subject of the justice system brought an alarming shift of perspective, having only been on the other side of the process until this point:





*“When you are the person accused, that flip of power, that flip of knowledge, that flip of understanding, that engulf of fear consumes you.”*  
Female, 53, Not guilty at Sheriff Court

## Investigation and charge



### Process in numbers

**170,575** Number of Criminal Reports received by COPFS, 2018-19

From an accused person’s perspective, the investigation and charge stage of the process involves police questioning and in some cases being held in police custody. While some of those interviewed presented themselves at a police station for questioning, charge and subsequent release, others were held in police custody prior to being charged.

### Police process and questioning

For the main part, participants had at some point in the past come into contact with the Police and knew what to expect. Opinion tended to be fairly neutral, with the process viewed simply as something that had to be gone through. It was appreciated when police officers were seen to have been fair or honest in their interactions, particularly if they explained what was happening and the reasons for this.

However, for those less familiar with police processes, entering a police station – perhaps even for the first time – was disconcerting in terms of not knowing what to expect. It was suggested that the provision of more information on due process would have helped relieve concerns or confusion. One person was left with the impression that there was no predetermined process being followed. Due to her dissatisfaction with the experience, she considered in hindsight whether it would have been better had she tried to remove herself from the situation faster by not co-operating. As someone who identified as middle class and from a background where involvement with the Police was not commonplace, the experience precipitated an internal struggle between trying to identify the most effective means of navigating a process that had left her feeling disempowered, and behaving in such a way that aligned with her own beliefs and values.





*"I felt quite shut out of the process of what then happened. And I just find it weird how there is this depersonalisation, yet also there seems a degree of randomness to how things are handled. I don't really understand that about policing.*

*"...It would have all been better for me if I had been arsey, had been standoffish and said 'no comment'. People who are structurally more vulnerable to the police than I am maybe are more likely to do that. Clearly with good reason. It was all really confusing."*

Female, 24, No action taken

### Experiences of police custody

Those who had been held in police custody talked the most about their experiences at the investigation and charge stage of the process. Stories of being held in custody were dominated by negativity for a range of reasons, from the impact of detention on health to the physical holding conditions. However, commonly the exact sequence and nature of events was unclear, likely due to the distress of being arrested and detained blurring the details in people's memories. As a result, we lack a detailed understanding of exactly how and why individuals felt the way they did, and how this might be improved in future. It is worth considering the potential for further targeted research into individuals' experiences of police custody suites to explore the nature and impacts of detention in greater detail.

A key issue related to health was lack of access to essential medication. It is known that people who are detained are more likely than the general population to be affected by health problems such as mental illness and substance misuse issues (BMA, 2009, McKinnon et al, 2016). Interviews in this study uncovered the extent to which being held in police custody was disproportionately challenging for those with self-reported mental health and addiction issues.

The availability and types of medication offered varied based on location, which led to concerns about the both the inevitability and severity of drug withdrawal symptoms. For others whose mental stability was at least partially reliant on their medication, being held in an unfamiliar environment without the prospect of accessing medication caused a spike in their symptoms.

However, it was not always clear from interviews whether explicit statements of health need or requests for support had been made by individuals, or whether the experiences they recounted were simply the result of police not receiving adequate health information about individuals.





*"I didn't have my anti-depressants, so I didn't have any tablets... I was getting bad panics, every ten minutes I was thinking 'that's me, I'm dead'. Panic attacks, every time... I was trying to tell the boy, I needed my anti-anxieties man, because my anxiety was quite severely bad as you can imagine. And I got 'no'."*

Male, 21, Completed Diversion from Prosecution

As with many stages of the system, a complex combination of circumstances could coalesce to make what would otherwise be a 'normal' process one that had severe and far-ranging impacts on an individual. This was the case for one woman, who felt that her experience of police custody constituted a trauma for her. This was the result of a combination of not having access to medication, the physical conditions she was held in, and the manner of police questioning she received. However, running through all of this were the circumstances – unknown to Police at the time – that she was an ongoing victim of domestic abuse. She mentioned that things could have been different for her, had she been able to try to explain the situation in an environment more amenable to disclosing such information than an interview room with male police officers. These challenges were further compounded by the fact that she had known people at the police station in her professional capacity as a worker in the justice and social care sectors:



*"I was taken to a holding cell, shoes taken off me. It was very cold, it was the winter. I have angina, my angina spray was removed from me. And I was put into a cell with a couple of woollen, horrible blankets. With a metal toilet in the corner.*

*"I was taken into an interview room. Two male police officers... throughout this whole time, I was video recorded, being interviewed, DNA taken... Which was horrific... I actually think if somebody would have spoken to me, without an interview room, without a recording device, without a cell, without two police officers holding my hands on a charge bar...*

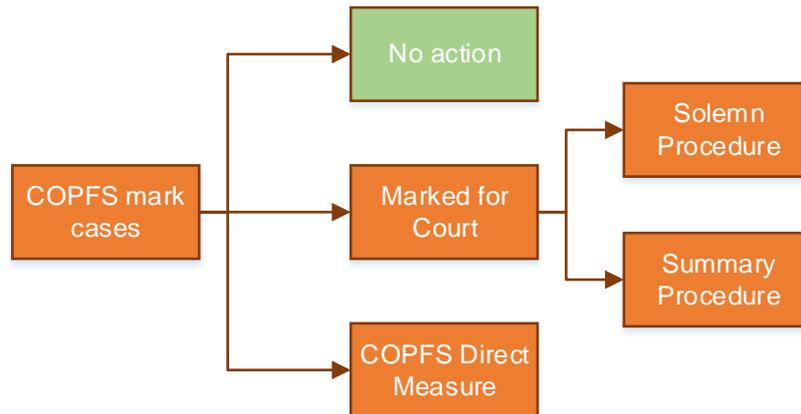
*"I could hear people in the cells around me kicking, screaming. One of them I knew was my client, which was horrific for me to think that I was next door to a client and potentially I was going to be in the same G4S van in the morning, ending up in court.*

*"I felt degraded, humiliated, dirty, I was sobbing. I hadn't stopped crying for hours on end... I would say I did feel traumatised by it. I can remember the first time I had to go back to the police station as a professional. I stood for, I would say, a good five minutes just staring at the door, thinking 'can I really do this?'"*

Female, 53, Not guilty at Sheriff Court

## Case marking





### Process in numbers

<b>170,575</b>	Number of Criminal Reports received by COPFS, 2018-19
<b>17,705</b>	Number of cases in which no action was taken, 2018-19
<b>63,325</b>	Total non-court disposals, 2018-19
<b>90,157</b>	Total court disposals, 2015-16

The case marking process undertaken by the Crown Office and Procurator Fiscal Service (COPFS) is largely invisible to an accused individual, only becoming apparent once they are notified – usually by letter or legal representative – of the outcome or onward proceedings of their case.

People’s experiences of the waiting period during case marking were largely defined by the environment in which it was spent – that is, either released on bail or remanded in prison. This was also true of experiences of the court process (see section: ‘Court’), although it is discussed in greater detail in this section.

#### Individuals released on bail

For those granted bail following initial police investigation, the most lasting feature recalled at this stage was the wait to find out what would happen next. This was mentioned by people who received COPFS direct measures, who for many this was their first interaction with the justice system.<sup>2</sup> Naturally, the uncertainty of waiting weeks, or in some cases months, for news of the outcome was stressful.

<sup>2</sup> <https://www.copfs.gov.uk/about-us/what-we-do>



*“It was a wee bit of a wait, because I remember I was sitting and waiting on it, and waiting on it, and eventually I got it. But it was quite a few weeks.”*

Male, 28, Completed Fiscal Work Order

This extended waiting period was also discussed in the context of having multiple outstanding charges, including those which in fact pre-dated the offences for which individuals had received the disposal originally identified in this research. Despite successfully completing their latest disposals and wanting to move on, some participants felt they could not do so until they knew what was going to happen next. This impacted their ability to pursue positive changes such as seeking employment, and caused a mixture of emotional responses ranging from despondency to frustration.



*“I got in trouble a few times in between [leaving prison and completing CPO]... It feels shit. I’m just waiting for that one day when it comes up. You don’t know when. I bet it’ll wait and wait and wait, till when you think it’s going to go away, it’s going to creep back up.”*

Female, 25, Completed CPO

Those who ultimately received fiscal direct measures were notified by letter that they were to attend an appointment with criminal justice social work to assess their suitability for the measure. However, it was fairly common that people did not understand from the information contained within the letter exactly what the measure was, or what the implications would be going forward. Often this was the result of literacy issues, with people struggling to read the fairly large volume of information contained, or not understanding the language used. In other cases, people felt that there was insufficient information, particularly with regard to whether it amounted to a criminal conviction, or indeed whether accepting it would mean the measure would appear on their criminal record.



