



# Building on McLeish



## Apex Scotland Annual Lecture

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# Introduction

## Pat McMullan, Chair of Apex Scotland

Good evening everyone and a warm welcome to this year's Apex Scotland Annual Lecture – the 6th since the event was re-launched in 2003.

My name is Pat McMullan, Chair of Apex's Board and it's my pleasure to say a few words of introduction and to outline the programme for this evening.

But first, I'd like to say a few words about Apex: we've had another successful year, with 1715 of those we worked with getting a job or going on to education or training. I've seen very good work going on around the country in my visits to Apex teams who work with a very difficult and, at the same time, vulnerable client group.

As you know, we host this Lecture to offer a platform for debate about criminal justice in Scotland. That it is well established as an important event is evident from the consistently high numbers and high calibre of our audience each year, from all parts of the Justice sector and beyond. This year, in fact, we were oversubscribed and had to create a reserve list. As in previous years, we will be publishing and disseminating the Lecture in due course.

We have also been fortunate to attract a very high calibre of speaker over the years and tonight is no exception. I am delighted to welcome Kenny MacAskill, the Cabinet Secretary for Justice and, in a change to our advertised programme, Richard Jeffrey from the Prisons Commission. We very much appreciate both of you taking the time to be here this evening.

Kenny MacAskill needs no introduction really. As Cabinet Secretary for Justice, he has a wide ranging portfolio that includes prisons and sentencing policy, criminal justice social work, police, drugs policy and victims. He was a senior partner in a law firm and has been MSP for Edinburgh East and Musselburgh since the General Election of May 3rd 2007.

Richard Jeffrey is a Chartered Civil Engineer and a graduate of Imperial College London. He is currently President of Edinburgh Chamber of Commerce and a Board member of Edinburgh Leisure. He has served on a number of Boards in the past, including Chairman of the Edinburgh Tourism Action Group,

a Board member of the Edinburgh Convention Bureau and a Board member of Scottish Enterprise Edinburgh and Lothians.

I'm sure I speak for all of us in saying that I am very much looking forward to hearing what our two distinguished speakers have to say. After each has spoken, Sheriff Brian Donald will chair the question and answer session before drawing the formal part of tonight's proceedings to a close. Brian, a much valued member of Apex Scotland's Board, recently retired as a Sheriff in the Drug Court in Fife and is also a member of the Parole Board.

So, without further ado, I would like to invite the Cabinet Secretary for Justice to share his thoughts with us on how we might go about 'Building on McLeish...'



# Kenny MacAskill MSP

## Cabinet Secretary for Justice

Good evening ladies and gentlemen. It is a genuine pleasure to have the opportunity to speak to you in such a prestigious setting on a topic which is currently attracting much attention, not only from those directly involved with the justice system but also wider commentators.

I am grateful to Pat McMullan for his kind words of introduction on behalf of Apex Scotland. I was very happy to accept Apex's invitation to speak at tonight's event as I have long had very high regard for the work carried out by the organisation and the contribution it makes to the aspirations of this Government in achieving sustainable economic growth.

The personal challenge I face this evening will be to avoid repeating myself, particularly for any of you who were at yesterday's Holyrood conference at Dynamic Earth and those of you who might be tempted to attend the Parliamentary debate this coming Thursday on the Commission's report. Plus, I also have to be careful not to pre-empt anything Richard Jeffrey might say following my own address. For this reason I will attempt to be relatively brief in my remarks which will be, as some of you may already appreciate, a major personal challenge in itself.

However, if achieved, it will, of course, allow opportunity for a fuller question and answer session after the formal speeches.

Tonight's event is taking place at a very important stage of developing a modern, coherent penal policy with the benefit of the work carried out by the Commission and when the numbers of people in our prisons has once again hit all time highs. The ever increasing prisoner population is far from unique to Scotland but, in Scotland, we imprison more people more often and for longer periods than most other European countries. As we have been reminded by the Commission in its report, we have a rate of imprisonment nearly twice as high as some of our immediate neighbours in Ireland and Scandinavia.

I do not believe that there is something about the Scottish psyche which intrinsically means that Scots

are more liable to commit crime. The conclusion must be that it is something to do with prevailing attitudes and the operation of the justice system; and let us remember that the continuing increase in the Scottish prisoner population is taking place when recorded crime is falling.

