

# **Criminal Justice Committee**

**28th Meeting, 2022 (Session 6), Wednesday 9  
November 2022**

## **Pre-budget scrutiny**

### **Written submissions from witnesses, other organisations and individuals**

#### Introduction

1. The Criminal Justice Committee is holding its third oral evidence taking session today as part of its pre-budget scrutiny of the Scottish Government's forthcoming Budget for 2023/24.
2. As part of this pre-budget scrutiny, the Committee is also seeking to assess the potential implications for justice sector funding in Scotland in light of the current economic and inflationary environment, and the announcement by the Scottish Government of a broad flat cash funding settlement for the remainder of the current session of the Scottish Parliament out to Financial Year 2026/27.

#### Public call for views

3. The Committee undertook a public call for written views as part of this scrutiny. This consultation ran between 21 September and 21 October 2022. A copy of the public call for views is included in Annex A (pages 3 – 5) for information.
4. The Committee received 45 written responses to its call for views from both organisations and individuals. All of the responses are available online on the Committee's 2023/24 pre-budget inquiry webpage:  
<https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-criminal-justice-committee/business-items/prebudget-scrutiny-202324> .

5. The Committee thanks all of those who have taken the time to respond to the call for views.

#### Written evidence from justice sector organisations

6. The Committee also sought a written response from the following justice sector organisations as their funding constitutes the bulk of the Justice portfolio budget-

- Crown Office and Procurator Fiscal Service.

## **CJ/S6/22/28/1**

- Scottish Courts and Tribunal Service.
- Scottish Fire and Rescue Service.
- Scottish Police Authority & Police Scotland, and
- Scottish Prison Service.

7. In seeking a response, the Committee asked four questions, broadly similar to those in the public call for views, namely-

- I. What assessment these organisations are making of the impact of a possible flat cash settlement to the delivery of services for 2023/24? What contingency plans are in place? What is the impact on their services?
- II. Similarly, what assessment are these organisations making of the impact of a possible flat cash settlement on their capital spending for 2023/24?
- III. What assessment are these organisations making of the longer-term impact of the possible flat cash settlement out to 2026/27 if the present inflationary cycle continues beyond 2023?
- IV. Any other comments these organisations may wish to make on the potential impact of the flat-cash settlement on their organisation or the budget more widely

## **Oral evidence at this meeting**

8. At its meeting today, 9 November, the Committee will take oral evidence from **Wendy Sinclair-Gieben, HM Chief Inspector of Prisons for Scotland.**

9. A written submission from HMIPS is attached at Annex B for information.

**Clerks to the Committee  
November 2022**

# Annex A: Copy of the public call for views issued by the Committee from 21 September to 21 October 2022

## Overview

On 31 May 2022 the Scottish Government's Cabinet Secretary for Finance and the Economy Kate Forbes MSP published the Scottish Government's [Resource Spending Review Framework](#). This set out the Scottish Government's scenario for budget spending of £180 billion over the four remaining financial years of the current Scottish Parliamentary session (Financial year 2023/24 to Financial Year 2026/27).

In the Framework, the Scottish Government set out a scenario for the allocation of £11.6 billion of public spending to the Scottish justice system over these four financial years as follows:

- 2023-2024: £2,839 million
- 2024-2025: £2,839 million
- 2025-2026: £2,954 million
- 2026-2027: £2,969 million.

These proposals, if realised, would represent an across the board, flat cash settlement for almost all parts of the justice criminal justice system in Scotland.

The UK Office of National Statistics [currently estimates](#) that the Consumer Prices Index (CPI) has risen by 10.1% in the 12 months to July 2022, up from 9.4% in June. A flat cash outcome would represent a significant real-terms reduction in spending across the justice sector if the current trend of high inflationary pressure continues into the medium to long term.