*“I’m not really good at reading... I didn’t have a clue. I’ve never had anything like this before. When I read ‘diversion’, I thought ‘what’s a diversion?’... When I got the letter I didn’t have a clue.”*

Male, 39, Completed diversion from prosecution

However, despite a fair amount of confusion around the written information provided, explanations provided later in person by Criminal Justice Social Workers was largely described as clear and comprehensive, assisting individuals to make an informed decision to accept the measure (see section: ‘COPFS Direct Measures’).



## Individuals remanded in prison

Meanwhile, for those whose cases progressed beyond the delivery of a fiscal direct measure, one of the most striking themes that emerged at this stage was experience of being remanded in prison. Experiences varied widely.

Remand can provide an opportunity to break recurring cycles of addiction and offending which can otherwise be hard to address. Prison is not and should not be regarded – or used – as a treatment facility in place of adequately resourced and tailored services in the community. However, the respite it offered particularly chaotic individuals was evident in research interviews. For one woman in this study, being remanded offered a last chance to escape what she described as:



*“It wasn’t really a life, it was just existing I suppose. It was like a repeat, I was doing the same thing every day. It wasn’t a very nice lifestyle to live.*

*“...The best thing that happened was getting remanded, for me. Because I managed to get clean. It wouldn’t have happened otherwise, I would have just kept using.”*

Female, 22, Completed CPO

However, several interviews highlighted a significant risk that being remanded can precipitate a range of harmful outcomes, for which there is often limited support either during imprisonment or upon release. The financial, housing and health implications of being remanded were wide-ranging. This caused uncertainty and stress as they tried to re-establish their situation upon release, attempting to rectify areas of their lives that had been crucial to their stability.

Benefit payments are suspended while an individual is remanded in prison. The impact of this can be acute, especially for those receiving legacy benefits such as Employment Support Allowance (ESA), then being required to transfer to Universal Credit in order to reinstate payments upon release. This causes delays to payments, as well as the risk of a sudden drop in the amount received due to a sudden transfer to the new system in place of a than a graduated approach, as with regular recipients transitioning to Universal Credit. One individual described how he went two weeks without any money, and credited the support of a local third sector worker as indispensable to receiving money again.



*“I was told when I came out it was just suspended, which I didn’t know at all. I didn’t have no letter. I just went to the bank on the Wednesday the week after I got out, and no money was there, so obviously I phoned them, they said it was suspended to bring my date of release through the prison to the JobCentre, which didn’t happen because I got released from court...”*



*"I was on the phone trying to get through just to speak to somebody for ESA. And then I was like keeping doing it, and couldn't get past, so I just had to hang up... You cannot reapply for ESA, you have to go through Universal Credit. I didn't have a clue what Universal Credit was all about."*

Male, 31, On bail awaiting trial

Housing can also be severely impacted by a period in custody. Whether the accommodation is rented through social housing or a private landlord, any individual paying their rent via housing benefit or Universal Credit would immediately be in breach of their tenancy through rent arrears accrued through the suspension of benefit payments. The impact of this was incredibly damaging for one person interviewed, who lost his temporary accommodation and possessions as a result of being remanded in prison for six months. Upon release, he was forced to stay in hostels and insecure housing for three years post-release.



*"I was in a [temporary] house when this happened. Obviously that was lost. After that allegation... All my clothes, every bit... I lost everything through that. I had to start from scratch. So, hostel, hostel, hostel, hostel, hostel."*

Male, 61, Not guilty at High Court

Health issues, in particular mental health, marked the experience of remand for many. This included limited access to medication or treatment. For one man, this was particularly challenging due to having dyslexia and struggling to fill out the paperwork required to access the medication he needed. This, combined with delays in the system, meant that he spent a week without anti-anxiety or anti-psychotic medication.



*"It absolutely trashed me... I was screwed with my medication, because even though I got it in the holding cells, they never put forward to the court, so it took a week for them to sort out medication for me."*

*"Inside [prison], you have to put your own forms in to see the mental health team. Even when I was told when I first went in...I'd go onto the mental health team, when I asked, because I hadn't heard anything, that I'd need to put the form in myself. I'm dyslexic for a start, trying to do all these forms... I didn't have a clue, and you have to ask what form it is. And you have to get your own prescription."*

Male, 31, On bail awaiting trial at High Court



Aside from accessing appropriate treatment, the over-riding psychological impact of being held indefinitely, and then reintegrating upon release, was severe for some.



*“When I first came out, even now I still think I’m inside half the time. Because I didn’t think I was getting out, I thought I was going to lose my house.”*

*“It’s been hard since I’ve been out, because it’s just been a brick wall after brick wall for me.”*

Male, 31, On bail awaiting trial at High Court

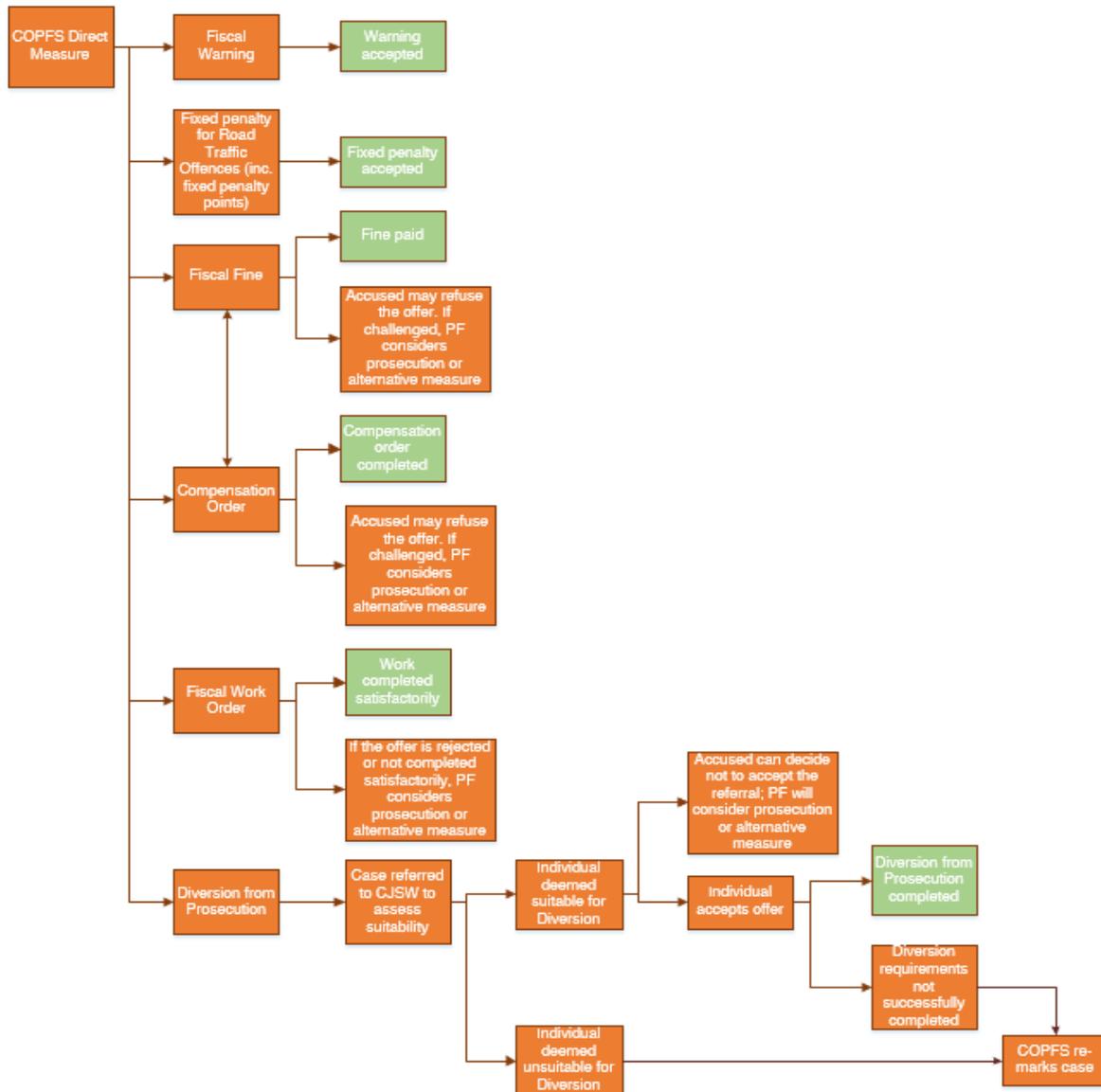


*“I thought myself in that prison, you know, how I could hang myself. And even one of the guys that was convicted, was telling me how to do it. [He said] ‘if you put it through the bar, and you jump, it’ll break your neck.’ He was telling me. And I was touching the thing, ‘I’m just gonna do it’. [He said] ‘you’ll be here for 5 months, 6 months more.’ And it does get to you, you know.”*

Male, 61, Not guilty at High Court

## COPFS Direct Measures





Process in numbers	
<b>8,764</b>	Total number of Fiscal Warning Letters issued, 2018-19
<b>6,544</b>	Total number of Fixed Penalties issued, 2017-18
<b>1,979</b>	Total number of Fiscal Combined Fine with Compensation Orders issued, 2017-18
<b>1,217</b>	Total number of Compensation Orders issued, 2017-18
<b>909</b>	Total number of Fiscal Work Orders issued, 2018-19
<b>2,945</b>	Total number of Diversions from Prosecution referred to criminal justice social work, 2018-19



Of the four individuals interviewed with experience of fiscal direct measures, two successfully completed diversion from prosecution, one completed a Fiscal Work Order, and one was assessed for diversion for prosecution but found unsuitable for positive reasons. In the latter case, ultimately no action was taken by COPFS.

