

## Howard League for Penal Reform

### Early Career Academics Network Bulletin

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#### ECAN Facebook Group



The Howard League for Penal Reform is active on [Facebook](#) and [Twitter](#). There is a special page dedicated to the Early Careers Academic Network that you can reach either by searching for us on Facebook or by clicking on the button above. We hope to use the Facebook site to generate discussions about current issues in the criminal justice system. If there are any topics that you would like to discuss, please start a discussion.

## Introduction

It has been a busy few months at the Howard League despite the hiatus in parliamentary activity and the purdah period with the general election. So there are a few things which I would like to highlight.

We have recently published the third briefing in the [Supervisable](#) series which focuses on [Scotland](#) and is based on research by Prof Fergus McNeill. As with the briefings on practice in [England](#) and [Germany](#), Supervisable uses photovoice methodology to provide an understanding of community supervision from the supervisee perspective.



The image above is from the Scottish study. It was taken by *Messiah 10* who gave it the caption *The Long Walk*.

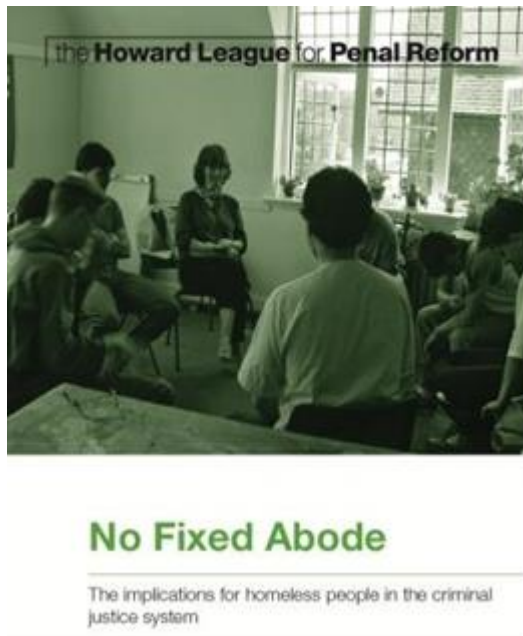
In discussing how this symbolised supervision in the community he said: *'...my first picture is just a picture of the beach, going up to the beach right there. A woman walking her dog. For me it kind of relates prison and probation and stuff. Whereas it's the kind of relationship is one's the boss. One's the obedient one: the dog.'*

*[Murmurs of agreement from the group]. It depends how you're treated. ...'* A key find of the trilogy was that the experience of supervision is both diffuse and pervasive; it extends in time and impacts on many aspects of the supervisee's life. The aim of this work is to find effective ways of working with supervisees, support their reintegration into the community and to change public and policy makers' views about community supervision.

Allied to our recent event, What if we rethought parole? – which will be available as a podcast soon along with a pamphlet outlining the arguments in detail – we are campaigning to reduce the number of [recalls to prison](#). Our research has shown that there were 22,412 recalls to custody in the year 2015-16. The surge in recalls has contributed to a steep rise in the number of people who are behind bars as a result of breaching their licence conditions. That number has grown from 150 in June 1995 to more than 6,500 in March 2017 – an increase of almost 4,300 per cent. This is one issue in a trilogy of issues in our [3Rs campaign](#) which also focuses on rules (adjudications) and release from prison.

Research published by the Howard League, [No Fixed Abode](#), by Dr Vickie Cooper, has been used in a Supreme Court case where we intervened. The case tested whether women are suffering in a failing criminal justice system that is designed to meet the needs of men.

Supreme Court judges heard a [case](#) that concerned the patchy provision of approved premises for women who have been released from prison. At a time when they are trying to rebuild their lives, many women must live hundreds of miles from home because places are unevenly spread across the country. More information about our intervention can be found [here](#).



A number of plenary speakers have now been secured for the Howard League's bi-annual international conference, **Redesigning Justice: Promoting civil rights, trust and fairness** which will be held on 21 and 22 March 2018 in Oxford. Confirmed speakers include: Profs Danny Dorling, Barry Goldson, Martine Herzog-Evans, Nicola Lacey, Elena Larrauri, Ian Loader and Fergus McNeill.

We have already put out a [call for papers](#). It would be great to see ECAN members there.

The [Howard Journal of Crime and Justice](#) and been rebranded and rebooted under the stewardship of [Professor Ian Loader](#). It would be great if could take the time to take another look at the journal and see if it is the place for you to publish your research. Please do not hesitate to submit an article or discuss your submission with Ian.

## The Howard Journal of Crime and Justice

Once again this ECAN bulletin has two articles based on last year's winning **Sunley Prize** entries: [Anna Norton](#)'s article reflects on the findings in her work on drugs, especially new psychoactive substances like spice in prison, and David Cross' highly commended work on human rights, desistance and community justice. Could someone at your university be among the [Sunley Prize](#) winners this year? They receive £1000 and their work published and publicised. The deadline is looming at 25<sup>th</sup> July.

There is so much you can do to support our work, and of course you can always [join](#) ... I look forward to meeting you at one of our events or receiving an email from you.

**Anita Dockley, Research Director**

## Features

### The potential and pitfalls of ‘problem-solving courts’ for women

**Loraine Gelsthorpe**

Recent debate has focused on various strategies to reduce women’s imprisonment; these include: recognition of women’s vulnerabilities and the inappropriateness of imprisonment, diversion from the courts altogether (where there are mental health problems), limiting magistrates’ sentencing powers, raising the custody threshold, deferred sentences for structured interventions and perhaps even establishing a presumption against short custodial sentences (Gelsthorpe and Sharpe, 2015; Scottish Government, 2017). There has also been discussion about the scope for ‘specialist women’s courts’.

It has been suggested that specialist women’s courts might run along similar lines to drug courts (Malloch and McIvor, 2011; Ward, 2014). This would entail a focus on proper assessment of women’s needs and tailoring the content of sentences to address those needs. Periodic returns to court would include consideration of whether appropriate provision has been made, as well as any factors relevant to compliance and progress.



#### Origins of problem-solving courts?

Problem-solving courts are thought to be an American invention where they evolved incrementally, at a local level, championed by enthusiastic judges. In fact the notion of discussions about individuals’ progress, with magistrates being able to check the progress of offenders – either directly, face to face, or indirectly via probation officers – is not at all new in the English and Welsh context. It was a common practice within probation services and courts for many years, stopping somewhere in the late 1980s at the time when I was completing my

PhD. I attended such meetings as a part of my PhD research and witnessed some powerful discussions between magistrates, probation officers and offenders as to how they were doing – although this was largely post-sentence.

### **Problem-solving courts in the 21<sup>st</sup> century**

Problem-solving courts do seem to be a very positive thing, introducing a holistic and humane response in a context where there can be detailed discussion of what might be needed to facilitate a pathway out of crime. Such courts have often been described in terms of ‘therapeutic jurisprudence’ The 21<sup>st</sup> century model of a problem-solving court focuses on discussion about the underlying reasons why a crime might have been committed and what an offender needs by way of strategy and support. In the USA, in particular, there are graduation ceremonies in some courts, where offenders complete community-based programmes to address *their* problematic behaviour, overcome additions (or at least be in more control of them), find jobs and suitable housing, and desist from crime. ‘Celebration of compliance’ sounds rather alien in the English and Welsh context, although it offers all sorts of potential in terms of positive reinforcement for offenders.

Indeed, following the report of the Justice Committee in the House of Commons on *Crime reduction policies: a co-ordinated response* (2014) there was considerable interest in problem-solving courts. In May 2016, the British Government expressed enthusiasm for problem-solving courts and pilot schemes were set up, with ultimate

hope that this would reduce the prison population (Guardian, May 21<sup>st</sup>, 2017) though it is not clear what has happened since then in terms of evaluation.

### **Looking to Europe**

If it is the American model which has prompted interest, it is also worth noting that elsewhere in Europe there are some interesting and related ideas. In France, for example, the *Juge d’application des peines (JAP)* serves as an implementation judge. The role of the French JAP is two-fold, supervising the progress of prisoners through custodial sentences and their re-entry into the community, and secondly, monitoring on-going supervision of community sentences. Thus monitoring, ‘showing an interest in’, or ‘investing’ in individuals by showing regard to their progress, is not new.