## What might this mean for justice spending?

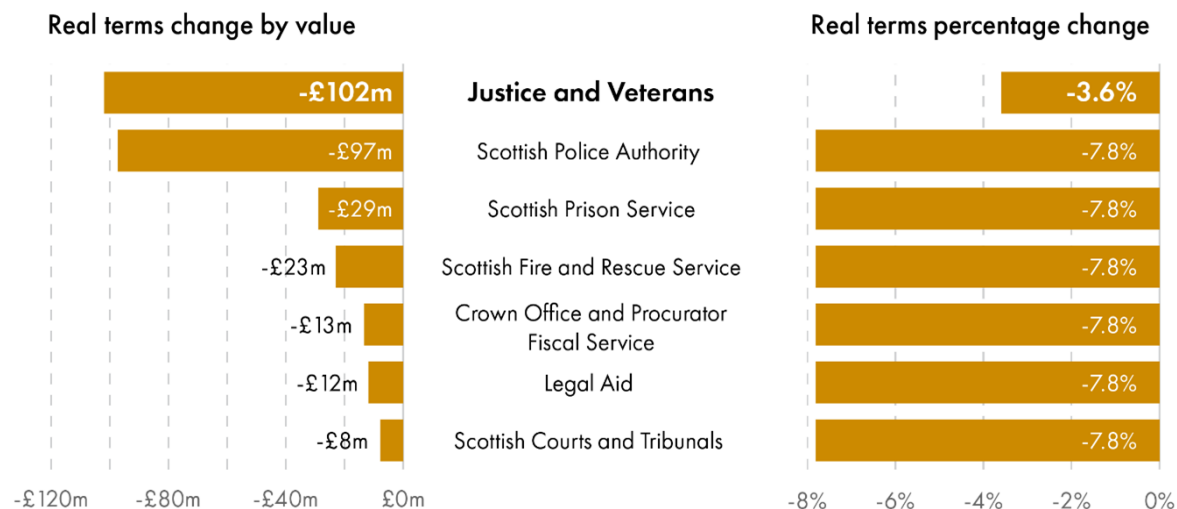
The Scottish Parliament Information Centre (SPICe) has produced the following information to indicate what this settlement may potentially mean, in real terms, if the current economic climate persists for the next few years.

Any real-terms shortfall in funding over this period may be substantially better or worse than the current estimate, depending on the inflationary pressure in each year up to 2026/27.

This estimate may also be affected by the forthcoming UK Government emergency budget, and the outcome of the Scottish Government's [Emergency Budget Review](#),

which the Scottish Government has confirmed would take place within two weeks from the forthcoming UK Government emergency budget.

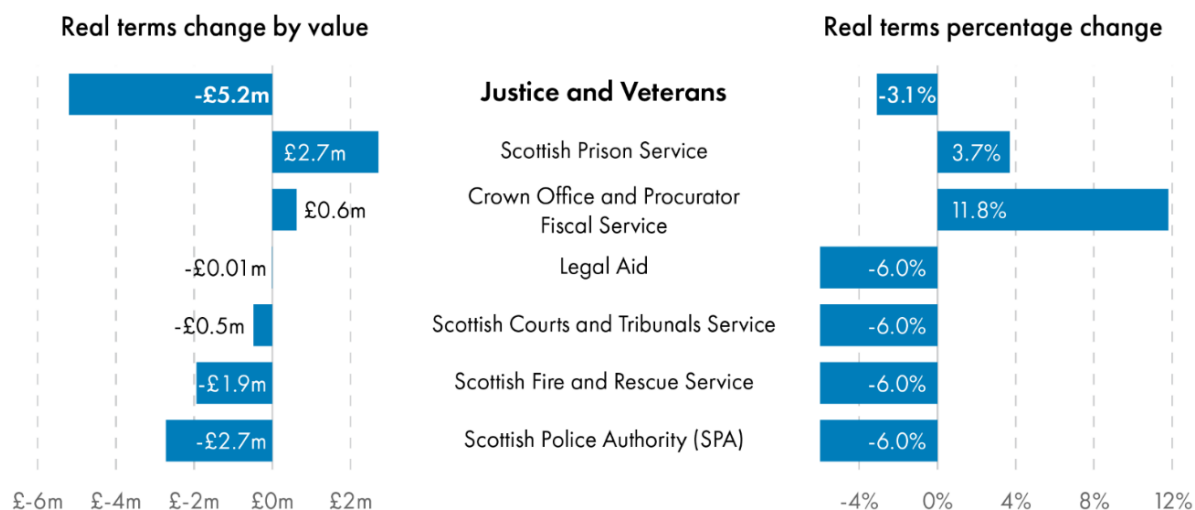
SPICE estimates that resource spending will fall in real terms by £102 million, or 3.6%.