We inherited an unfit prison estate with record numbers of prisoners and numbers continue to rise by the day. The Scottish Government have set to with a will to modernise the prison estate but we can't build our way out of this problem. We will shortly have a new prison at Addiewell but on current trends that will simply alleviate the problem, not end it.

How can it be good public policy to take taxpayers money at a very tough time and spend even more on prisoners when we ought to be spending on education and industry that will transform the economy and bring real benefits to the people of Scotland.

Those who carp from the sidelines but never offer any alternative solutions jeopardise the safety of our brave prison officers and the security of the estate. They have bequeathed us an intolerable situation but will not work with us to address the challenges. For I am in no doubt that we face huge challenges. I am also acutely aware that these reforms cannot be delivered by criminal justice interests alone. We need all who are involved in improving Scotland's social fabric to play their part.

The status quo of ever escalating prisoner numbers and associated levels of re-offending is neither sustainable nor what the Scottish Government wants for the people of Scotland. The Commission's report provides a catalyst for the Government and its partners to tackle this unacceptable situation and move towards an outcome that sees prisons used for serious and dangerous offenders, with a strong and imaginative framework of community penalties for low tariff, repeat offenders that offers payback to our communities. It would be unrealistic, however, to expect the world to change overnight.

We face the prospect of some difficult choices, not only as to how we develop the justice system, but

also across the range of government policies and responsibilities. It is important to remember that the justice system deals with people only after things have gone wrong. It is worth reminding ourselves that a third of those entering prison in Scotland are assessed as having an alcohol problem, over half are assessed as having a drugs problem and 70% are assessed as having some form of mental health problem. In addition, over half come from our most deprived communities. It is not within the gift of the justice system alone to remedy such deep seated problems which is why this Administration is committed to taking action on early interventions across a range of policy portfolios.

For example, the Skills Strategy published last autumn specifically identified offenders as having needs which are not currently being met. As is generally recognised, improving the employment rates of offenders can have a direct effect on re-offending and, if we are able bring about a positive impact on current levels of offender learning skills, this in turn increases the prospect of obtaining a job. For some offenders access to employment cannot be achieved effectively because of health or addiction problems. We are committed to removing some of the existing inequalities which can act as barriers to those wishing to address their offending. The recent report of the Health Inequalities Task Force "Equally Well" identified the need for cross cutting action by agencies to achieve change to the health of the country across a number of areas; including the need for offenders and ex offenders to have the same access to health and other public services and benefit from the same quality of service as the rest of the population. By doing so we can ensure that offenders are given the best possible chance of a new start.

All of this means that development of a coherent penal policy has to be viewed in a wider policy context. We need to consider carefully who we are sending to prison and the reasons why. This leads to the question of whether prison is really the most effective option in dealing with minor offenders, or should the use of short prison sentences be curtailed. How do we improve the

effectiveness of community penalties and how do we improve support for those leaving prison and resettling in the community?

The Commission was asked to address these and other issues as part of its work. I am grateful to Henry McLeish and the Commission members for their sterling work in coming up with an insightful and comprehensive report within a very tight timescale. It is therefore important that we give proper consideration to the Commission's recommendations and we are committed to providing a detailed response before the end of the year.

As you will be aware, the report sets out proposals around the key themes of payback, reparation and more effective management of offenders in custody. Recognising that tonight's event is sponsored by Apex, the majority of whose work takes place within the community setting, it seems only appropriate that I should focus on the themes of payback and reparation within the context of the community penalties agenda.

The heart of our strategy is to build on the progress made in recent years. Not only has the use of community penalties such as community service and probation been increasing steadily over the past 10 years, but as recognised by the Commission, there are examples of excellent local practice such as the Falkirk Community Service scheme. And it is not only the Commission that has found this: The Scotsman and Herald reported very positively on Community Service schemes in the Tayside CJA area and even The Sun, which is not always the greatest fan of offenders undertaking community sentences, was able to make a positive write-up of the experience of one of its journalists of Community Service in Glasgow.

However, notwithstanding this positive coverage, I believe much more can be done to let communities know of the work that has been undertaken on their behalf. We need to be more imaginative in our approach and ensure that current best practice where it occurs is shared across authorities. With this in mind, three of the Community Justice Authorities have recently been awarded a modest amount of challenge

funding to set up demonstration models for raising the profile and credibility of Community Service within their areas and to encourage community involvement across the CJA area. If we can start to change existing levels of public awareness and attitude to community penalties, it is possible that our courts may be more willing to make increased use of such disposals.