Feedback from those who completed disposals was resoundingly positive. The disposals were felt to have provided an opportunity to make positive and sustainable life changes. Often this involved a change in perspective, with key work focusing on developing consequential thinking skills and considering the wide-ranging impacts of offending behaviour.



*"If it wasn't for coming and seeing here, or doing what I've been doing, I probably would be in the jail. Because I probably would have done all these stupid things again. But the help I've had, aye. When we started off I just didn't feel me, I was down low. But ever since been talking to [Criminal Justice Social Worker] everything's been getting better and better and better. He's made me bring myself out to where I used to be, know what I mean? Realised my mistakes and what I've done."*

Male, 39, Completed diversion from prosecution

One person who completed unpaid work as part of a Fiscal Work Order also described the satisfaction he derived from the chance to give something back to his community.

There was an appreciation of the opportunity the disposals provided to address the issues at the root of offending behaviour without affecting a person's criminal record or having to go through the court process. However, one person who was ultimately assessed as unsuitable for positive reasons highlighted the confusion caused by information provided on this subject. While some information indicated that accepting the disposal would not affect her criminal record, other written information suggested it would be kept on file by COPFS but to what end, she did not know.

The chance to work closely with a Criminal Justice Social Worker to address specific, individual needs played a significant part in achieving positive results for most people. Individualised support was seen as providing a more meaningful and lasting solution to avoiding future offending.



*"It's different if you get chucked in the jail... you'd rather sit down and speak to somebody about what actually happened, and maybe it'll take a couple of weeks, couple of months I don't know. Then it's coming to the conclusion that what you were doing was wrong. And you go away and you'll no do it again, 'cause you know in your head, it's already drilled... You've already learned... It's understanding basically, aye."*



*"[My worker]'s helped me out with a lot... He's always kept in touch with us. I didn't even answer the phone and he's come up to my door with letters and that, hand delivered! It shows us they actually care. They don't forget."*

Male, 21, Completed diversion from prosecution

With the focus of diversion from prosecution one of addressing criminogenic need, there will always be a small proportion of people whose lower level offence type fits the criteria, but whose individual need does not. One individual assessed for diversion from prosecution for drug possession was not considered to have sufficient issues with drug misuse to qualify for the programme, and so her case was passed back to COPFS for re-consideration. While she understood the rationale, there was a disappointment and slight frustration that a resolution to the case could not be provided at that stage, and even that she might be prosecuted on the basis of having fewer needs.

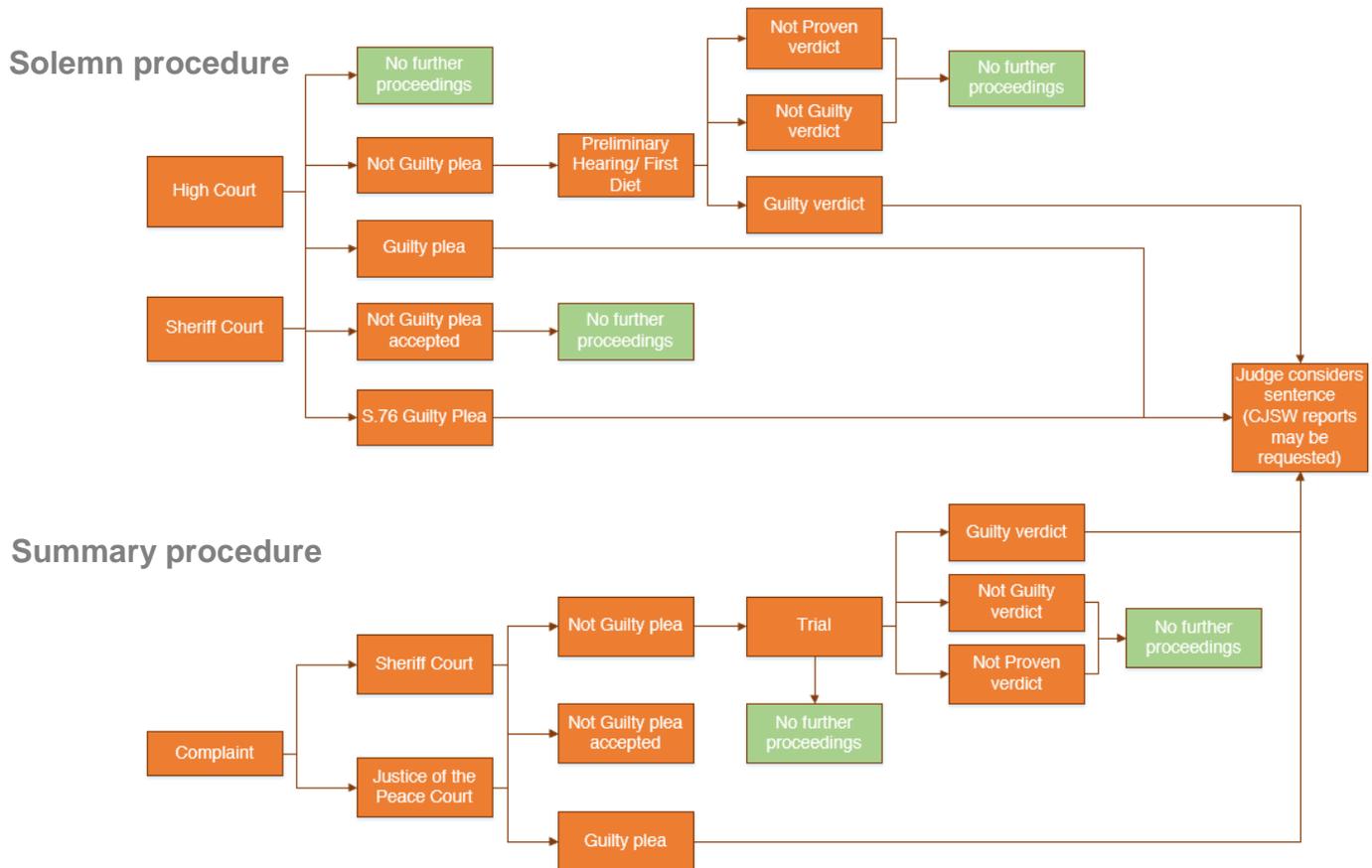


*"I went to the social work meeting, chatted with the guy. It lasted maybe 15-20 minutes, he was really nice, but said sorry, we can't do anything for you at social work because you have no drug addiction, this isn't a recurring issue, so it's going to go back to the PF. I would have been better off if I'd been 'well I do have a drug problem'... My biggest concern was that I was going to have some kind of criminal record, and I would have to pay a lot of money to defend myself in court."*

Female, 24, No action taken

## Court





### Process in numbers

**Solemn procedures (2018-19)**  
**911** Total number of indictments registered at High Court  
**9,160** Total number of petitions registered at Sheriff Court

**Summary procedures (2018-19)**  
**59,777** Total number of complaints registered at Sheriff Court  
**36,955** Total number of complaints registered at Justice of the Peace Court

There is an extensive research literature on experiences of the Scottish Courts, much of which is further segmented by demographics, locality, accused or victim, crime type and court type. As such, the aim of this section was not to conduct a detailed evaluation of every court process experienced, but rather to gain an overall impression of people’s experiences, understand their views on the information and support provided, and consider the impact of this in the context of their wider justice journey.



The large majority of participants had gone through the Scottish Courts as part of the justice process. As with the case marking stage, many experiences were marked simply by the lack of transparency or visibility of the process. This centred on a lack of understanding of the processes involved, often as a result of scant information or insufficient contact with legal representatives. When asked for details of what had happened at court many people were unsure, often because of the length or complexity of the process they had been through. Despite the lack of detail recalled, people were left with a lasting impression of the overall feelings and emotions they had experienced.

### Psychological and emotional impact of appearing at court

Attending court, regardless of the outcome, was associated with stress, anxiety, fear and apprehension. Similar to experiences of fiscal measures, this was augmented for some by the long wait – often several months – either for news of the case’s progress or the court date itself, during which nervous anticipation grew. These emotions were then fully realised at the trial.