There will be a cut to resource spending of 7.8% across the portfolio. These include the following reductions:

- Scottish Police Authority and Police Scotland: £97 million
- Scottish Prison Service: £29 million
- Scottish Fire and Rescue Service: £23 million
- Crown Office and Procurator Fiscal Service: £13 million
- Legal Aid: £12 million
- Scottish Courts and Tribunals: £8 million

SPICE's analysis also says that capital spending will also decrease in real terms by £5.2 million, or 3.1%.



Two elements of the portfolio will get an increased amount of funding:

- The Scottish Prison Service will receive an increase of £2.7 million (or 3.7%)
- The Crown Office and Procurator Fiscal Service will receive an increase of £600,000 (or 11.8%)

However, other elements of the portfolio will see their funding their funding cut by 6% in real terms. These include the following reductions:

- Legal Aid: £10,000
- Scottish Courts and Tribunals: £500,000
- Scottish Fire and Rescue Service: £1.9 million
- Scottish Police Authority and Police Scotland: £2.7 million

## Questions

The Criminal Justice Committee would like to hear your views, or those of your organisation, on this situation:

- What are your views on the impact of a possible real terms cut in the funding for the Scottish justice sector for the financial year 2023/24?
- What are your views of the impact of possible real terms cut in the funding for the Scottish justice sector for the financial years over the longer term if the present rate of high inflation continues beyond 2023?
- Any other comments you may wish to make on the impact of the possible flat-cash settlement on the Scottish justice sector or the budget more widely.

**The deadline for submitting a response is 11:59 pm on Friday, 21 October 2022.**

## **Annex B: Submission from HMIPS**

### **Overview**

HM Chief Inspector of Prisons has a statutory duty to inspect and monitor the treatment and conditions of detainees in prison, and to inspect detainees under transport and in court custody units. HMIPS is a member of the UK National Preventive Mechanism, and our inspections contribute to the UK's response to its international obligations under the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). OPCAT requires that all places of detention are visited regularly by independent bodies known as the National Preventive Mechanism (NPM); which monitor the treatment of and conditions for detention. HMIPS is one of 21 bodies making up the NPM in the UK.

We carry out our duty through a human rights lens which focuses on whether the treatment and conditions of prisoners are upheld to an agreed international standard.

Allocating resources in a way that enables a government to fulfil its human rights obligations requires consideration of the specific human rights obligations as set out in the human rights treaties it has signed and ratified. Extensive guidance on how those commitments translate into policy objectives on the ground is set out in a number of places, including for example: General Comments and Concluding Observations And Recommendations provided by the various UN Treaty Body Committees and reports from the Special Rapporteur on specific issues.

The UK has agreed to uphold a number of international human rights standards relating to detention and prisons. They are, namely: UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules); European Prison Rules; UN rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules); Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; Various Council of Europe Recommendations; European Convention on Human Rights; UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules); UN Convention Against Torture; International Covenant on Civil and Political Rights; and International Covenant on Economic, Social and Cultural Rights.

### **What are your views on the impact of a possible real terms cut in the funding for the Scottish justice sector for the financial year 2023/24?**

HMIPS will continue to monitor and inspect against international obligations. We have serious concerns that a flat budget represents insufficient resourcing to allow for the adequate fulfilment of these duties. However, it is important to emphasise that HMIPS does not have any statutory responsibility for reviewing the way in which financial resources are allocated or used by the Scottish Prison Service, and any risks associated with that, which is more the territory of Audit Scotland. Instead, our

mandate is to examine and report on the outcome of this allocation of resources, and where the treatment and conditions of prisoners are affected. Other organisations will be better placed to provide detailed information on the costs and liabilities involved in running the prison service in Scotland. Moreover, we have no responsibility for reviewing operations within SPS Headquarters, only inspecting the care and treatment of prisoners in individual prisons.

A budget is a clear indication of a government's priorities. This real-terms funding cut which will impact the 7500 individuals in prison and the front-line staff who work with them is concerning. HMIPS are of the firm view that continued investment is required for effective rehabilitation, appropriate and humane conditions, and ultimately, a reduction in crime or a rapid expediting of justice reform to reduce the prison population to cater for the funding loss.