On the subject of communities, it is important we recognise the wider partnership interests which exist. The recent signing of the Concordat with COSLA and the introduction of Single Outcome Agreements has revitalised the relationship between local and central government, although the relationships and responsibilities established through The Management of Offenders Act continue to apply. The challenge now is for the CJAs and their partners to identify and develop opportunities for linking to local service planning and monitoring arrangements under Community Planning Partnerships. Those Partnerships are the key vehicle for the local achievement of the Government's strategic objectives. None of us can operate in a vacuum and, for that reason, it is essential that we establish strong and effective working links with the communities that we claim to represent.

On the issues of immediacy and speed, considerable work has been taking place over recent months in conjunction with ADSW and other partners in addressing how improvements to current practices might be achieved. Before the end of the year we should be in a position to issue guidance which will lead to no offender leaving court without being issued with a copy of his order and reporting instructions. The overall aim is that the work placement should commence within seven days of the order being made by the court. Whilst this will inevitably take time to bed in, it should lead to vast improvements over current performance.

And with regard to speed of completion of orders, we are looking to this being achieved within 6 months rather than the 12 months provided for in the existing legislation. Again this will present certain logistical

challenges, particularly in respect of the increasing numbers of offenders in employment and faced with a longer order. However, I make no apologies for raising the bar as this is what the Scottish public will rightly be looking for if we are to overcome the current perception of community penalties.

I believe that the operational improvements currently in train are very much in keeping with the general direction and thrust of the Commission's findings. It is not always resolution of the big strategic issues that leads to the biggest impacts, but often the willingness and ability to overcome traditional approaches which can be of equal importance.

I do not underestimate the challenges ahead but I hope you will appreciate during the course of this short address the strength of this Government's commitment to the suggested direction of travel set out in the Commission's report. To be successful it will require all of us to pull in a similar direction if we are to achieve that common vision of a safe and crime free society.

# Richard Jeffrey

## The Scottish Prisons Commission

Good evening ladies and gentlemen.

I am quite used to speaking to audiences of this size, but I have to say that I am not used to speaking to audiences that know so much more about a subject than I do. Normally I would have half a chance of knowing at least as much about a subject as some of my audience. Tonight, I think it is fair to say that there will not be a single one of you who knows less about this subject than I do.

After initially finding this a very daunting prospect, I actually now find it quite liberating. Because I am not an expert on prisons, not an expert on the legal system and not an expert on the criminal justice system, it frees me up to give you my own personal reflections on my time on the Prisons Commission. I must stress that the opinions I give are mine and not the opinion of the Commission.

Before joining the Prisons Commission I had never come into contact with the criminal justice system either personally or professionally. So I did come at this with a completely fresh pair of eyes and, where possible, I tried to apply some of my business thinking and experience to the problems I encountered.

If there are factual inaccuracies in what I am saying I apologise. If I cause offence to any group, again, I apologise. I just really wanted to take you on the personal journey that I've been on during my time on the Prisons Commission. Ultimately you can do what you like with my observations and opinions; you can agree or disagree, you can dismiss them or you can reflect on them. I hope you will accept that they are honest, well intentioned and genuine. I also hope that when you are considering what to do with them you at least use them to prompt your own thinking.

My first observation is that, to a lay person, the criminal justice system is pretty confusing. I think I am a moderately intelligent person, but the court proceedings I witnessed left me confused and not clear about what was going on. I suspect also that defendants are confused and are more of a passenger than a participant in their own demise. I think this is

a shame because I think it misses an opportunity for the defendant to link what is happening to them to the crime they have committed. A common concept in animal training and child rearing is that the sanction must be closely linked to the transgression or the opportunity for learning is lost. By and large the professionals in the system are pretty bright people; by and large the defendants being processed by the system are not. I think the average literacy age of the Scottish prison population is 11. If we could make the court proceedings more meaningful for the defendant perhaps we could do good, as well as do justice. This lack of engagement and understanding was also a complaint from victims groups that the whole process did not feel very accessible. Again, another missed opportunity: an opportunity for the victim to gain some sort of closure.

