**Submission to Sentencing and Penal Policy Commission: call for evidence**

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Low reconviction rates were identified as being able to demonstrate the effectiveness of community-based sentences by Rt. Hon. McLeish in outlining a possible future for Scottish justice (McLeish, 2008:1). Reconviction or recidivism rates are also identified by Scottish Government as an “indicator of the effectiveness of the criminal justice system in the rehabilitation of offenders” ([Scottish Government 2024, p8](https://benmatthewsed.github.io/reconviction-rates-scotland/index#/references)) and by Gormley and colleagues as a “key metric for evaluating the effectiveness of sentencing” (2022:18).

However, the recent change in the demographics of people being convicted in Scotland adds an additional complication to intra-jurisdiction comparisons in sentencing, and particularly to using reconviction rates as measures of sentencing effectiveness or criminal justice system performance.

Our preliminary analysis[[1]](#footnote-23020) suggests that almost half of the roughly six percentage point fall in the aggregate reconviction rate in between the 2004/05 and 2020/21 reconviction cohorts (from around 0.32 to 0.27) is due to change in the underlying demographics of the reconviction cohorts rather than due to changes in reconviction rates *per se* (see Matthews and King, forthcoming).

As an illustration: people aged under 21 made up around a quarter of the 2004/05 reconvictions cohort, but only around 10% of the 2020/21 reconvictions cohort, whilst those aged over 40 made up roughly 15% of the 2004/05 reconviction cohort, but around 30% of the 2020/21 reconvictions cohort. Crucially, the reconviction rate for those under 21 is consistently higher (albeit declining) than for those over 40 – the one year reconviction rate for people aged under 21 was around 0.4 in 2004/05 and around 0.3 in 2020/21, but the reconviction rate for those aged over 40 was around 0.2 for both cohorts. In calculating the overall reconviction rate, young people with higher reconviction rates are in effect being replaced by older people with lower reconviction rates. The change in the aggregate reconviction rate – and potential performance indicator for criminal justice system performance – reflects both the fall in reconvictions that we see amongst those aged under 21, and the smaller proportion of people under 21 in the reconvictions cohort. This demographic change could reflect factors such as diversion from prosecution, but cannot plausibly be attributed to the effectiveness of the justice system in facilitating rehabilitation. It is likely that the same demographic trends – principally the startling recent falls in the numbers of young people being convicted in Scotland – may also affect other indicators of justice system ‘performance’.

As a result of these shifting demographics, focusing on aggregate measures of performance may obscure areas where groups show countervailing trends. For example, when Scottish Government disaggregate the average number of reconvictions per offender by age and sex, women age 31-40 show a marked increase in the average number of reconvictions per offender between the 1997/98 and 2020/21 cohorts – one that runs counter to the overall decline in this measure.

As the panel considers trends in community justice sentencing (Question One) and the implementation and impact of the McLeish recommendations (Question Four), it is imperative account for the fact the demographics of people involved in the criminal justice system today are very different to those involved in the justice system at the time the McLeish report was written, particularly to the extent to which aggregate ‘performance’ measures are involved in this assessment.

Moving forwards, we suggest that performance metrics for the CJS which rely on aggregate rates could be supplemented in three ways. First, analysis of headline trends could be accompanied by analysis of whether the same trends are seen for *all* relevant demographic groups; Scottish Government already provides breakdowns by age and sex, there may be other important groups. Second, data sharing between justice organisations and researchers would allow linkage studies to incorporating richer contextual information about the people who have been in contact with the CJS, and so allow more relevant comparisons to be made about how reconviction rates have changed over time. Third, quantitative performance measures should be triangulated with qualitative understandings of how the CJS is performing.

**References**

Gormley, Jay, Melissa Hamilton, and Ian Belton. 2022. “The Effectiveness of Sentencing Options on Reoffending.” <https://www.sentencingcouncil.org.uk/wp-content/uploads/Effectiveness-of-Sentencing-Options-Review-FINAL.pdf>.

McLeish H (2008) *Scotland’s Choice: Report of the Scottish Prisons Commission*. Edinburgh: The Scottish Prisons Commission.

Scottish Government. 2024. “Reconviction Rates in Scotland: 2020-21 Offender Cohort.” Scottish Government

1. An preliminary write-up of these results can be found online at https://benmatthewsed.github.io/reconviction-rates-scotland-briefing/reconviciton-rates-evidence-summary.html [↑](#footnote-ref-23020)