The criminal justice system in Scotland is facing a number of strategic challenges that can only be made more difficult to address as a consequence of a real term cut in funding. Many of these issues are long standing in nature, but became more entrenched as a result of the impact of the pandemic. The Justice system therefore either requires a whole system paradigm shift in the way in which crime is handled or alternatively additional investment beyond a flat budget.

Lessons can be learned from those countries that have, like Scotland seen a reduction in crime, but where they have also achieved a significant reduction in prison populations, and therefore a significant reduction in cost. It is evident from those countries that 'fluctuations in prison rates are caused not so much by changes in the number and nature of crimes but by changes in the way the criminal justice system handles them.' (Explaining the collapse of the prison population in the Netherlands, European Journal of Criminology 2022, Vol 19(4) 488-505)

There are significant implications for the Scottish Prison Service (SPS) across a number of dimensions, primarily resources, sub-contracts, prisoners, partnerships and relationships with the third and community sectors.

### *Resources*

Recruiting, training and retaining staff to manage Scotland's dangerous, refractory and vulnerable incarcerated population requires an adequate budget to ensure there are sufficient high calibre staff with appropriate training. Enforcing a flat cash budget must make this harder. It also carries the very real risk of moving away from an enlightened penology that addresses criminogenic need towards one of (at best) humane containment that does little to ensure prisoners return to the community as responsible citizens to reduce recidivism.

### *Contracts*

The contract with the SPS for Prisoner Transport was based on a scope of activity that post COVID has altered and changed arguing that the original cost model is no longer fit for purpose. Court backlogs, additional Court docks, increased hospital bed watches, virtual courts and reduced route movement no longer sit easily within the original financial model; the contract needs reviewed and recognition is given that

the additional scope may not be absorbed into the original funding and conversely may require additional resource.

### *Partnerships*

COVID outbreaks and restrictions have added to long standing pressures on both SPS teams and NHS prison healthcare teams, with staffing shortages and low morale from sustained pressure over the course of the pandemic taking its toll. Funding is not the only challenge here, but it may inhibit action on the NHS side to recruit sufficient trained staff on pay scales that both attract and retain clinical staff. The ability of the SPS to support the NHS in their approaches to alcohol and substance use, and the visible rise in mental ill health potentially compromises health outcomes which will spill back into the community.

### *Third and Community sector*

Unless alternative approaches to remand and custodial sentences are adopted, encouraged by greater investment at scale in community justice services and more willingness to reduce risk through electronic tagging, then tackling the backlog in court cases will force a further rise in the expensive prison population and place additional pressures on an already struggling SPS and NHS. Inevitably the community and third sector funding is not core and the pressure to comply with a reduced budget places these services at risk.

Moreover, the enduring and significant challenges outlined below continue and the impact of a real term cut on the treatment and conditions for prisoners is clear:

### *Overcrowding.*

The work of the prison service is twofold; to safely and securely hold those who are committed to prison by the courts and to work with those people to reduce their risk to the community on release. A comparison of data provided by the World Prison Brief shows that Scotland has one of the highest imprisonment rates (143 prisoners per 100,000) of Northern European countries (Scottish Centre for Crime and Justice Research (SCCJR), 2019).

The challenge for the SPS will be in providing rehabilitative support for all prisoners against a flat budget when half of all prisons are currently operating above design capacity. With the sustained increase in remand and backlogs in the court system the likelihood of an adverse impact on the ability of the SPS to manage a decent, rehabilitative and humane regime is distinct. That disturbing statistic does not tell the full story; there is a long-standing inability of the SPS to provide sufficient levels of purposeful activity for the entire population. Locking people up for most of the day, often for 22 hours a day, without much, if any, form of purposeful activity does nothing at all to address criminogenic need, reduce recidivism or deliver outcomes that represent value for money. It also contravenes the key standards in Human Rights including the ECHR obligations.



### *Extraordinarily high remand figures*

The excessive length of time spent on remand risks contravening human rights and poses significant concerns about equality of access to healthcare such as dental treatment and access to work, education and other forms of purposeful activity within many of our prisons. Moreover our 2019 thematic mental health review identified the period of remand as one with a higher risk of self-harm or suicide. Currently 28% of the prison population is remanded; a determined approach to reduce the number on remand is required, as well as more equitable access to work, education and rehabilitative opportunities within Scottish prisons who for legal and cultural reasons have already have limited access to rehabilitative opportunities.