### **Added value of problem-solving courts?**

The key features of problem-solving courts are thus specialisation around a target group (e.g. women, drug misusers), collaborative intervention and supervision, accountability through judicial monitoring, procedural fairness (including the offender in discussions), with a focus on outcomes. A review of the evidence as to whether or not they work is mixed (Centre for Justice Innovation 2016). Adult drug courts produce a positive response in terms of reducing substance abuse and reoffending; juvenile drug courts on the other hand have either minimal or harmful effects. Family treatment courts and family drug and alcohol courts also seem to have positive effect in terms of



reducing parental substance abuse. There is promising evidence to support the application of the key features of problem-solving courts in relation to those who have multiple and complex needs too, in particular, young adults, and female offenders at risk of receiving a custodial sentence.

In 2016 there were three women's problem-solving courts: Aberdeen Sheriff's Court, Stockport Magistrates' Court, and Manchester and Salford Magistrates' Court. All three are still at a relatively early stage of development, although the project at the Manchester and Salford Magistrates' Court is arguably the most established. In this court the focus is on women at risk of custody or a high-level intensive community order, all of whom have four or more 'criminogenic' needs (that is, crime related needs). The women are placed on community orders with sentence plans drawn up at multi-agency meetings. The women are brought before the court for regular reviews to discuss progress and to set goals for the continuing attempts to address the criminogenic needs. This might include attempting to engage with education (to gain basic qualifications in maths and English, for example), engaging in job readiness training or alcohol misuse treatment. As a requirement of the other many women are required to attend a Women's Community Centre. There are no data available yet to indicate outcomes, but the specialist courts for women certainly suggest potential to ensure gender-responsive practice which responds to the distinctive needs of women who offend. What it is important to



Credit: Almay

say is that monitoring of outcomes will reach beyond reconviction data to include progress in relation to lifestyles, money management, health and well-being. The initiative is certainly not just seen as a way of reducing the costs of imprisonment, but as a positive way of facilitating pathways out of crime.

### Potential pitfalls

But alongside potential there are some pitfalls. Might there be net-widening, for instance? Already one hears from the police that they feel as if they are working as social workers. Might women be pushed towards the problem-solving courts if it is thought that this process will access resources for women? In an ideal world mainstream services would be freely available, but we know that they are not, and in busy professional life it must be tempting to think strategically to get clients or 'customers' what it is thought they need.

Secondly, few would deny that those who commit low level offences (if prolifically and persistently for a while) often live chaotic lives. This cohort frequently finds it difficult to turn up for appointments (especially if there

are child care responsibilities), so to add in frequent court appointments for progress to be checked, may be compounding the problems. This could be problematic where it is thought that breach proceedings need to be enacted. Perhaps what is needed is a system of reminding people about appointments and motivational interviewing to re-engage if they do not attend turn up.

Thirdly, what training do magistrates have for their roles in a problem-solving court? What training do they need? We learn from research on magistrates' training that there is very little, if any, attention to criminogenic factors; there is nothing on criminological research on pathways into or out of crime for instance (Gibbs, 2014). Certainly, there is need for direct engagement and support from experts in managing offenders, not least, to ensure that magistrates (and I am mentioning magistrates because women offenders are largely dealt with in the magistrates' courts) do not *overdose* low risk offenders with multiple requirements in the benign but misguided notion that *more* will mean better.

Finally, the potential impact of problem-solving courts should not be overstated. There is promise, but they are never going to be a complete solution to the over-use of custodial sentences in UK. However, in the context of other measures such as those indicated in the opening paragraph, there may be scope for problem-solving courts to play a part in the panoply of provision for women.

## References

Centre for Justice Innovation (2016) *Problem-solving courts: an evidence review*.

<http://justiceinnovation.org/wp-content/uploads/2016/08/Problem-solving-courts-An-evidence-review.pdf>

Gelsthorpe, L. and Sharpe, G. (2015) 'Women and Sentencing' in J. Roberts (ed) *Exploring Sentencing Practice in England and Wales*. Basingstoke: Palgrave Macmillan.

Gibbs, P. (2014) *Fit for purpose: do magistrates get the training and development they need?* London: Transform  
Justice.[http://transformjustice.org.uk/main/wp-content/uploads/2013/05/TJ\\_MAGISTRATES-TRAINING.pdf](http://transformjustice.org.uk/main/wp-content/uploads/2013/05/TJ_MAGISTRATES-TRAINING.pdf)

Guardian, May 21<sup>st</sup>, 2017:  
<https://www.theguardian.com/law/2016/may/21/new-york-problem-solving-courts-england-wales>

Herzog-Evans, M. and Padfield, N. (2015) *The JAP: lessons for England and Wales*. London: Criminal Justice Alliance.

House of commons Justice Committee (2014) *Crime reduction policies: a co-ordinated approach*  
<http://www.publications.parliament.uk/pa/cm201415/cmselect/cmjust/307/30702.htm>

Malloch, M. and McIvor, G. (2011) 'Women, drugs and community interventions' in R. Sheehan, G. McIvor and C. Trotter (eds) *Working with Women Offenders in the Community*. Cullompton: Willan Publishing.

Scottish Government (2017) *Consultation on Proposals to Strengthen the Presumption Against*

Ward, J. (2014) *Are Problem-Solving Courts the Way Forward for Justice?* Working Paper 2/2014. London: The Howard League for Penal Reform.

Lorraine Gelsthorpe is Professor of Criminology and Criminal Justice and Deputy Director, Institute of Criminology, University of Cambridge. She is also Director of the university's research centre: the Centre for Community, Gender and Social Justice. Lorraine has wide interests in the links between criminal justice and social justice, looking at race, gender and social exclusion, women and sentencing, and at the effectiveness of youth and community penalties in particular. Lorraine is the immediate past President of the British Society of Criminology and she is chair of the European Society of Criminology Gender, Crime and Criminal Justice Working Group. Lorraine is a member of the Howard League's Research Advisory Group.

The Howard League provides administrative assistance to the All Party Parliamentary Group (APPG) for Women in the Justice System. Baroness Corston has been Chair or Co-chair of this APPG since its inception. The APPG works to ensure high quality debate and discussion on issues around women in the justice system in Parliament and continues to push for the full implementation of the Corston Report recommendations.



The APPG's latest report looks at the impact of the Transforming Rehabilitation reforms on women's centres



## Preventing suicide in prisons: prisoners' lives matter

**Graham Towl**

Prisoners' lives matter. But we often act as if they do not and thus we should not be surprised at the high rates of suicide. If we were to design a system to increase the risk of suicide, overcrowded and under resourced prisons would perhaps be such a prototype. But it is not just a question of facilities and resources, but culture and priorities too. In this article I argue that suicide prevention in prisons needs to be given greater priority. I comment upon issues relating to staffing levels, types of staff and training. Finally, I touch upon some key findings from the largest UK case records based study into prisoner suicide with a view to informing policy and practice positively.

### **A question of leadership**

A starting point for how to prevent prisoner suicide is to establish the principles that should underpin such activities. So, if preserving life is more important than, for example, escapes then this could be explicitly stated as an organising principle. The question therefore is how important is saving lives in comparison with other functions and related activities? I think that it should have the highest priority. Thus that, for me, would be one of the underlying organising principles. The function and implication of this is more resources would be secured (by their removal from other areas) with immediate effect within existing



resources. This principle would have to come very clearly from the top leadership team. And it needs to be reinforced by prison leaders on the ground. So, managerially once the level of priority is escalated, the resource allocations will be adjusted too. I contend that there is insufficient priority given to suicide prevention in prisons and this is likely to make a significant contribution to suicide rates. Areas for freeing up resources to do this have been widely reported and suggested elsewhere (see for example, Towl and Crighton, 2017).

### **Prison numbers**

There seems to be widespread agreement that a reduction in the number of prisoners would, most likely, result in a reduction in the number, if not necessarily the rate of prisoner suicides. One toxic consequence of overcrowding is the increased systemic pressure to

move prisoners from prison to prison more frequently than would otherwise be the case. In terms of the prisoner suicide literature this consequence of overcrowding is likely to be a key driver of an inflated risk of suicide. So, minimising the numbers of such movements could play a very significant role in reducing the overall numbers of suicide. So, one operating principle may be to design a prison system where the movements of prisoners between prisons are less likely. Putting overcrowding aside currently the system appears to be predicated upon a normative process of prisoners comparatively rarely staying in one prison for their term of imprisonment. In terms of system design consequences this will contribute to inflated risks of prisoner suicide.