My second observation is that there are too many bodies involved in the whole system. If you were designing the system from scratch you would not have this many bodies involved in it. The more parties you involve in any system the greater the opportunity for confusion, duplication, waste and error. If it is unavoidable that there are so many parties involved, then it is vital that communication and co-ordination between the different parties is excellent. I'm afraid I haven't witnessed that excellent communication and co-ordination within the Criminal Justice System. What I did see was professional silos, lack of trust and mutual respect between the different professions within the system and, in some cases, a belief that each bit of the system is not answerable to each other bit of the system.

This brings me on to my third main point, the fundamental role of prisons: punishment or rehabilitation. I suspect that deep down all of these different groups involved in the criminal justice system share a common desire to see a single outcome – a safer society. But I'm not sure all the groups share the same values when it comes to the age old debate about punishment and deterrence versus rehabilitation. This difference of approach is, of course, not limited to



the criminal justice system: it is reflective of a schizophrenia that is evident in wider society and across the world. We looked at America and Scandinavia with their very different approaches. Are we stuck with this? Let me come back to this later and link it in with another point.

I have to say that I saw no evidence that punishment is an effective deterrent. I heard prisoners talk of the fear of getting caught, but not the fear of punishment. I heard that argument: what about all the crime that is not committed because of people's fear of punishment? Well that seems to me an argument that works well with rational law abiding citizens, but not with drug addicted, alcohol fuelled chaotic individuals who fill our prisons.

If prison was an effective punishment and deterrent, why do we have such a high rate of re-offending? If I ran a business with a 63% failure rate I think I would lose my job pretty quickly.

When I mention a 63% failure rate obviously I am referring to the re-offending rate for criminals sentenced to a period of incarceration. I expected that the prison service would be defensive on this but when I confronted people, expecting to hear excuses, what I heard was even slightly more depressing. It was defeatism. I asked prison governors what they could do to help prisoners lead a crime-free life and in so doing help create a safer society by reducing re-offending. The answer I got was, no good at all if we get them for less than twelve months.

Let me tell you a story about a young lady from Cornton Vale. Having been imprisoned for 6 weeks this young woman was due to be released the next day. We asked her if she was likely to reoffend and her answer was, "of course I will re-offend". Slightly taken aback by this I asked her why. Her answer was, "look at it from my perspective: I came into prison homeless, drug addicted with no friends, no family and no money and no job. When I leave prison I'm going to be homeless, jobless, friendless, drug addicted and with a criminal record. What do you think I'm going to do?" We saw her begging on Princes Street two days later.

The sad thing for me was that she and a lot of the women in Cornton Vale were crying out for help. "I need discipline and structure in my life" was one plea. What they really wanted was help to get away from the life of crime, but they didn't have the basic skills to know how.

Not only did I ask prison governors who they felt they could help and how long they needed people for before they could do any good, I also asked prison officers what percentage of people in prison were actually getting the help they needed? I expected them to say 50, 60, 70%. I was pretty shocked when they said that they thought only 10 or 20% of the people in prison were getting the help they needed. It seems to me if you have a prison system where prison governors, prison officers, prisoners and statistics are all telling you that it is not working, then maybe it isn't working. I also have to say that I saw examples, particularly, in fact exclusively, of long term prisoners where I do believe prison was working to help people lead a crime-free life. So it is not as simple as saying prison works or it doesn't, but it certainly seems to me that sending people to prison for short sentences does no good at all.

I was reminded of the definition of insanity which is the continued application of the same input in the expectation of a different outcome. That seems to me to be what we are doing with our short term prisoners. We put repeat offenders through the same process time and time again and we do nothing to reduce their re-offending. One sheriff said to me that, in his experience, people stop re-offending in spite of the criminal justice system not because of it.

I talked a moment ago about insanity. This is my fourth main point.

I was shocked to hear about the level of mental health issues that the prison population suffer from, but not just mental health - alcohol and drug issues too. Care in the community is obviously not working and care in the community in many cases means care in prison. Just imagine how effective the criminal justice system could be if we find a different way of dealing with, what one of my colleagues so eloquently described



as, "the mad and the sad and the stoned". If our health and social infrastructure properly picked up these problems our prisons would be free to deal with the serious and dangerous criminals. One person giving evidence quoted Winston Churchill, who talked about our prisons holding the socially and intellectually clumsy and inadequate. The only difference between now and Churchill's time is that their clumsiness and inadequacy is exaggerated by drugs and alcohol.