### *Changing demographics*

With an ageing population and a growing cohort of Serious Organised Crime Group (SOCG) cohort, decisive action is required to meet both the complex social care and rehabilitative needs of an ageing prisoner population and the serious risks that SOCG present. We have suggested consideration of a dedicated aged care prison facility and recognise that the SPS will need to consider an SOCG strategy for accommodation. It is hard to see how those aspirations could be progressed against a flat budget.

### *Substance misuse*

With high levels of addictions and drug related overdoses and deaths in the prison population, along with violence linked to drug debts; this is a significant issue. Those countries that have successfully secured a sustained drop in their prison population and a reduction in drug-related deaths have almost uniformly taken the bold decision to decriminalise or de-penalise substance misuse. Recent academic evidence calls for a shift to a public health model and we applaud the rise in recovery cafes. There are opportunities to go further however to address substance misuse issues while people are in prison, but this would again require sustained investment at a time of significant financial restraint.

### *Human Rights and Children*

We welcome the Scottish Government's commitment to ending the need to send children under 18 to HMP Polmont. Continuing with prison custody would contravene UNCRC and the barriers to removing children from prison custody requires a whole system drive and appropriate investment in the resourcing of secure care facilities, which can only be compromised by a flat budget. Removing children from HMP YOI Polmont has the benefit of freeing cell spaces to reduce overcrowding in other establishment.

### *Health and Mental Health*

Discussion on alternatives needs to take place between Health and Justice around the safe and appropriate location of prisoners with mental health issues. HMIPS observe and interact with a high proportion of apparently mentally unwell prisoners, several of whom are located in segregation. We find prison used as a 'place of

safety' and lengthy periods of waiting for those who require in-patient care. Women in particular are at the extreme end of the waiting times and if requiring high secure in-patient treatment are transferred to England, affecting the vital support that their families and friends can provide. Recruitment and retention of clinical staff is consistently challenging, The ICT system inhibits liaison with the community, we lack electronic prescribing, and the inconsistencies between health boards, for example on access to Buvidal as a more progressive alternative to methadone, continue to stand out.

Recruitment and retention of prison healthcare staff continues to be a major challenge for the NHS, with staff shortages consistently causing problems with the delivery of healthcare in prisons, but this can also be affected by staffing shortages on the SPS side creating difficulties escorting prisoners from residential areas to the healthcare centre. There are cultural and other factors at play here, not all of which relate to resourcing pressures, but more restricted funding is not going to help.

*A fragile and ageing prison infrastructure.*

The ageing infrastructure and general condition of some of Scotland's prison buildings are ill-suited to a modern prison system, not least at HMPs Barlinnie, Castle Huntly, Dumfries, Greenock, Inverness and Perth. Some of Scotland's prisons are modern and fit-for-purpose, but Scotland still has antiquated Victorian prison establishments that breach human rights guidelines on cell size, are expensive to maintain, and do not provide for the changing demographics. This is particularly notable at Barlinnie and Perth prisons, where many prisoners are doubled-up in cells of 6m<sup>2</sup> (including the partitioned toilet). The CPT has long considered there should be as a minimum, 6m<sup>2</sup> of living space for a single occupancy cell and 4m<sup>2</sup> of living space per prisoner in a multiple-occupancy cells. Moreover, the increasing number of cells out of commission in HMP Greenock due to water ingress serve to highlight the challenges in maintaining Victorian infrastructures. The routine over-reliance on HMP Barlinnie for surge capacity when prisoner numbers are high accentuating the risks until the new HMP Glasgow is built and becomes operational.

*Heightened risk of prisoner disturbances.*

Adverse prisoner reactions are both traumatic and costly with previous disturbances reports evidencing the cost. The cost of the prison riots in England between April and May 1986 were estimated by the Government to be £5.5 million. The riot in HMP Birmingham in 2016 was estimated to have cost the Government and the private operator £6 million in total. One imagines that the cost of full-scale prison disturbances will have risen since then so the risk of an adverse prisoner reaction to their conditions and treatment carries significant financial risks.