### Staff

Staffing levels are key. But so is what is prioritised in terms of roles and tasks. With suicides at their current levels it simply does not look like the organisation has got this balance of priorities right in terms of what is and is not being resourced. To my mind, for a prison service an escape is often less important than a suicide. I am sure that some in and out of the prison service will disagree. But for me it is a matter of basic human rights, if we cannot effectively prevent suicide, it calls into question if the state is a fit body to imprison. I think that there is a case for the use of prisons, but that we need to use this as a last resort in justice. If we are not able to prevent prisoner suicide this case seems to me to become weaker. And I say that as an advocate of the case for the limited use of imprisonment in

justice. From my perspective, current levels of imprisonment are utterly out of kilter with the needs of justice or society more widely, in that sense we live through some worrying times in terms of the uses and abuses of state use of imprisonment. Fundamentally there is no need for more prison officers, but rather, fewer prisoners.



Credit: PrisonImage

Of course, a case is, entirely understandably, made for more prison officers, based on current high and rising numbers of prisoners. But even here, if there are to be more staff, why would they all be prison officers if we wished to focus on reducing prisoner suicide? Surely it would make more sense to recruit more health and care professional staff with the qualifications and experience to more effectively work with suicidal prisoners? Allied Health Professionals would be free of traditional custom and practice in the relatively closed world of prisons and be better equipped to address prisoner needs. There is a politics to this, unsurprisingly. But if we were to prioritise prisoner need, in this case in relation to suicide, then an investment in health and

care professionals may very well be an important element of a strategy to deliver on reducing prisoner suicides.

Aside from the recruitment of further staff the redeployment of existing specialist staff would be another area of quick and effective change in terms of a prioritisation of work to reduce the risk of suicide. This could be enacted very quickly and effectively in the case of, for example, psychological staff whether employed directly through the Prison Service or through contracts with health providers. The redeployment of such staff would not be difficult and would be cost neutral.

The third area in terms of staffing would be in relation to making staff training in suicide prevention mandatory. There is a common conflation between 'staff' and 'prison officers'. I refer to all staff coming into contact with prisoners. Often, for example, individual teachers or workshop instructors will spend more time with individual prisoners than prison officers. Thus they can be particularly well placed to assess and intervene in the event of the inflated risk of suicide for any individual prisoner. Also teachers may tend to have higher existing levels of educational attainment and are used to working with adult learners in a manner which may parallel ways of working effectively with suicidal clients. The issues of what staff skills and training that may be needed are addressed in detail elsewhere (e.g. Towl, Snow and McHugh, 2000).

Especially in view of current levels of suicide it is difficult to see, from my perspective, how not having

such mandatory training is defensible. The fact that such training has been seen in the Prison Service as discretionary seems indefensible. Presumably the basis of a defense is that 'other priorities' take precedence. It is worth exploring what these other priorities are? And it is the answers that are important. In human rights terms, it is surely incumbent upon the state to make every effort keep those incarcerated alive. Why would that not be so? Given that we know that overall the rates are high and rising why is this not higher on the political, policy and practice agenda?

### **What do we know?**

From an analysis of the suicide records based data from 1978 (when formal records began) to 2014 commissioned by the Harris Review (Harris Review, 2015) it is evident that we know a great deal about the characteristics of suicide cases. And this is by no means simply about the individual characteristics of prisoners. Indeed, the single most powerful and widely replicated finding is that the early period of imprisonment is the time of most inflated risk. And arguably these are some of the most preventable suicides, so it makes a great deal of sense to target those. Over recent years the prison service appears to have become more successful at identifying and working effectively with this group of prisoners as indicated in the figures for the percentages of those deaths by suicide occurring in the early stages of imprisonment. That said, the early period remains, markedly the period of the highest risk of suicide. And such averages are important especially when from larger data sets such as that in the



study for the Harris Review. Indeed there is a need for caution in the uses of percentages in relation to relatively small numbers whether about suicide or other areas of interest. One key exception to the pattern of risk being higher during the earlier period of imprisonment is with life sentenced prisoners where this does not appear to be the case, or at the very least not nearly so strongly. The patterns of inflated risk in terms of temporal variables tend to be, unsurprisingly, at times of key decision making for their progress through the prison system and, in most cases, their eventual release.

Gender is an important consideration in relation to prisoner suicide (Walker and Towl, 2016). The risk of suicide for imprisoned women increases far more markedly than men with imprisonment, something that I am unsure if the courts weight in some of their decision making. But this is important for obvious reasons. If we know that the chance of women dying by suicide is so markedly increased (when compared with men) when imprisoned, surely this should inform decision making? Studies on gender comparisons in prisons in relation to the risk of suicide have tended to ask what I think is the wrong question: are women or men more at risk of suicide in prisons? It is the wrong question for a court deciding whether or not to imprison. The right question in this area is what impact will imprisonment have upon this individual (and others)? If the individual is a woman the likely impact may be markedly inflating the risk of suicide by the act of giving a prison sentence. There have been numerous reports on

what needs to be done to address both the broader issue of the imprisonment of women and also the particular ways of addressing suicide prevention.



Credit: PrisonImage

Finally, on gender, on average prisoners are more likely to die by suicide in prisons as they get older up until around aged 60. But this average is based upon a population of around 95% men. Once the data is organised to separate men and women to calculate such patterns (in the research for the Harris Review) the opposite pattern is evident for women and men. Women seem to be at a higher risk whilst younger with age being a potential protective factor. A caveat would be that this is still based upon a relatively statistically small population of women of just over a 100.

### Final thoughts

In conclusion, unless suicide in prisons is prioritised we should not expect rates and numbers of deaths by suicide to decline. Also there is a need for more imaginative and robust policies and practices in relation to staff



recruitment to include allied health professionals at least as much as prison officers. All staff need training and there appears to be no compelling defense of not ensuring mandatory training which perhaps reflects the priorities of the day which do not sufficiently seem to be suicide prevention. We have the data, there is no need for any more research spending, we are awash with data and reports on prisons. What is needed is clear leadership in prioritising suicide prevention with a focus upon both the evidence and compassion. In short, prisoners' lives matter.

### References

The Harris Review (2015) Changing Prisons, Saving Lives, Report of the Independent Review into Self-Inflicted Deaths in Custody of 18-24 year olds, July, London: OCL.

Towl, G.J., Snow, L. and McHugh, M.J., Eds (2000) *Suicide in Prisons*, BPS, Blackwell, Oxford.

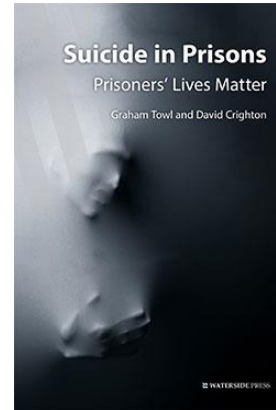
Towl, G.J. and Crighton, D.A. (2017) *Suicide in Prisons: Prisoners' Lives Matter*, Waterside Press, Hook.

Walker, T. and Towl, G.J. (2016) *Preventing Self-Injury and Suicide in Women's' Prisons*, Waterside, Hook.

### About the author

[Graham Towl](#) is Professor of Forensic Psychology at Durham University. He was formerly the Chief Psychologist at the Ministry of Justice and Head of Psychological Services for Prisons and Probation. He is the co-author of three books on prisoner suicide (references below) and was peer nominated as the most influential forensic psychologist in the UK. Uniquely he is the recipient of both the Award for Distinguished Contributions to

Professional Psychology (on diversity and equality contributions) and Academic Forensic Psychological Knowledge (chiefly for his work on suicide)



Graham Towl and David Crighton have just published *Suicide in Prisons: Prisoners' lives matter*. We have secured a **special offer** for Howard

League: 20% off [Suicide in Prisons](#) until 31 July 2017. Enter the following coupon in Shopping Basket or during Checkout: **HOWARD20** - Only at [www.WatersidePress.co.uk](http://www.WatersidePress.co.uk) - UK standard postage is FREE for all orders. International delivery available, see website for details.