It was at times the physical environment of the court building or room that played a part in this, with the social isolation of being held in a cell or standing in the dock alone amplifying feelings of vulnerability. This was described particularly vividly by those who were found not guilty of their charges; memories were recounted of their feelings of disempowerment during the trial which were closely linked with the potentially life-changing consequences of the verdict.



*“I was just so terrified. Every bit of will I had made my body try and stand still in the dock, whilst I trembled and I shook.”*

Female, 53, Not guilty at Sheriff Court



*“It was pure fucking nerve-wracking... You’re sitting in your cell [in the court], you’re really tormented, because this is your life in front of you.”*

Male, 61, Not guilty at High Court

While there was little that could change this, for some people having supporters present helped them cope during the trial. For those that did not have such support available, it was mentioned that this would have made a difference in making their experience more manageable.





*“I knew that what kept me going was the belief I had from the people that employed me, my work colleagues, my family, the defence solicitor that knew me personally and professionally.”*

Female, 53, Not guilty at Sheriff Court

### Cycles of offending

For many research participants, the appearance at court had not been their first. For those involved in repeat offending, there was a sense of inevitability in how they regarded their repeated appearances at court. For one person who had previously been on a youth Structured Deferred Sentence, her continued appearances at court had a significant impact on her onward trajectory. Eventually, she was sent to prison for a short spell due to what she perceived to be the Sheriff’s frustration.



*“When I went to court, he [Sheriff] was like, ‘nah, I’m sick of seeing you’, and he gave me three months [in prison]. So I had just like wasted three years of my life, after me doing all of this [SDS] work. It was him that kept putting it off, him that kept seeing me, because he kept putting the date off. Eventually he gave me the jail, but I shouldn’t have even got it. I hadn’t been in trouble or anything like that.”*

Female, 25, Completed CPO, who here references the period she was on a Structured Deferred Sentence

This sense of losing control, or voice, in proceedings was also reflected by those who had little recollection of what had happened. For one person this was because the experience of court was so well-worn. Although linked again to the inevitability of the cycle of re-offending, it resulted in the defendant relinquishing all agency in the process, because it was easier simply to blank out proceedings until the verdict was read. At the point of interview, this individual had served six prison sentences in the past 15 months.



*“Most of the time, to be honest, when I’m in court and going through the whole process of going in and out of prison, it’s just a blur. It’s been so many times now, I’ve... I lose track of things and what’s happened. It’s actually to the point now, when I end up in court I blank out. I find out what’s happened once I’m taken away.”*

Male, 23, Completed short-term prison sentence

By contrast, the inevitability of re-offending and future appearances at court provoked an alternative response for another participant, which was one of engaging as much as possible with the judiciary. He viewed it as an opportunity to develop a positive relationship with the Sheriff in question, in the hope that it might act in his favour in the future.

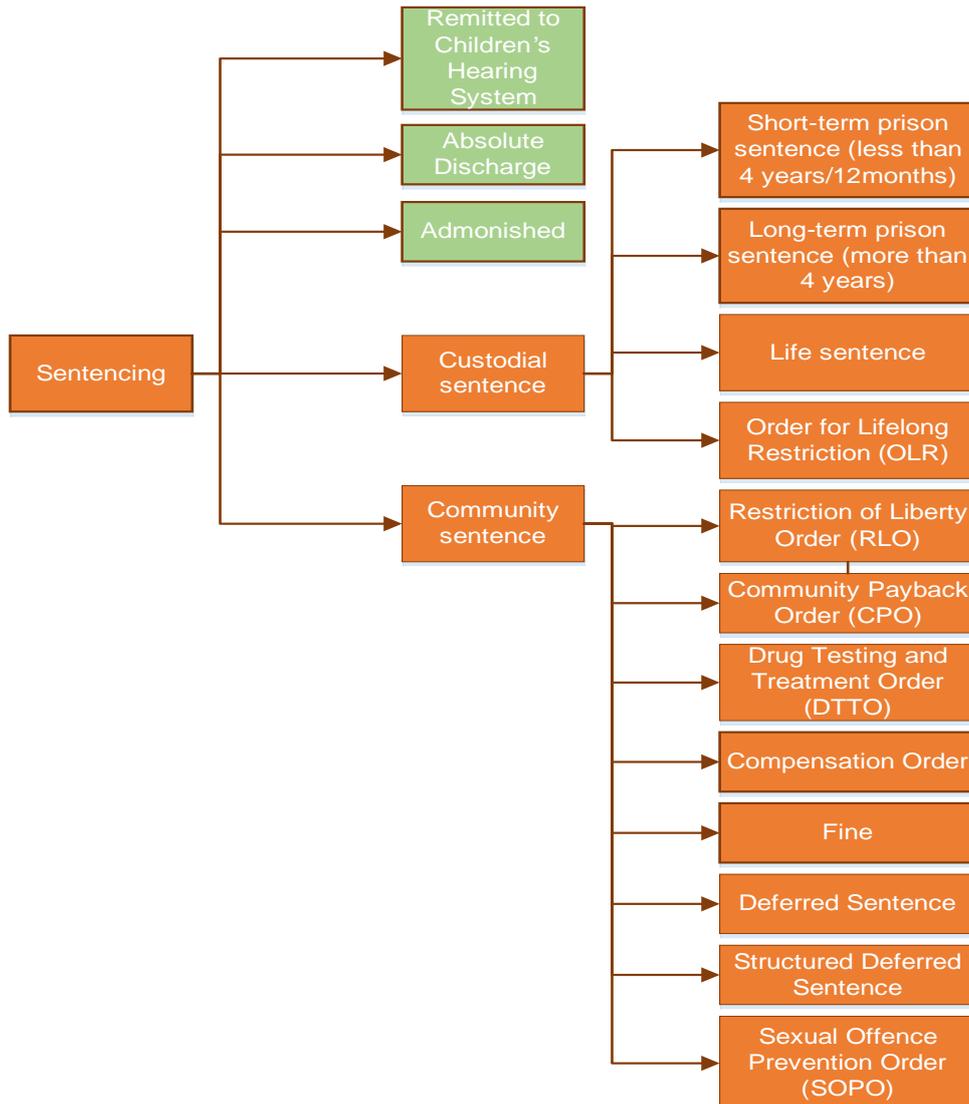




*“If the Sheriff sentences me, I say ‘thank you, your honour’. Because my mentality is I think, if the next time I’m up in front of them they remember it!”*

Male, 42, Completed short-term prison sentence

## Sentencing



## Process in numbers

<b>82,716</b>	Total number of people convicted, 2017-18
<b>11,973</b>	Total number of custodial sentences, 2017-18
	9,486 Short term prison sentences
	454 Long term prison sentences (including life)
<b>16,830</b>	Total number of community sentences, 2017-18
<b>39,260</b>	Total number of financial penalties, 2017-18
<b>13,861</b>	Total admonished, 2017-18
<b>673</b>	Total absolute discharges, 2017-18

Regardless of the ultimate verdict or sentence imposed, perceptions of how proceedings unfolded and whether justice had been achieved were diverse.

### Perceived justice

Whether individuals felt that justice had been served in court was a thorny issue for some, and rarely offered a simple answer.

Some who pled guilty and received a sentence simply accepted that a fair outcome had been reached, and there was little else to say.



*"I accepted it. I reaped what I sowed. There's nothing else I can say about it. I didn't feel hard done by, or aggrieved. I got my just desserts."*

Male, 46, Serving long-term prison sentence

However, this was a more complex issue both for people who pled not guilty and were found not guilty, and those who went on to accept guilt for their crime but were not satisfied with the sentencing process.

For the former, naturally there was frustration at having had to go through the court process to prove their innocence. However, there was at least relief that the correct judgement had been made. One woman had lost faith in the justice system as a whole based on her experience up to that point, but the court process was in fact the first time she felt she had had her voice heard. This resulted in mixed feelings given the sense that justice had been served further down the line in the process than she would have liked.





*"It was actually the one time I felt somebody had heard me, somebody had actually listened, somebody could actually see this is not right."*

Female, 53, Not guilty at Sheriff Court

For the latter, there were reservations about the logic or justice of the process. One young man, who had already served multiple short-term prison sentences in recent times, accepted the final verdict but questioned the process by which this was decided. Having already been in prison multiple times through continual re-offending, there was a sense of helplessness in which he wished another option could be offered to him but seemed unavailable.



*"I was really pleading with them to give me a community disposal. There was no need for me to go back to this. Give me a chance again, I know I messed up, I know the consequences. If I breach whatever they give me in a community, I know what happens. I go back, and then... I pay for it. But they don't seem to be giving me that chance again."*

Male, 23, Completed short-term prison sentence

### Support during and after trial

While all those interviewed had legal representation in court, rarely was a relationship developed between them. Usually this was simply due to time or resource constraints, meaning that it was not possible to discuss events at length prior to the trial. For example, one person was taken by surprise upon arrival at court to find someone else than expected was representing her. Patchy or limited legal advice and support left individuals feeling detached and disengaged from the process, with little to no sense of agency in proceedings.