The reality is that a flat budget will affect the ability of the SPS to maintain or increase resources to staff, prisoners and establishments to cope with rising inflation and energy bills. The threat of Industrial Relations, staff shortages, cost of living pressures on families and the perception by prisoners and staff that they are not being treated legitimately, poses a genuine risk. It is difficult to avoid the conclusion that the conjunction of resource, population and policy pressures are very significant factors in any rapid deterioration of safety.

**What are your views of the impact of possible real terms cut in the funding for the Scottish justice sector for the financial years over the longer term if the present rate of high inflation continues beyond 2023?**

The imposition of a 'flat cash' budget on many Justice agencies (e.g. a 7.8% cut in real terms to the SPS resource budget next year) can only have a profoundly detrimental impact on their ability to address these key strategic issues. HMIPS cannot see how the SPS can manage against a flat cash budget without significant adverse impact to rehabilitation focussed activities, affecting outcomes for individual prisoners and efforts to reduce reoffending, or delay to vital infrastructural improvements.

Even if inflation were to peak shortly and begin to subside, which is by no means guaranteed, the cumulative effect of a flat budget for four years against even moderate levels of inflation and modest pay settlements will be significant. A net reduction in 'buying power' over 4 years of at least 25% or worse is no doubt possible. The likely consequences for the SPS would appear to be:

- The potential to have to consider closing some prisons; without a combined Justice approach to reducing the prison population; the risk of increased overcrowding in other remaining establishments is clear.
- Heightened risks of having becoming humane containment; i.e. focus almost exclusively on 'essential activities' to the detriment of activities focussed on rehabilitation, with the likelihood of adverse consequences for those incarcerated, recidivism and future levels of crime.
- High risk of an adverse prisoner reaction.
- Potential delays to vital prison infrastructural improvements such as delayed openings of HMP Glasgow and HMP Highland, and no further modernisation or replacement to the other Victorian prisons such as HMP Greenock, HMP Dumfries and HMP Perth.

Example: HMP Barlinnie causes HMIPS particular concern for a number of reasons:

- There are only five cells suitable for disabled prisoners for a design capacity prison population of 1,021 and a prison population which frequently exceeds 1,200.
- Unlike a modern prison, there are no shared areas to sit and converse with other prisoners at meal time – all meals have to be eaten in a prisoner's own cell, many of which are considered too small to accommodate two people and adds to inherent risks of social isolation and excessive time in cells  
HMP Barlinnie is the main mechanism for coping with surges in the prison population, using single cells to accommodate two prisoners, but in some cases this breaches the minimum space standard of 4m<sup>2</sup> per prisoner (excluding toilet area) set by the Council of Europe European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

- HMIPS understands that despite approximately £6 million per year being spent on maintenance of HMP Barlinnie there remain significant risks that the drainage and sewage may fail. There is no obvious fall-back option to accommodate the high number of prisoners at HMP Barlinnie if one or more halls had to be taken out of use for this, or related ageing infrastructural issues.

**Any other comments you may wish to make on the impact of the possible flat-cash settlement on the Scottish justice sector or the budget more widely.**

With a flat cash settlement, justice reform is necessary. Radical investment in diversion and community-based alternatives to prison, restructuring the third and community sectors to exploit their expertise, and setting targets to tackle the criminogenic factors that lead to imprisonment has the potential to reduce the overall justice costs.

HMIPS is completely neutral on the role that the private sector should play in the Scottish Prison Service (SPS). We inspect and monitor public sector and private sector prisons in exactly the same way, seeking to prevent any violation of the human rights of prisoners; regardless of whether the operator is public or private sector. We note, however, that the transport provider is struggling and the SPS is planning to bring HMP Kilmarnock back into public ownership. Audit Scotland may have a view of whether private sector contracts represent value for money.

Finally, the number of children currently held in a Young Offender Institution (YOI) is small, with approximately 70% on remand at any one time. Scotland now needs to grasp the opportunity and expedite its plans to remove the remaining small number of children from prison entirely; leading the way in the treatment of children and young people who are in conflict with the law. The new Youth Justice Vision, the acceptance of the recommendations of 'the Promise', and the recent approval by the High Court of the new sentencing guideline developed by the Scottish Sentencing Council for young people, are positive first steps. Whilst it is more expensive to hold children in secure care, it does free up good quality accommodation that can be used more efficiently for adults.