The Howard League and the Centre for Mental Health have recently completed an [Inquiry into Preventing Prison Suicide](#). Four briefings are available to [download](#).

## ‘In humanity’s machine’: Prison health and history

**Fiachra Byrne**

Prisoners suffer significant health inequalities and a much higher burden of chronic illness, mental illness, infectious disease and substance misuse than the general population. Yet we lack an adequate historical perspective on these issues that might highlight continuities and ruptures in both prisoner health and prison health systems. *Prisoners, Medical Care and Entitlement to Health in England and Ireland, 1850-2000* is an ambitious, wide-ranging, comparative history project that seeks to tackle these questions from the birth of the modern prison era down to the present day. The project is funded by a Wellcome Trust Senior Investigator Award and led by co-Principal Investigators, Associate Professor Catherine Cox (UCD Centre for the History of Medicine in Ireland, University College Dublin) and Professor Hilary Marland (Centre for the History of Medicine, University of Warwick).

This is a large, complex, multifaceted project that is being conducted by a group of historians working in England and Ireland and based at four different universities. In addition to Cox and Marland, the project team includes members from Dublin City University (Dr William Murphy) and the London School of Hygiene and Tropical Medicine (Professor Virginia Berridge) and five postdoctoral researchers, two of whom are based at Warwick (Dr Rachel Bennett and Dr Margaret Charleroy), two at UCD (Dr Holly Dunbar and Dr Fiachra Byrne) and one at LSHTM (Dr Janet



Weston). Dr Nicholas Duvall, who had been based at both Warwick and UCD, completed his two-year research fellowship on the project in January 2017. The impact of this research programme has also been significantly expanded with the recent addition of two public engagement officers to the project group based at UCD (Dr Sinead McCann) and Warwick (Ms Flo Swann).

The various research strands of the study include: the mental health of adult prisoners (Cox and Marland); the mental health of juveniles in custodial settings (Byrne); the physical health of prisoners, especially in regards to diet and nutrition (Charleroy); the health of women prisoners and maternity services in prison (Bennett); substance misuse among prisoners and the impact of HIV/AIDS (Weston); the aftercare of prisoners (Dunbar); the use of health in the campaigns of political prisoners (Murphy); and the place of prison doctors within the wider medical profession (Duvall). These individual

subjects of historical inquiry are brought into coherence and dialogue under several overarching thematic questions: who advocates for prisoner health? To what extent are prisoners entitled to healthcare? Have human rights discourses impacted on prisoner healthcare? To what extent have prison doctors been constrained by dual loyalty to both the prison service and their prisoner patients? The project has sought to engage with these questions not only in academic fora but also at policy events and through public outreach activities. You can read more about our research and upcoming events on the project website <https://histprisonhealth.com>

### Focus on juveniles

My own research investigates the mental health of juveniles in custody in Ireland and England from the mid-nineteenth until the end of the twentieth century. Of course, the pernicious and damaging effects of incarcerating juveniles has long been a topic of concern and controversy for reform groups, policy makers, childcare practitioners and academics; such concerns are doubly compounded where the mental health needs of the confined young person are in question. Yet, while there is a considerable scholarly literature on the history of juvenile delinquency and juvenile justice systems more broadly, there have been few substantial treatments of the institutional detention of juveniles in the modern era outside of official and non-official inquiries into historical allegations of child abuse. Equally, aside from a small number of highly focused studies, there is a paucity of scholarly research on the history of the mental health of juveniles in secure settings. This omission is puzzling given the focus



Exercise, Borstal Prison, 1902. Modern Records Centre (MRC), University of Warwick, Howard League Collection, MSS.16A/7/23/1

within the history of medicine on both institutions and the health of young people. This pretermission is also difficult to account for when there is such a strong contemporary focus on the ubiquity of mental health problems amongst young people in detention, concerns over the scale of juvenile confinement, and the manner in which such secure settings can cause or exacerbate psychiatric disturbance.

Frequently historical analysis of juvenile justice has been occupied with a sometimes sterile charting of the pendular policy swings towards either welfare or punishment. Instead, I detail the change in our understanding of the juvenile offender from that of a degraded if redeemable moral agent in the nineteenth century to our current conception of the detained youth as a figure marked by psychiatric morbidity, behavioural disturbance and complex needs. One of my central findings is that the context of institutional confinement itself has been one of the essential factors in



The 'Lookout', Borstal Prison, 1902. Modern Records Centre (MRC), University of Warwick, Howard League Collection, MSS.16A/7/23/1

the long-term psychiatric pathologisation of detained juveniles. This framed the scale, manner and context of their frequent group conceptualisation as potentially dangerous and uniquely debilitated by psychiatric morbidity. This is not to argue that the presence of trauma and psychiatric morbidity amongst juveniles in custody is simply a historical construct. Nor is it an argument that the use of psychiatry for detained youths merely constituted yet another instance of factitious medical labeling for the purposes of social control. Rather I suggest that, historically at least, the deployment of psychiatric diagnoses and treatment facilities within the youth secure estate has often primarily served institutional or political needs rather than the needs of juveniles in custody.

### Developing notions of development

My research, in large measure, also constitutes an analysis of the historical processes whereby juveniles in custody have been increasingly understood in psychiatric terms in England and Ireland. This development rested upon the emergent notion, fostered by reformers such as Mary Carpenter (1851) from the mid-nineteenth century onwards, that the incarcerated juvenile offender was psychologically and morally distinct from his or her adult counterpart. For such juveniles the prison was increasingly perceived as a potential site of moral contagion whose disciplinary systems were inimical to the natural processes of child development. Instead, for juveniles, the prison as a primary site of detention was increasingly marginalised with the creation from the mid-nineteenth century of specialist youth detention facilities, such as industrial and reformatory schools. Indeed, in both England and Ireland, this tendency would lead to the eventual establishment of separate and discrete youth justice systems in the early twentieth century. The proliferation of new institutions for 'infant malefactors' was initially founded on the hypothesis that governors and staff could affect rehabilitation through the exercise of moral suasion over their charges and the nurturing of affective bonds. However, the reality of regimented institutional regimes coupled with attendant disciplinary problems and 'disturbed' or at least 'disturbing' behaviour often served to undermine this seemingly beneficent rehabilitative model.

In England, by the late nineteenth century there was a further shift in



emphasis, as medical and psychological discourses increasingly framed delinquent juveniles in terms of mental deficiency. Yet, even following the passage of the Mental Deficiency Acts (1913, 1927, 1931, 1938), juvenile courts were reluctant to embrace a model of mental defect to account for juvenile offending. Nonetheless, outside of the court setting, mental deficiency became increasingly important to the internal organisation of juvenile detention institutions. This was perhaps especially true in the borstal system, where Feltham functioned as a singular repository for 'backward' boys. This development, together with the growth of child guidance and psychiatry services from the interwar period, would provide the impetus for the later post-war psychologisation of the detained juvenile in England. In the Irish juvenile justice system, by way of contrast, the concept of mental deficiency due to the non-extension of the Mental Deficiency Acts lacked legal and institutional purchase, child psychiatry and psychology had little foothold until the late 1960s, and there was considerable cultural resistance to conceptualising the population of industrial and reformatory schools in terms of mental aberration. These factors were critical to the later development in Ireland of a psychological understanding of the juvenile offender in custodial settings.