*"I don't even think it was my lawyer that was up for me that day, to be honest. The lawyer that I had didn't really know anything about me. It wasn't my lawyer, it was some other lawyer... And they didn't come downstairs to speak to me, I just got called up and my case was taken from there."*

Female, 22, Completed CPO





*“I wasn’t expecting to get the jail... Nobody explained it to me. I’d never been in jail, I didnae ken what was going on. And my lawyer didn’t even come and speak to me.”*

Female, 25, Completed CPO, who here references the period she was given a short jail term having failed to comply with a Structured Deferred Sentence

This was not the case for all, however, and the value of a strong and trusting relationship between lawyer and client was clear for those that had had it. Small actions could make a big difference, such as being informed of developments in the run up to a court date.

For those found not guilty in court, the feeling of walking out of the court building free came with mixed feelings. It was a highly emotional experience, and they still needed to come to terms with what had passed. Layered on top of this, however, was the reality of life ahead and the challenges this would present, especially for people who had until that point been on remand. One individual in particular was highly critical of the lack of support available post-trial, having been made homeless while remanded for six months. He felt strongly that there should be more support for people remanded and found not guilty.



*“There was no backup at all for anybody that’s innocent. My lawyer said ‘good luck, where are you going to go next?’ [I] walked into the lanes of Glasgow, got myself a bottle of whisky. Went from there to all places. It was from Barlinnie to hostels, to hostels, to hostels, to hostels. So there was nae ‘we’re going to give you a house’ or anything, no.*

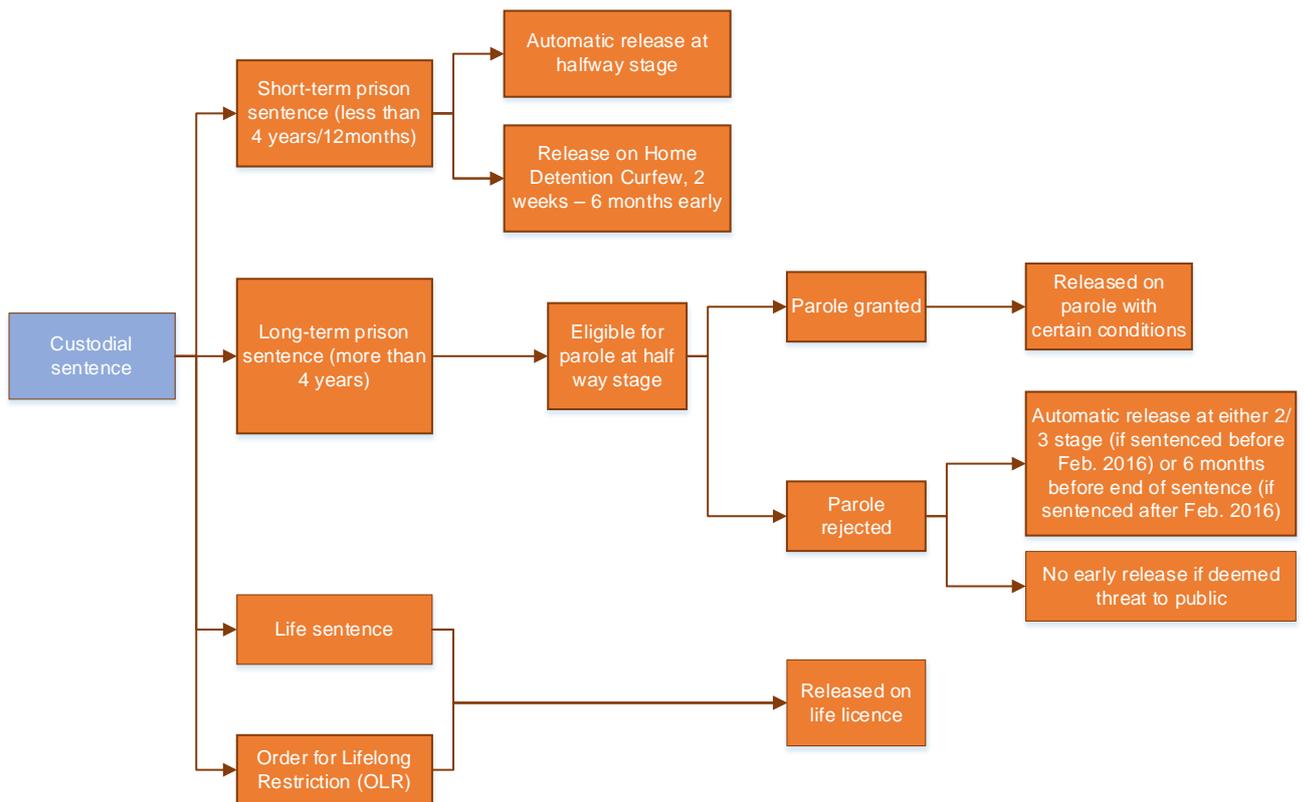
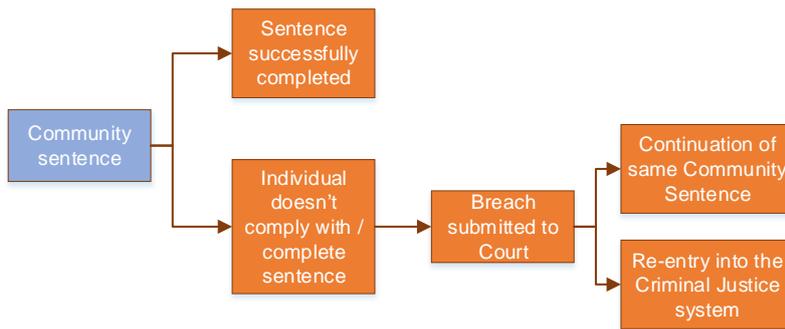
*“There was no back up at all. There was no people saying, ‘we’ll help you, you’ve lost everything, we’re going to help you’. Nothing.*

*“I met two guys at the court, a different court case, I came out, and they were going to buy heroin for themselves. That was their backup, coming out of jail.”*

Male, 61, Not guilty at High Court

## Serving sentence





There was a divergence in stories at this point of the process between those given community-based disposals and those given custodial sentences. The purpose of this section is not to offer any direct comparison between stories, but to give voice to people’s experiences and highlight any common themes which emerged where relevant. Experiences recounted are not necessarily representative of all people who have gone through these stages of the justice system, but a reflection of those who took part in this research.

Community sentences



Two participants spoke directly about their experiences of receiving and completing a community sentence. Others had previous experiences of community sentences, which are also included where relevant.

### *Supervision*

For most community sentences, supervision forms a significant part of the hours ordered, with the aim of identifying and addressing unmet needs that may contribute to an individual's risk of offending.

Many Community Payback Orders (CPOs) include a supervision requirement, and for the two participants in this study supervision comprised their only order requirement. Both were undertaking their order through a local women's service that offered tailored support to address their needs, which included assistance with housing, finances and substance misuse issues. Most valuable to them was the provision of wrap-around support that went beyond the bounds of their CPO requirement, and extended to addressing wider issues affecting their health, welfare and general stability.



*"In [previous location where received an order] you would just go in, you'd speak to your probation officer, she'd ask what you've been up to and is all your benefits and housing all right, but here at [women's service] it's totally different. There's a lot more in here for you to do, and the staff have got different activities on every week. Workers give you time and support Monday to Friday as before it was sit across a desk for half an hour"*

Female, 22, Completed CPO



*"They helped me with my house and that, put me in touch with people to come and help me sort my gas and electric. Anything that I needed, they helped me with that. The people here, they actually care about you"*

Female, 25, Completed CPO

The value of this type of support was made clear when contrasted with previous experiences of supervision at other services, which for some had in fact contributed to the failure of their order as they simply did not feel understood or supported to make positive changes in their lives.





*"It was rubbish. I was getting no support. Basically you had to go to appointments, you didn't do anything at them. They don't do anything to help you..."*

*"They just assume. If you tell them you've not done this or not done that, they don't believe you. So if they don't believe you, then what's the point of doing it? You've been proud of yourself, but they're going 'oh no, I don't believe you'"*

Female, 25, Completed CPO, previously on Structured Deferred Sentence

### *Community sentence failure*

Often first-time recipients of community disposals are young, as they offer people involved in lower-level or first-time offending a structured alternative to punishment and payback which avoids a custodial setting. Several participants reflected on past community sentences that they had failed to complete, the majority of whom were young adults at the time. They considered in retrospect that the failure of the order may have been their fault, because they were not ready to make positive changes in their lives or accept help. All had then gone on to re-offend and receive higher tariff sentences.



*"I don't really think it was anything that they could have done at that time, maybe it was just me. I don't know." [When asked what might have changed things] "...Maybe it would have been better doing one on one, and actually finding out what it is that I need done to help me. Finding a way they could help me, instead of all of this 'we're doing this, we're doing that, no you can't do this, you can't do that'."*

Female, 25, Completed CPO, previously on Structured Deferred Sentence



*"It was me. It didnae work because of me, because I was still in the frame of mind that I used to be in. I wasnae interested, I was just doing it [community sentence] because it got me out of jail. See if I had a chance now to have it, I'm at the frame of mind where it would work..."*

*"See to be honest, I wasnae ready for change. I'm ready now, this is the first time I've actually been ready to change, to accept all the help. Before I got a lot of help and I was just counting it away, cause I wasnae interested in. So I cannae really tell you if certain help would have changed, cause I probably don't think I would of, because I was suffering through a bereavement, even years later. But now, I'm ready to accept the help..."*



Male, 34, Serving long-term prison sentence, Previously failed community sentence

This does, however, raise the question of the purpose of a sentence and where the responsibility lies to ensure its success. The National Strategy for Community Justice highlights the importance of supporting individuals to access services that will help them desist from further offending (Scottish Government, 2016). We know that younger people are significantly less likely to complete a CPO successfully – 63% of people under 25 achieved a successful CPO outcome in 2017-18, compared with 77% of people aged 40 or over (Scottish Government, 2019). If young people are both more likely to receive a CPO, and also more likely to fail it than other age groups, it raises the question of how service provision might be better tailored to meet the needs of this population.<sup>3</sup>

### Custodial sentences

The reflections of those currently serving sentences in prison offered a different perspective compared to those who had since been liberated from prison. Descriptions of time spent in custody were extensive and diverse. Participants were generally not guided towards any specific items within the subject of imprisonment; the issues discussed below tend to reflect spontaneous topics of conversation. Naturally, for those imprisoned at the time of interview, this comprised the majority of discussion during interviews.

#### *Substance misuse and addiction*

Data from 2016-17 tells us that at the point of release, 30% of prisoners in Scotland were tested positive for illegal drugs, while 40% reported using illegal drugs at some point during their sentence (ScotPho, 2018). However, these figures are likely to be under-reported by prisoners, and also do not account for the recent influx of new psychoactive substances, or ‘legal highs’, which are also known to permeate the prison estate.

Nearly every person interviewed with experience of prison discussed the nature and impact of drug misuse and addiction during their period of imprisonment. The first aspect of this centred around access to drugs in prison and the general prison environment, while the second was around accessing support and treatment programmes.

### Access to drugs

Easy access to drugs was universal. The number of people misusing drugs, and the dangers presented by the proliferation of legal highs, was described as particularly concerning. Whether or not participants had used drugs themselves, the prison environment was felt to be unsafe and fraught as a result.

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<sup>3</sup> See Community Justice Scotland, 2020. *Community payback orders 2017-18: analytical review of unsuccessful outcomes* for further reading.



*“The worst thing about the jails now is the legal highs. That’s a nightmare. I got caught up in that as well. Usually the screws check there’s two of you in the cell [in the morning] and shut it, but now they started opening doors and they had to get a response off of each person, ‘cause it’s that many people in serious predicaments with that stuff.”*

Male, 42, Completed short-term prison sentence



*“The atmosphere in the halls is horrendous. Horrendous. I’d say, conservative estimate in my hall, 75% have addiction issues. And it’s all legal highs.”*

Male, 47, Serving long-term prison sentence

While the harms of drug use were understood, self-medication provided an opportunity for escapism to combat the severe feelings of hopelessness that came with incarceration. This was particularly acute for those serving long-term and life sentences, for whom the indefinite nature of their sentence had brought significant psychological distress. Despite already being drug users upon entry to prison, some people found themselves forming addictions to new drugs they had not taken before.



*“I started taking heroin and that in prison, just to kill time, to blank out how long I had left. You just blank it all out.”*

Male, 46, Serving life prison sentence



*“Drugs wasnae a problem till I got introduced to heroin. And I never really started taking that till I was sentenced to life in prison.”*

Male, 62, Serving life prison sentence

### Seeking treatment

Drug treatment was available in all the prison environments described by research participants, but the variety of needs and treatment preferences across individuals quickly became evident across interviews. While in some places people were frustrated not to have been offered appropriate drug replacement treatment, others wished they could go ‘cold turkey’ and detox completely.



*“I’m taking subutex right now, but all I want is a detox. They could help me out, they could help me with giving me a detox in this prison, a dihydrocodeine detox, but they won’t dae it. They’ll just offer you methadone. They just say, take methadone or nothing.”*

Male, 34, Serving long-term prison sentence



Some individuals also described the lengths they went to in order to access the treatment they wanted, or indeed to avoid a treatment they did not want. Part of the frustration surrounding this was the lack of control that people felt they had over their own health and circumstances, with a strong sense that they did not feel heard.

There were strong opinions around the provision of methadone for opiate replacement treatment: while it was recognised as the first step to recovery for many, there were also reservations about the risks of its highly addictive nature and the fear of dependency. However, if it was the only option on offer, there was little else that could be done.



*"I used to smash up halls, I used to get involved in things if I felt that my habit was too strong. I would dae that, so I could get segregated, go down to the segregation and just rattle. Because all the prison system wanted to offer you was methadone. No. For the simple fact, the prison wants to give you methadone, but at the same time they want you to sign a contract, saying 'I won't dae that, I won't dae that, I won't dae that', so when you're on methadone, all they want is to threaten you, [so if anything happens] 'I'll take you aff methadone'. So I didn't want them having that power on me."*

Male, 46, Serving life prison sentence

### Looking ahead

Feelings towards future prospects for those who were in prison at the time of interview were complex. They were all on long-term or life sentences, which brought an added sense of gravity to how they regarded their situation and future destinations. The potential for release was also dependent on proof of self-change, which brought a different dimension to attitudes towards time spent in prison (see also: 'Securing release', below). This was less the case among those who had previously completed shorter sentences, with prison commonly regarded more as a short interlude, with the main challenges to be faced upon release (see section: 'End of sentence').

Repairing, maintaining, improving or establishing relationships with family and friends was one of the most vital factors in people's desire to change and secure release. Most had been buoyed throughout their sentence by regular visits from family, many of which had been across the Scottish prison estate as they served their sentence in multiple establishments. The gratitude and sense of duty towards family that this brought was significant.



*"In here I've learned a lot about myself. On the outside I used to be a people-pleaser. I wanted to be 'oh, look at me'. Whereas now I'm more worried to look at myself and be the person I want to be. A steady person that other people want me to be... I've got hope, 'cause I've got two nephews out there and I used that as a driver that I want to be in*



*their life, so to stop them from going down the road that I took. One's 8, one's 10. They come and visit me. I've never seen them outside. That's my driving force, and I want to be there for my family."*

Male, 46, Serving life prison sentence

This desire to build or repair relationships was also inextricably linked with the role of recovery from drug addiction (although it must be noted that participants interviewed in prison were identified through a recovery support group which brought an element of sample bias). Taking part in the recovery group was crucial to changing people's attitudes towards their own health, wellbeing and onward journey. The value of the lived experience of those running the group also played a part in this.



*"I had to change for my family. Because it's come down to family. My family don't want to know my anymore, unless I go to this rehab [post-liberation]."*

Male, 34, Serving long-term prison sentence



*"I've learned to listen to the people that matter, the people that have the answers to the questions... Most of the people that come in and do the meetings, I've got experience of using and partying with them, and seeing them when they lived the chaotic, unmanageability of their lifestyle before, and where they are today. The peace and the order that they give off, it's life. Living life on life's terms. So they've got the answers to the questions I'm asking... I used to see prison as a hindrance, but today I see it as a blessing. Cause it saved my life, such was the level of my using. It was... I could never have survived a long, sustained period using in the manner I did."*

Male, 46, Serving long-term prison sentence

For those on longer term sentences, over time prison had proved to be a place of reflection. Particularly in the case of a life sentence, initial feelings of hopelessness and frustration were eventually supplanted by a strong desire for release. It was this prospect of release that changed attitudes towards self-change and seeking a positive future.



*"I didnae want to get out in a way... There's nae out from a life sentence, and see your mind set when you get sentenced to a life sentence... you're in prison and you're sentenced to life, right, you're never been any fear in your life when you've been sentenced to life, because you've got fuck all else to lose. So therefore, as far as I'm concerned, fucking take me to court every day, I'm getting life, fuck yous. I'll just sit here and have a couple of joints. That was the way I lived all through my sentence.*

[When asked about how he went on to manage a self-driven drug detox]: *"Just the fact that there was a chance of getting out, getting*



*released. That was enough... What's the most important thing to me?  
My granddaughter. And my boy, my grandson."*  
Male, 62, Serving life prison sentence

### *Securing release*

For people who had completed short-term prison sentences, the question of release did not feature in interviews because of the certainty of automatic release at the halfway point of their sentence.

Seeking and securing release for people on long-term prison sentences, however, is a more complex pathway of participation in programmes, meetings with criminal justice social work and legal representatives, and attending parole tribunals.