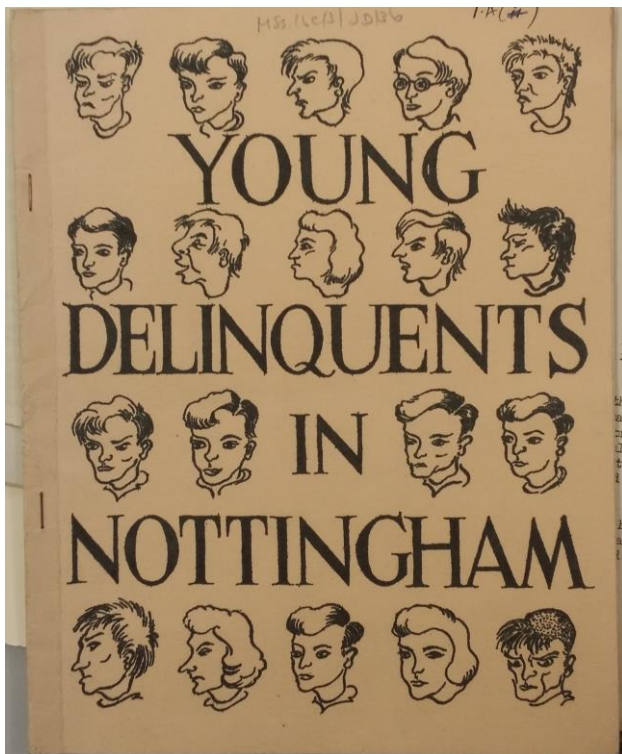
Yet, despite their significantly different historical trajectories, in both England and Ireland the post-war period constituted a significant watershed in the treatment and understanding of children and youth in custodial facilities. In both cases, the often fitful and partial institutional renewal of juvenile detention facilities was advanced primarily through an



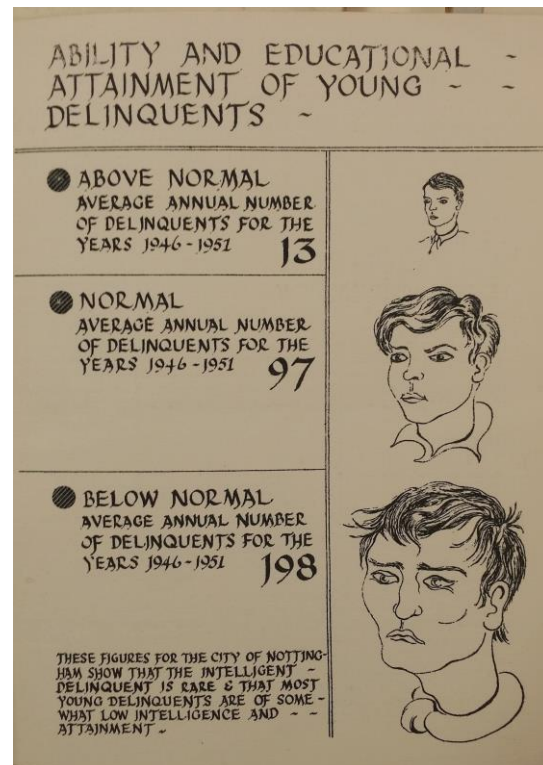
Schoolroom, Borstal Prison, 1902. Modern Records Centre (MRC), University of Warwick, Howard League Collection, MSS.16A/7/23/1

attempt to refashion the 'emotional regimes' operating in these facilities. This development was driven by the increasing recognition of the emotional needs of such youthful offenders in detention and their reframing through the categories of psychiatric morbidity. The dominant psychological model underlying such changes was the post-war attachment theory of John Bowlby, or 'Bowlbyism', as Mathew Thomson (2013) phrases its wider popularisation. The influence of Bowlbyism in official reports seeking to humanise residential institutions for juveniles is evident in England dating from the landmark *Report of the Curtis Committee* (1946).

Ultimately, however, in England the psychological model provided by attachment theory proved inadequate for the needs of custodial institutions and it was deemed necessary to medicalise security. The medicalisation of security refers to the policy of conceiving of external security not simply as a means of containment but as having a therapeutic role in providing the necessary stability for the



'Juvenile Delinquency'. Cover image from *Report of the Juvenile Delinquency Panel established by the City of Nottingham Education Committee* (1951), Education Office.



'Ability and Educational Attainment of Young Delinquents'. Image from *Report of the Juvenile Delinquency Panel established by the City of Nottingham Education Committee* (1951), Education Office

development of emotional wellbeing, personal autonomy and self-discipline. A focus on the disturbed and disruptive juvenile from the late 1960s in England was an important element in the notable expansion of child and adolescent detention throughout the 1970s. Specifically, the medicalisation of security as potentially therapeutic was a key factor allowing for the institutional renewal of secure institutions whose expansion continued unabated until the early 1980s.

In Ireland, in what is a species of transfer history, Bowlbyism, in local translation, informed part of a mounting critique of existing childcare provision throughout the 1960s that reached its culmination, and official sanction, only in the issuing of the seminal *Kennedy Report* (1970). Indeed, such intercultural transfers were highly relevant to the emergence of an incipient model of professionalised residential

childcare in Ireland, including custodial settings. The lay and religious agents of this intercultural transfer, on the basis of their own training and expertise, sought to displace older variants and organisational providers of childcare in Ireland's increasingly archaic industrial school system. Their cultural and accredited acquisition of the social and human sciences knowledge underlying their authority was, however, heavily mediated through a dominant Catholic, 'socio-spiritual' cultural space (Skehill, 2004). In Ireland, the advent of modern psychological approaches to the child, evident from the late 1960s, served to increasingly delegitimise an archaic nineteenth-century infrastructure of juvenile detention facilities as profoundly inadequate,



and significantly accelerated an already ongoing process of juvenile decarceration.

### The question of gender

In England and Ireland, gender was a critical component in structuring the youth justice estate. During the twentieth century in both jurisdictions girls were significantly more likely than boys to be detained for status offences rather than criminal behaviour. This differential treatment was in part informed by deep concerns over the supposedly 'wayward' sexual precocity of such girls. In England, female juveniles in custody came to be deeply pathologised, especially during the 1950s and 1960s, as much more psychologically disturbed and difficult than their male counterparts. Conversely, in Ireland, despite the fact that a proportionately much higher population of girls were in custody for much of the twentieth century, the psychologically disturbed female juvenile offender was hardly a category of any salience whatsoever within either the judicial system or the penal estate. When the psychologically disturbed juvenile offender eventually emerged in Ireland during the 1960s it was a markedly male figure.

### Lessons using a mental health lens

It is my aim and belief that this research, resulting in a book length study, will provide a proper historically contextualised account of how juveniles in custody have come to be understood increasingly in terms of psychiatric morbidity in the present day. It will also elucidate some of the benefits and dangers of framing this institutional population through the lens of mental health. In particular it will highlight the potential dangers that derive from such a



Girls' Reformatory, England, early 20<sup>th</sup> century. *Making Citizens* (1946) Home Office.

pathologisation when it is driven by institutional needs rather than from a careful evaluation of the individual needs of juveniles in custody.

### References

- Carpenter, M. (1851). *Reformatory Schools for the Children of the Perishing and Dangerous Classes and for Juvenile Offenders*. C. Gilpin.
- Curtis M. (1946). *Report of the Care of Children Committee*. Home Office.
- Kennedy E. (1970). *Reformatory and Industrial Schools System Report*. Stationery Office.
- Skehill, C. (2004). *History of the Present of Child Protection and Welfare Social Work in Ireland*. Edwin Mellen Press.
- Thomson, M. (2013). *Lost Freedom: The Landscape of the Child and the British Post-War Settlement*. Oxford University Press.

### About the author

Fiachra Byrne entered the field of medical history when his PhD focussed on the history of twentieth century Irish psychiatry. Since graduation, he was appointed as a lecturer in the School of History and Archives, at University College Dublin.

A chapter based on his PhD research can be found in an edited volume, *Medicine, Health and Irish Experiences of War 1914-45*, David Durnin and Ian Miller (eds), to be published by Manchester University Press (2015).

Fiachra is currently a Postdoctoral Research Fellow (2015-2018) on a project that has received a Wellcome

Trust Senior Investigator Award. Led by Dr Catherine Cox (UCD) and Professor Hilary Marland (University of Warwick), the project is entitled *Prisoners, Medical Care and Entitlement to Health in England and Ireland, 1850-2000*. My research is on the mental health of juvenile prisoners in England and Ireland from 1850-2000. This comparative study examines the penal practices and discourses relating to the management and understanding of juvenile prisoners' mental health.

Anita Dockley, the Howard League's Research Director is a member of the project's advisory group.



## ‘Spicing up the subject’

**Anna Norton**

The problem associated with use of synthetic cannabinoid receptor agonists (hereafter referred to as ‘spice’) in custodial settings has been described by the current Inspector of Prisons as an issue that is having a ‘dramatic and destabilising effect on prisons and prisoners’ (HMIP 2016: 8). Spice is typically smoked in herbal form, similar to cannabis. However, the effects of spice are significantly stronger and more wide-ranging than cannabis. The widespread use of spice in the secure estate has been directly linked to significant increases in suicides, violence and self-harm in recent years (HMIP 2014, 2015a, 2016).

### Research overview

The research on which this article is based sought to record prisoners’ experiences of spice - a marginalised group often excluded from conventional drugs research. The aim of the research centred on establishing the extent of spice use in a prison in the north west of England, and documenting the effects spice use had on the health and wellbeing of prisoners and staff, prison drug markets, and the day-to-day management of the prison.

The research (which formed part of my master’s degree) was conducted alongside my supervisor (Dr Rob Ralphs) who at the time was conducting a wider research project commissioned and ethically



approved by the prison. The fieldwork was conducted in 2015 and consisted of 22 interviews in total: 16 one-to-one interviews with staff in the prison, three one-to-one interviews with prisoners, and a further 17 prisoners participating in three focus groups. Observations of spice awareness workshops and restorative justice circles in which prisoners and prison staff discussed their experiences of spice were also carried out ([Ralphs et al. 2017](#)).

### Research findings

Although many findings emerged from my master’s research, I was able to cluster them into three main categories. The first outlined the scale of the spice problem, highlighting that spice had become a disease within the prison with a large proportion of prisoners smoking it.

The second key finding documented the effects and implications of spice on staff, prisoners and the prison estate, and the third key finding evidenced the way in which this prison had responded to the spice problem. Recommendations for future policy and practice also formed a central part of the research (<http://howardleague.org/wp-content/uploads/2017/01/Spicing-up-the-subject.pdf>). For the purposes of this article, I am just going to focus on a few key aspects of the research.

### **‘Everybody’s doing it’: The prevalence of spice in prison**

In order to establish the scale and prevalence of spice, all prisoners and staff were asked as part of their interview to estimate what percentage of the prison population they thought were using spice. Although opinions varied, the respondents indicated between 60% to 90% with one staff member stating: *“It is 90% of the jail who’ll be on it, there’s only a few lads on every wing that don’t do it”*.

Other responses identified that spice was not specific or limited to a certain group of people. Instead it was acknowledged that spice is an all-encompassing drug which appeals to the whole prison population: *“It just started off with the odd few, but now it’s the whole jail”*.

### **The herbal mix: prison drug markets**

*In terms of prison markets, it was clear from the research that these were dominated by Spice with one prisoner stating: “It always used to be Subbie [Subutex] and like gear but that’s all gone now ain’t it, it’s all Spice”. Likewise, another prisoner conveyed: “I think it’s a bad drug ... but at the same time it’s easy to get*



*hold of, you know it’s there so if you want it ... it’s not hard to find it”*.

These quotes not only establish the prevalence of this substance over other illegal drugs, but also that they were widely available in the prison.

### **‘It’s worth it for that one ounce’**

One main reason that was reported to have driven this increase in availability is 28-day recalls. The research uncovered strong evidence that the licence recall system (intended to act as a deterrent and a motivation for individuals to change their behaviour) was actually being systemically abused to bring spice into prison. This was a consistent finding amongst staff and prisoners, with staff indicating: *“The lads will tell you themselves... I’m going to go out get some spice ... and then I’m going to come back in and I’m going sell it and make thousands of pounds”*.

Another prison officer stated: *“They are coming [back] purposely for that oner [one ounce] which is worth £3000”*. Likewise, prisoners reported similar findings: *“I’d not go probation and come in and get paid £1000 for coming in, you know what I mean, you get paid £1000 for coming in full of Mamba [spice] for 2 week”*. The above quotes highlight that not only are 28-day recalls an established

way spice is entering the prison but also that prisoners are motivated to purposefully abuse the recall system to make money.

### **Motivations for spice use**

Alongside motivations for bringing spice into the establishment, prisoners also discussed their motivations for using spice. Some of the central reasons documented were boredom: *"Its boredom that's what it is its boredom there's nothing to do ... especially because of all the cut backs there's no jobs anymore so you're sat in your pad 21 hours a day"*. Another key reason was escapism: *"It kills your jail don't it .... It's like an escape mechanism"*. Lack of testing was also discussed as an overriding motivation to consume these psychoactive substances with prisoners stating: *"If I have a [cannabis] spliff and get tested I'm getting days [added to my sentence]. With Mamba now, yeah, I'm getting nothing. I can blaze [smoke] in front of whoever"*. Likewise: *"It don't come back in urine test, they don't test for it at the moment, with cannabis and anything else like, heroin and benzos and anything like that you get tested urine"*, and *"That's why a lot of people use it now at the moment in jail"*. This finding is in line with research that was conducted by UserVoice (2016) who identified avoidance of a positive Mandatory Drugs Test (MDT) was the most widely stated motivation (69%) for the consumption of Spice in prisons.

### **The drugs don't work: Effects of spice**

Research has linked the rise in self-harm and suicides in custodial settings with an increase in consumption of synthetic cannabinoids (HMIP 2014, 2015a, 2015b, 2016). This research provides

further evidence for this association. Prisoners described episodes of self-harm or suicidal thoughts after consuming spice: *"I slashed myself all over. I thought my veins were snakes wrapping themselves around me so I sat there in my cell slashing them all"*. Another prisoner told us: *"Do you know what I'm surprised at, what's not a regular occurrence about Mamba [spice] is suicides? ... A few times when I've gone under I've started thinking proper negative thoughts about myself like 'why have I turned out this way?', 'why am I here?', 'why am I in jail again?', but magnified, do you know what I mean, times ten"*. Here you can see that spice use was reported to be causing a lot of harm within the prison, especially with regards to prisoners' mental health.

### **I predict a riot**

An increase in violence and aggression associated with spice use was also a key finding that emerged from our research. Both staff and prisoners relayed a particular violent incident where a prison officer was assaulted, as a custody officer explained: *"There was someone who had taken spice and was in the middle of the yard. He's gone out to see him, and this guy was hallucinating thinking that the rest of the inmates on the yard were ants trying to get away from him, but he was a monster going to him. So as he's gone to him and said 'Are you alright?', he's just got his key out and stabbed him"*. Prisoners also recognised a link between spice and violence: *"I'd say most of violence comes from Mamba [spice]"*.

### **Problems at home**

In addition to the negative effect on users, we also found spice was impacting upon the management and



function of the prison estate. Not surprisingly it was consistently reported that operationally, spice use was having a detrimental effect on prison regimes and staffing. One staff member expressed: *"It's just frustrating, the man power involved to an incident to sort it out... it's taken away from other posts in the prison... it's ridiculous"* with another reporting: *"It is a major issue because anytime there is an incident, you've got to think ten steps ahead of what's going to happen...it's a strain on staff because we're taking away staff from what they're meant to be doing...it's just drawing resources from everywhere"*.



### Fighting a losing battle

Alongside the physical strain spice related incidents were having on staff, we also found it was having an impact on them emotionally. Throughout the interviews, various employees expressed the personal struggle they face when required to deal with a spice incident. One prison officer acknowledged: *"I would think there's been an increase in staff being worried about dealing with incidents because... you don't know what you're going to deal with once you get there, so it's quite daunting coming into work to think, you don't know what's going to happen and*

*you've seen some quite bad experiences"*. Similarly, a recovery peer mentor explained: *"I've seen officers in tears me from some lads... if you've been here for a couple of years you start building a bit of a like relationship with an officer do you know what I mean, one of my mates was coughing up, foam was coming from his mouth and everything in the pad and when we told like [Joe Bloggs] they cried their eyes out because, they had bin [sic] with him for a few years...I reckon they went back and it messed with their heads"*. These quotes provide some insight into the emotional challenges prison officers face when dealing with issues in the prison linked to spice use.

### Recommendations

Although it is acknowledged that this research was relatively small-scale, the issues that emerged from the study were very significant and need to be acted upon. It is clear from the quotes above that the findings of this research challenge the effectiveness of MDTs. The evidence demonstrates that the emergence of spice in prison has been driven by current testing policies, and in turn has displaced traditional drug markets. This finding is in line with the arguments put forward by Djemil (2008) who highlights that MDTs do not necessarily deter prisoners' use of illicit drugs, but instead inadvertently encourages people to take other, more harmful substances. It is also particularly concerning that almost all of the prisoners reported trying spice for the first time within the prison setting, thus further indicating the failure of MDTs and the need to revise testing policies. Although it is recognised that drugs are, and will mostly likely remain, a feature of



prison life, an approach rooted in harm reduction should be adopted.