The uncertainty of a parole release date was a cause of frustration and anxiety. For some this was due to what was felt to be limited support for preparing for parole tribunals. This was often simply due to a lack of available time or resource and high levels of staff turnover. As a result it could be difficult to build a meaningful relationship with social workers, which ultimately led to the feeling that a fair or accurate representation of personal character or progress could not be presented on the basis of a meeting that in one example lasted 'three minutes'.

The significance of someone's whole life situation relying on a single parole ruling made the process tense and emotional. While it was understood that the process had to happen, this rarely allayed the anger and hopelessness felt as a result of the lack of agency people believed they had in the process.



*"All you've got is your lawyer, but your lawyer's only there to make sure you get your legal rights... I find it hard to talk to people looking down on you... Every time I talk to yous I always get a thing saying I'm being abusive, abrasive in the way I speak. I don't mean to sound threatening but I'm sorry if I'm being passionate, I'm not being threatening. It's because I'm being passionate, it's because you're feeling things."*

Male, 62, Serving life prison sentence

If granted release, individualised licence conditions are developed as a key part of how a person serves the remainder of their sentence in the community. These are imposed with the aim of managing risk, preventing re-offending and promoting reintegration. In order to meet these aims, however, conditions can be complex and lengthy, and some participants described the challenges these posed for them.

The most prominent was the limit applied to contact with family or existing social ties. Being barred from living near family or other connections raised concerns among prisoners around the destabilising influence this would have upon release. For one individual quoted below, ultimately this contributed to his being recalled to prison while on parole. The equation of desistance with social isolation is widely understood as a challenge to prisoner reintegration upon release (Nugent and Schinkel, 2016).





*“All my addresses that I applied to go and live in were refused, because of the environment and known criminal associates. I went to live in supported accommodation supplied by my social work. I found it hard to adjust in that kind of environment, because the people I was living with was people I’d spent numerous years in prison, in prison landings with. So to me, I never ever felt that I’d escaped my environment.”*

Male, 46, Serving long-term prison sentence, recalled to prison on parole



*“My family’s been supportive all through my sentence. But now I’m coming to release, they’re actually barring me from my area where all my family stay. All through my sentence it’s always been ‘your family’s a good support network’ and all that, but now they’re all ‘you cannae go back to your family’... To tell you the truth, now I’m starting to think, is it worth my while getting released? Cause... They’re gonna put me somewhere where I don’t know anybody. That’s just a disaster waiting to happen.”*

Male, 46, Serving life prison sentence

## End of sentence

### Liberation from prison

For some who were in prison at the time of interview, release was a daunting prospect. Particularly for those who had been imprisoned for many years, or cycled in and out of prison for many years, some of the fundamental requirements of modern life were at risk of presenting significant challenges for them, such as opening a bank account, having the identification with which to do so, and securing housing. These challenges demonstrated individuals’ reliance on adequate support prior to and at the point of release, but reports from the individuals in question as to whether this would be available were uncertain and patchy.<sup>4</sup>



*“Just housing, I think. ID for my benefits, things like that. Getting a bank account sorted. I’ve been in the jail for years, so I don’t even know how to open a bank account. I don’t know.”*

Male, 34, Serving long-term prison sentence

For those who were able to look back to the time they had been released from prison, there was a strong sense that leaving the prison establishment had

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<sup>4</sup> At the point of interview, the [SPS Throughcare service had recently been suspended](#) due to prison overcrowding and resource scarcity.



essentially been as if entering a void. Particularly for those who did not receive support with resettlement or reintegration, it was a challenging time during which – without secure housing, employment or finances – they could feel overwhelmed and did not know where, or how, to restart ‘normal’ life.

The health challenges associated with leaving prison were significant. While data is unavailable on the exact proportion of people leaving custody without being registered with a GP, the figure is known to be high due to difficulties in registering and accessing appointments, and an inability to register from custody (Scottish Prison Service, 2017). There is a high incidence rate of people leaving prison with mental health and substance misuse issues. This was reflected in the experiences of those interviewed in this research, for whom without access to adequate support and treatment, the consequences were damaging. Because of this, it was the very short ‘window of opportunity’ provided by Throughcare support that could represent the crucial difference between relapse or not.



*“When you go out of there, you’re just, before you know it, bottom of the street, back to the same old. That’s how I like being picked up from jail. Cause I knew when I was first clean there’s a very small window of opportunity to get people, cause by the time they’re at the bottom of that road, sometimes not even getting to it, and they’re just \*phhh\*... The jail doesn’t do nothing to you, it’ll take anybody, it just stops time. So as soon as that gate opens, you just go back to exactly what you were doing before you went in. Biggest majority.”*

Male, 42, Completed short-term prison sentence



*“I just didn’t know what to do with myself. So I ended up, I think it was literally that night, the day I got out, I went and sat in somebody’s house and bought a packet of heroin. So after being clean and all that...”*

Female, 25, Completed CPO, who in this excerpt references a short period spent in prison

From a financial perspective, one individual described the difference that practical support from his voluntary throughcare worker made in his journey to resettlement.



*“[The throughcare worker]’s been good and he’s helped me go to the Jobcentre when I’ve not had the money to jump on the bus. He’s got us there and back. If it wasn’t for that then I wouldn’t have been paid or anything like that, and it’s not as if I get paid much anyway.”*

Male, 23, Completed short-term prison sentence

### Desire for change

Despite extensive discussion around current and future challenges faced by participants, a desire for change and positive destinations shone through all



conversations. Most prominent were simple aspirations for stability, good health and happiness.



*"I just want to be happy. I'd say happiness is the key to life."*

Male, 31, On bail awaiting trial



*"Number one is recovery [from addiction]. Without recovery, you cannae do the rest of it. Two, establish a good relationship with my family again. And three, a job. To do some sort of training, or college, or whatever I need to do to get a job."*

Male, 34, Serving long-term prison sentence

Employment was seen as a gateway to stability and security, although the impact of convictions on disclosure processes was mentioned by several people. This was not a process that many had yet spent significant time trying to navigate, but was certainly regarded as a dampener, or element of uncertainty, on their personal aspirations.

Several people also touched upon a desire to use their experiences of the justice system for the benefit of others. This was not restricted to any particular point of the system, being mentioned by individuals on fiscal direct measures, community and custodial sentences, and even one individual who had been found not guilty in court. Often this reflected their own experiences of having received support from others with lived experience of the justice system, and the positive impact this had on them.



*"I want to be a youth worker. Obviously I've been through a lot in my life and I've had to grow up pretty quick, so I'm hoping with the experience I've been through, I can help other people eventually. It's easier to talk to somebody that's been through some of the same or some of the stuff you're going through I think, because then they understand a lot better."*

Female, 22, Completed CPO



*"It made me a more empathetic and understanding worker, to not see just the professional side of the judicial system, but also the offender side of the judicial system... It's about being able to accept when things haven't gone right in your life... you can use that in other ways to actually enable other people."*

Female, 53, Not guilty in Sheriff Court

## Universal themes



This chapter has so far illustrated a number of themes that are rooted in specific stages of the justice process, which allows us to understand better how people's needs and experiences differ based in the stage of the justice system they are at. However, alongside this there were subjects that emerged in interviews that permeated stories regardless of the length or complexity of a person's journey. While these do not necessarily reflect the experiences of all people with experience of the justice system, they are reported on to reflect the significance they held for the participants in this research.

### Complex need and response

The experience of severe and multiple needs pervaded many stories, and in particular the extent to which this was a factor in subsequent offending behaviour. The instances in which this presented itself most acutely was among those who had struggled with both unaddressed mental health issues and substance misuse, some for many years.

Despite having sought help, in many instances it was the intersection of these issues that created a barrier to accessing appropriate treatment or support. The negative outcome of multiple needs can often be greater than the sum of its parts, presenting issues around the prioritisation of the provision of support, or indeed where the responsibility lies for providing this support (Bramley et al, 2019, Turning Point, 2016). This research saw some individuals go to extreme lengths in attempts to access the support required. With echoes of stories told by people in prison (see section: 'Serving sentence'), the result for one man was engaging in risky behaviour – lying to his GP – in order to receive the treatment he felt he needed.



*“Every time I went to the doctor for help, they said I had to stop drinking, so that they could assess me before they could treat me. ‘Cause I’m telling them I’m drinking ‘cause I’m feeling like this, I’m depressed, and anxiety, I’m feeling a certain way, I’m thinking about this, that’s the reason why I’m drinking, so is there nothing that we can do to help me? And they say I need to stop drinking first, before they can then assess and medicate me. So I’m stuck on a fence there. And it makes it harder for me then. So at one point I did end up having a breakdown, it took me having a breakdown before anything actually happened with my mental health.*

*“I lied to the doctor and told them that I stopped drinking. So that I could get my medication. So I lied to him, I got my medication, then I stopped drinking.”*

Male, 23, Completed short-term prison sentence

This individual also touched upon another issue around the point to which a risk factor has to escalate – perhaps even to the point of justice system re-entry – in



order to access the support required. One woman described her experience of this in relation to accessing support for drug dependency at her local service:



*“See if you get out of the jail, so obviously you’re clean, do you know you’ve got to go away and take drugs to get put on the programme [at local substance misuse service]. It’s crazy here. You have to have it in your system.”*

Female, 25, Completed CPO, who here references her release from a short period of imprisonment

Anecdotes such as these highlighted a confusion and frustration among those who had identified the issues that lay at the root of their offending behaviour, but despite their efforts seemed unable to access the treatment required.