An alternative solution would be to decriminalise drugs which have been proven to cause less severe health implications. By removing drug testing for lower risk drugs such as cannabis, it may discourage prisoners from taking more harmful substances that pose a greater health risk (Svrakic et al. 2012). Cannabis is a Class B substance and therefore is not recommended or endorsed but it is important to acknowledge that extensive research has been carried out concerning this substance. The harms are widely known to users, medical staff, prison officers and policy makers including the long and short-term effects. Contrastingly, the chemical composition of spice is often unknown and can result in adverse and unpredictable effects.

Finally, when looking at other motivations for drug use, boredom and the realities of prison life were widely discussed, thus suggesting the prison regime requires reform. A key recommendation for policy and practice would be to invest money and resources into ensuring that prisoners are able to engage in some level of employment whilst in prison. Further suggestions would be reducing long periods of lock-up and unstructured activities and replacing them with increased opportunities for personal development through positive and engaging education work which run alongside a prescribed treatment services. Adopting this approach will reduce boredom levels which in turn could reduce the motivation to use Spice and the harms associated with this substance.



## References

- Djemil, H. (2008) *Inside Out: How to get drugs out of prison*. Centre for Policy Studies. [Online] [Accessed on 10th July 2015]  
<http://www.cps.org.uk/files/reports/original/111026174106-INSIDEOUT.pdf>
- HM Inspectorate of Prisons (2014) *HM Chief Inspector of Prisons for England and Wales: Annual report 2013–14*. [Online] [Accessed on 8<sup>th</sup> July 2015]  
[https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2014/10/HMIP-AR\\_2013-14.pdf](https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2014/10/HMIP-AR_2013-14.pdf).
- HM Inspectorate of Prisons (2015a) *HM Chief Inspector of Prisons for England and Wales: Annual report 2014–15*. [Online] [Accessed on 10<sup>th</sup> February 2016]  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/444785/hmip-2014-15.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/444785/hmip-2014-15.pdf).
- HM Inspectorate of Prisons (2015b) *Changing patterns of substance misuse in adult prisons and service responses: A thematic review by HM Inspectorate of Prisons*. [Online] [Accessed on 10<sup>th</sup> February 2016]  
<https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2015/12/Substance-misuse-web-2015.pdf>.
- HM Inspectorate of Prisons (2016) *HM Chief Inspector of Prisons for England*

and Wales: Annual report 2015–16. [Online] [Accessed on 20<sup>th</sup> August 2016]

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/538854/hmip-annual-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/538854/hmip-annual-report.pdf).

Norton, A. (2017) 'Spicing up the subject'- The recorded experiences of prisoners and prison staff on the subject: New psychoactive substance use in a North West Prison. [Online] <http://howardleague.org/wp-content/uploads/2017/01/Spicing-up-the-subject.pdf>

Ralphs, R., Williams, Askew, R., and Norton, A. (2017) Adding spice to the porridge: The development of a synthetic cannabinoid market in an English prison. *International Journal of Drug Policy*. 2017; 40: 53–65

Svrakic, D.M., Lustman, P.J., Mallya, A., Lynn, T.A, Finney, R., and Svrakic, N.M. (2012) *Legalization, Decriminalization & Medicinal Use of Cannabis: A Scientific and Public Health Perspective*. [Online] [Accessed on 26th August 2015] [http://www.msma.org/docs/communications/momed/Medicinal\\_Use\\_Cannabis.pdf](http://www.msma.org/docs/communications/momed/Medicinal_Use_Cannabis.pdf)

User Voice (2016). *Spice: The bird killer—what prisoners think about the use of spice and other legal highs in prison*. [Online] [Accessed on 24th August 2016] <http://www.uservoice.org/wp-content/uploads/2016/05/User-Voice-Spice-The-Bird-Killer-Report-Low-Res.pdf>.

#### About the author:

Anna is currently a full-time PhD candidate in the Arts and Humanities Department at Manchester Metropolitan University where she continues her research on the impact of new psychoactive substances. Her doctoral studies build on some of the

key themes raised in her Masters research including a deeper exploration of synthetic cannabinoids and the affect this substance has on vulnerable young people, particularly amongst the homeless population. Her research aims centre on how this substance affects an individual's health and wellbeing and offending behaviour. The research will also explore the challenges synthetic cannabinoids pose to service provision, commissioners and policy makers.

Anna was a winner of the [John Sunley Prize](#) 2016. The Howard League has [published](#) a report based on her Masters research

## Human rights and desistance: Converging approaches to community justice

**David Cross**

When the Human Rights Act 1998 was passed, I was a main grade practitioner in a criminal justice social work team in Edinburgh. I was curious back then about how this radical flagship legislation from the New Labour government might impact on the practice of supervising offenders in the community. Almost twenty years later, as a Masters student on Strathclyde University's Criminal Justice and Penal Change programme I opted to take an elective module, Human Rights Protection in the UK, and for my dissertation explored a human rights approach to supervising offenders in the community and how this approach might fit with the prevailing desistance focused practice.

My study was primarily a theoretical or conceptual quest designed to reach a measured and informed judgment about the value of the concepts of human rights and desistance in the context of community justice, and to consider a conceptual framework for the synthesis of these concepts, based on the careful selection and critical discussion of both descriptive and theoretical literature.



### **Community supervision and desistance**

I began by exploring the definition of community supervision of offenders and outlining developments in approach and practice, and the growth in supervision in the community. This provided a context for a discussion of what is meant by effective practice in the supervision of offenders in the community as well as the concepts of legitimacy and credibility. Community sanctions and measures entail restrictions on individual liberty, and to justify these restrictions and the use of interventions there has to be confidence that they can achieve their explicit or implicit objective; while on the other hand if such measures are to offer to policy makers and sentencers alternatives to imprisonment, they require to provide both legitimacy and credibility, that is, they need to be able to demonstrate their relative

effectiveness in meeting policy and sentencing objectives. Focusing specifically on the concept of desistance I provided a critical account of some of the current research findings in relation to desistance from crime, identifying a framework of desistance principles (McNeill et al 2012) that is used as the basis for subsequent discussion on the convergence of desistance and human rights approaches to supervision.

### Human rights developments

The study outlined the development of a human rights agenda, primarily in the UK, leading to the implementation of the Human Rights Act 1998, and explored its impact on public services, with a focus on the criminal justice system and on offender supervision specifically. I used a broad definition of human rights, beyond civil and political rights towards economic, social, cultural and collective rights. In terms of community sanctions and measures, I examined the formal rights-based constraints that have been developed internationally and considered the extent to which they have impacted on practice. I explored how social work as a profession has responded to human rights developments and looked at ways in which human rights developments have had an impact on current interventions in the field of offender supervision.

### Application in the public sector

Before looking at a human rights approach specific to social work intervention, it is helpful to consider how human rights approaches have been applied more generally in the public sector (see Cross

2016). The Scottish Human Rights Commission (SHRC) has developed resources on a human rights-based approach to public services, founded on the UN's PANEL principles – participation, accountability, non-discrimination, empowerment, legality. The SHRC contends that a human rights-based approach:

- provides a legal and objective basis for ensuring a person-centred approach in practice
- reflects the rights of everyone involved, not only “service users” but also workers, individuals and groups
- helps to balance rights and risks, ensuring that any restriction on autonomy be based on law, pursue a ‘legitimate aim’ such as protecting the rights of others, and be the least restrictive effective means of achieving that aim
- helps to reinvigorate a public service ethos among staff, reinforcing the purpose of public service - to improve people’s lives.
- helps improve relationships between those who deliver and those who use public services
- ensures compliance with law and provides a foundation for good practice in relation to equality, freedom of information and data protection (Scottish Human Rights Commission 2013)

The Commission has developed several strands of work across the public sector to put this approach into practice, such as the *Care about Rights* training and awareness raising resources relating to the care and support of older people.