### Familiarity with the system

This chapter has demonstrated the complexity of the justice system a whole, and the challenges and confusions encountered in navigating it. We might expect that the better a person knows the system, or the more contacts they have within it, the more empowered they would be to have agency through the justice processes. However, this was not always the case.

Despite having worked as a professional in the system for many years, one woman reflected on how her experience counted for little when the tables turned and she became a subject of the system. Despite knowledge of all the relevant processes and agencies involved, she felt powerless through much of the case in which she was both a victim of domestic abuse and found not guilty in court.



*“However well you know the system, it still can work against you. I thought I was clever, I worked in the judicial system! Clearly I wasn’t as clever! ...I worked in domestic abuse for 15 years, I thought I was highly skilled – I am highly skilled – in the judicial system.”*

Female, 53, Not guilty at Sheriff Court

Another had numerous contacts who worked in the justice system who were able to provide information and advice. This included a defence lawyer, an expert in criminal records disclosure and professionals within justice-related organisations. Despite this, the complexities of the system meant that she received conflicting advice in a range of situations. This was particularly destabilising given it was her first involvement with criminal justice.



*“[Disclosure contact] was emailing me, being really helpful, and he advised that I personally should ring up the PF office and ask them as many questions as I could to look like I’m being proactive about any potential action that is taken against me. So I rang up the PF office... I was trying to say ‘these things are contradictory’. And she then gave*



*me information that was different even, to what the social worker and the letter said. So something like, 'one of them would stay on your record, but one wouldn't'? At this point I was really confused about what actually meant what, and was really stressing out..."*

Female, 24, No action taken

### Chance and fortune

References to 'luck', or the slim chances involved in the outcome of various situations, were commonplace. While for some this was considered in quite a fundamental sense regarding whether justice had been delivered, for others it was simply securing or maintaining necessities such as financial stability and housing. This links to earlier discussions throughout this chapter of the various ways in which being subject to justice processes emerged as synonymous with individuals' disempowerment through events seemingly 'happening' to them.



*"If you look at the judicial weighing scales: my life was in them balance, and it could have tipped either way for me. And I think sitting here today, I am very, very lucky that the judicial system used the right protocol, and evidence was used in favour of me. Because it could have been a very, very different outcome."*

Female, 53, Not guilty at Sheriff Court



*"I applied for a house, through my worker. I was in that house for 13 month now. I'm not going to leave that place. Neighbours are great. I don't have parties, I don't have drug sessions. This is everything. I'm in my 60s now."*

Male, 61, Not guilty at High Court

### 'Us' and 'them'

People with a significant history of involvement with justice touched upon a feeling of 'otherisation' that they had come to associate with the system. It applied to a range of situations, from simply the identity of being an accused person, to interactions with agents of the justice system such as criminal justice social work and prison officers.

For some people this was only implicit in their recollection of events, as it emerged that the source of their negative or confused feelings was underpinned by this 'otherised' status. However, for others there was an overt anger and disillusionment at the way binary 'us' and 'them' identities had compromised their experience of the justice system.





*“Sometimes it’s ironic, the old saying ‘innocent until proven guilty’, but it’s ‘guilty until you’re proven innocent’ sometimes, when it comes to other people’s reactions. It’s tough.”*

Male, 31, On bail awaiting trial



*“I’ll always say as well, it’s one rule for them and a different for me. If I’m five minutes late for an appointment, I’ll not get the appointment, or cut off or whatever. But they can be half an hour, or an hour late. Same with probation, I’ve had missed appointments and that but it’s all right for them to do it”*

Female, 25, Completed CPO



*“It’s rules for them and it’s rules for us. We play with their rules, they don’t play with my rules. It’s always been two systems. Two systems have always been there. It’s just the way it’s been, always. It’s no just introduced this, it’s always been them, and us in prison.”*

Male, 62, Serving life prison sentence

There is some inevitability in this, given that the moment someone is accused of a crime they are a subject of the justice process, and this remains the case until they reach an exit point of the system. However, there is a risk that these experiences contribute negatively to people’s justice outcomes. If the ultimate effect on people is one of anger, injustice or hopelessness, as the above extracts suggest, it is not surprising if the outcome is reduced motivation for change, depleted self-efficacy and ultimately reduced chances of desisting from offending behaviour (Farrall and Calverley, 2005).



## 4. Conclusion

As a small-scale qualitative study, the data gathered in this research is far from generalisable to the whole justice system population. However, it illustrates the variety of experiences that can emerge from a single system entry point. It also relates the stories of people who have navigated common stages of the justice system, yet had entirely different experiences to one another. Past experiences, individual case handling and ongoing support needs are a significant factor not only in the path people take, but how they navigate and experience it.

Much of this report relates the complicated and unstable realities of life for many people navigating the justice system. Some aspects of this pre-dated individuals' engagement with the system, but many were precipitated or exacerbated by it. Running through all of this was how crucial the endowment of agency on individuals was in any given situation. The sense of disempowerment experienced at many stages of the process remained vivid in people's memories, resulting in fear, frustration and hopelessness.

Simple actions were often the most meaningful remedies to this, including feeling listened to by agents of the justice system; the provision of timely and accessible information about processes; adequate support for complex or conflicting support needs; and the chance to build and maintain strong relationships with professionals.

Where these were manifest, the impact could be significant. Many participants related a desire and motivation for self-change or securing a positive future, largely centred on simple aspirations such as stability, living independently and giving something back to the community. This was strongest among those who had been afforded the time or resource by others to actively engage in the processes to which they had been subject.

In mapping out and exploring the complexities of the justice system, we can highlight the ways in which people experience these processes with a view to making targeted improvements going forward. In doing so, we must consider how we can better support individuals at all stages to take ownership of their journey and view themselves as participants rather than mere subjects of the justice process in Scotland.

## 5. Appendix A: Sample profile

	<b>Gender</b>	<b>Age</b>	<b>Justice point at interview</b>
1	Male	31	On bail awaiting trial at High Court
2	Female	25	Completed CPO
3	Male	39	Completed diversion from prosecution
4	Male	21	Completed diversion from prosecution
5	Female	53	Found Not Guilty at Sheriff Court
6	Female	22	Completed CPO
7	Female	28	Completed Fiscal Work Order
8	Male	42	Completed short-term prison sentence
9	Male	23	Completed short-term prison sentence
10	Male	61	Found Not Guilty at High Court
11	Female	24	COPFS case marking – no action taken
12	Male	62	Serving life prison sentence
13	Male	34	Serving long-term prison sentence
14	Male	46	Serving long-term prison sentence
15	Male	46	Serving life prison sentence

## 6. References

### Process in numbers series

<b>Stage</b>	<b>Figure</b>	<b>Source</b>
<i>Crime</i>	Number of incidents reported to Police Scotland (Year to date to end of Q2)	Management Information, Police Scotland Force Report
	Number of crimes recorded by Police Scotland, 2018-19	Recorded Crime in Scotland 2018-19, Scottish Government
<i>Investigation and charge</i>	Number of Criminal Reports received by COPFS, 2018-19	Statistics on Case Processing last 5 years (2014-2019), COPFS
<i>Case marking</i>	Number of cases in which no action was taken, 2018-19	No Action cases reported to COPFS 2014-2019, COPFS
	Total non-court disposals, 2018-19	Statistics on Case Processing last 5 years (2014-2019)
	Total court disposals, 2015-16	As above
<i>COPFS Direct Measures</i>	Total number of Fiscal Warning Letters issued, 2018-19	As above
	Total number of Fixed Penalties issued, 2017-18	Experimental Statistics: Local authority breakdowns by local authority of the accused, 2015-16, 2016-17 & 2017-18, Scottish Government
	Total number of Fiscal Combined Fine with Compensation Orders issued, 2017-18	As above
	Total number of Compensation Orders issued, 2017-18	As above
	Total number of Fiscal Work Orders issued, 2018-19	Criminal Justice Social Work statistics: 2018-19, Scottish Government
	Total number of Diversions from Prosecution referred to criminal justice social work, 2018-19	As above
<i>Court Sentencing</i>	Number of solemn and summary procedures, 2018-19	Criminal Court Statistics, SCTS Reports and Data
	Total number of people convicted and by type of penalty, 2017-18	Criminal proceedings in Scotland, 2017-18, Scottish Government



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