### **A human rights approach to community supervision**

In considering human rights approaches to the supervision of offenders in the community it is helpful to distinguish between those aspects of a human rights approach which relate to the conduct of the statutory order (due process, equal access to supervision, the right to rehabilitation, fair treatment on the order, the management of compliance including the discretion of professionals and the sanctions for non-compliance) from those which pertain to the nature of the intervention (addressing the human capital and social capital issues to support desistance from crime, such as inequality, mental and physical health, literacy, emotional resilience, family supports, housing, employment, community engagement). In attempting to bring together some of the common themes and values shared by a human rights approach and a desistance focused approach to supervision, it is primarily on this latter aspect of supervision that my study focused.

The Australian academic and community development practitioner Jim Ife (2012) developed a human rights-based approach to social work. His definition encompasses civil, political, economic, social, cultural and collective rights that are universal, indivisible, inalienable and in abrogable. Social work practice should primarily be rights based as opposed to needs or justice based. Needs are described as 'contextualised rights' and challenges the idea of professionally defined needs. Ife argues for a move beyond the

conventional view of human rights being located in the public sphere, extending the sphere of rights into what is sometimes construed as the private sphere, embracing the realms of domestic abuse, child protection, older people and people with disabilities. He contrasts traditionally framed professional social work ethics with a moral commitment from the profession to human rights, promoting community participation and user voice.

Good practice should include both deductive and inductive approaches: that is, there needs to be a dialogue between the formal statements of rights and the concrete experience of communities. A challenging aspect of Ife's thinking is his concern to locate human rights practice within a postmodern and post-structuralist philosophy. This demands an acceptance of ambiguity, diversity and uncertainty, and such features create challenges for the criminal justice system as well as for the concept of 'evidence-based practice'. The approach also "implies a strong element of empowerment: ideas of enabling people to define their rights and to act in order to have them realised and protected are the very essence of empowerment" (Ife 2012: 73). Again, this is a challenging concept in view of the statutory nature of supervision and the enforcement duties and powers of the supervising agency. In my view Ife's framework (i.e. a broad based understanding of human rights; taking account of cultural traditions alternative to the West; a critical analysis of disadvantage; extension beyond the public into the private sphere; community participation

and empowerment; a postmodern response to positivist certainty) can provide a philosophical basis to intervention in community justice.

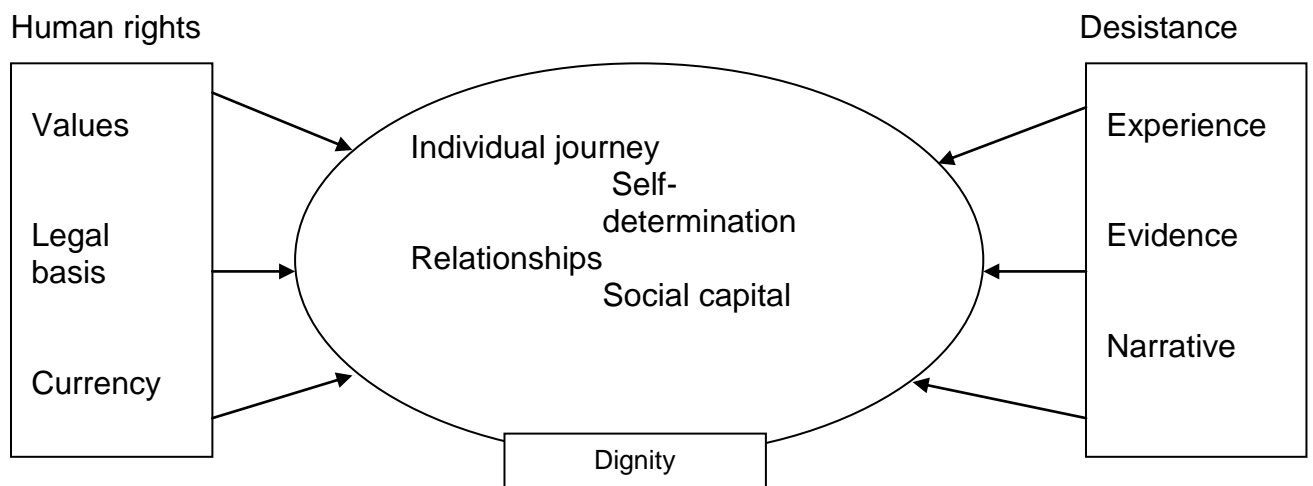
### Converging approaches

While human rights-based approaches have been developed across the public sector and across social work practice, what makes the approach particularly applicable in the community justice field is the convergence of common themes between a human rights approach and desistance-focused practice. These themes include:

- the value of the individual
- the context of key relationships
- the principle of self-determination
- the need to address both human and social capital
- the importance of language that enhances human dignity.

A human rights based approach contributes a set of universal values, an established legal foundation and a concept which has currency in public discourse to a desistance approach rooted in a strong evidence base, the experience of offenders and the value of narrative. An approach which incorporates both human rights and desistance principles can help to balance the legal requirement for objective fairness with the rehabilitative requirement to meet subjective need. The human rights contribution can underpin desistance practice with an equal focus on the rights of offenders, their partners and children, victims and potential victims, and communities.

The diagram below illustrates this. It sets out the distinctive contributions made by human rights and desistance approaches to practice, and some key features which the two approaches share.



This study was undertaken during a period in which preparations were being made for a fundamental change to the way in which community justice in Scotland is to be delivered and funded (for more information see <http://www.gov.scot/Topics/Justice/policies/reducing-reoffending/community-justice>). I was able to demonstrate how the principles of rights and desistance were both explicitly identified as features of the proposed changes, and speculating as to how these could be evidenced. A subsequent policy shift by the Scottish government to transfer funding from prison-based to community-based services may indicate further support for these principles.

### Relevance and conclusion

In summary, the findings of my study support the submission that a human rights approach to supervising offenders in the community can provide additional legitimacy and credibility to desistance focused intervention by reinforcing essential human dignity. If such organisational arrangements and interventions have human rights at the centre then there can be benefits for people convicted of crimes, for victims and potential victims, and for communities.

This study can contribute to the wider understanding of penal issues in several ways:

- In the most general sense, it can contribute to a progressive and an effective criminal justice system by bringing a widely shared set of values to bear on the practice of supervising offenders in the community

- One of the distinctive contributions that human rights can bring to this field is universality, in this context having an equal commitment to promote the rights of victims, communities and offenders, ensuring that they are not seen as competing rights in a zero-sum calculation
- In a time of changing structural arrangements to the delivery of community justice services, the findings of my dissertation reinforce the value base of a desistance-focused approach to working with offenders in the community
- Both human rights and the community supervision of offenders are issues which arouse public debate, and my findings are a rational, progressive and balanced contribution to such debate.

At a time of increasing interest in the growth of community supervision as a global phenomenon, the human rights issues have never been more pertinent. A human rights-based approach to community justice can contribute additional legitimacy and credibility to effective desistance-focused intervention by reinforcing essential human dignity.

### About the author

**David Cross** has practiced as a social worker across community and custodial settings and is currently managing the Drug Treatment and Testing Order service for the City of Edinburgh, East Lothian and Midlothian. This article is based on research undertaken for the LLM Criminal Justice and Penal Change at the

University of Strathclyde in Glasgow.

David's dissertation was highly commended in the Howard League's [John Sunley Prize](#) 2016.

### References

Cross, D (2016) *A Human Rights Based Approach to Community Justice* Scottish Justice Matters Vol 4 No 3, 23-24  
Ife, J (2012) *Human Rights and Social Work: Towards rights-based practice* 3rd Edition Melbourne, Cambridge University Press  
McNeill, F, Farrall, S, Lightowler, C and Maruna, S (2012) *How and*

*why people stop offending: discovering desistance* Insights: Evidence summaries to support social services in Scotland, no. 15, Glasgow, Institute for Research and Innovation in Social Services Scottish Human Rights Commission *Care about Rights* <http://scottishhumanrights.com/careaboutrights>  
Scottish Human Rights Commission (2013) *Scotland's National Action Plan for Human Rights*



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Text should be readable and interesting. It should, as far as possible, be jargon-free, with minimal use of references. Of course, non-racist and non-sexist language is expected. References should be put at the end of the article. We reserve the right to edit where necessary.

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