I would challenge anybody to see inside Scotland's prisons, to talk to the prisoners and to come away with their views on cheap, readily available alcohol, unchanged. Alcohol is not an excuse for crime, but it sure is a common factor.

During my time on the Prisons Commission I formulated a picture in my own mind of how the criminal justice system fits into society as a whole. This picture is a series of filters of a differing grade stacked one on top of each and, at the bottom, a bucket. In this picture individuals are dropped into this system and perhaps if they are lucky they are caught by the first filter, maybe their family. The second filter is a social network; perhaps the third is education; the fourth having a home; the fifth having a job, etc. Prison is the bucket at the bottom. What I saw for the vast majority in prison is that they have dropped through every one of these filters and they drop into this bucket at the bottom, which is the only truly non-optional part of our society. We say to the prison service that these people have not managed in society and have been let down by their families, friends, the education system, their employment prospects and so on. Then we put them in prison for three months and expect them to come out as fully functioning members of society. Is it any wonder they re-offend? There surely has to be a better way to deal with this; a better, more effective and cheaper way to deal with the problem.

My next observation, my fifth, is that we seem to rely too heavily on the voluntary sector for the post prison care of offenders. Why don't we invite the voluntary sector to get involved in policing, or sit on the judiciary? I jest, but the point I am trying to make is we seem to

have a very well funded state system for enforcement of laws and the administration of justice, but once people are out of the prison system we leave them on their own and wonder why they reoffend. If they are lucky they are picked up by the voluntary sector, who do an amazing job, but it is too important to be left to chance. Perhaps the state doesn't fund post prison care to anything like the same extent because there are no votes in helping ex offenders. My challenge is: the first time someone comes into contact with the criminal justice system should be the last time. We should not cast people away from the system until we have sorted out their underlying issues, whether it be drugs, alcohol, education, job prospects, anger management, etc.

This is a stated objective for the Red Hook project in New York where, the first time a youngster comes into contact with the police, they are referred to the youth courts for a problem solving session.

Which brings me neatly on to my next point, my sixth, which is that I was massively impressed with the community court projects I saw in Red Hook and Liverpool. There, many of the problems that I have mentioned earlier seem to have been addressed and look at the statistics: between 1994 and 2007 murders have fallen from 11 to 3, in fact in 2005 and 2006 there were no murders at all; shootings have fallen from 58 to 12; robberies from 398 to 126; assaults with weapons from 307 to 66; burglaries from 438 to 91 and so on. I was impressed with their openness and transparency, their problem solving approach, the fact that they felt themselves accountable to their community and their joined up thinking. It is a model I would highly recommend.

And so to my last and most significant point. Does the public have confidence in the criminal justice system? I asked this question of everyone I met, as well as conducting my own informal research. The overwhelming answer is no.

So does it matter if people do not have confidence in the system? Well I would say yes it does and so did most of the people I spoke to.

Whose fault is that? Is it the media, the politicians, the judges, the police? It is probably everybody, but I think there is also a systematic reason for this lack of confidence.

My next question is, whose job is it to fix it? This is the systematic fault. Nobody thinks it is their job to fix it. Back to my first point about too many players, poor coordination and lack of accountability.

What the criminal justice system needs is a champion. Someone whose job it is to build public confidence, someone to make the system and all the parties in it accountable. It is not the job of the Justice Secretary. It is no use coming from a politician, it has to come from an industry professional. Somewhere, between you, you have to take responsibility for the system and show some leadership on the issues.

This champion has to take time to educate and inform the public about how the system works, explain why we have automatic early release, explain why sentences do look transparent, explain why the system fails from time to time and minimise the risk of future failures and, if something is plainly wrong, the power to fix it. I do think that the more people understand the system, the more understanding of it they will be.

One of the challenges I came up against here was that some of the judiciary felt that they could not possibly be accountable. I have to say I was pretty shocked by this. Their argument being that to make them accountable would jeopardise their independence. What? Since when has independence been the opposite of accountability? Every profession I know is both accountable and independent.

Accountability is the very essence of independence: if you are not accountable for your actions, then you have no right to be independent.

My proposal for a champion for the criminal justice system would have the specific goal of building confidence in the system by getting the players in the system to recognise they stand or fall by the weakest link in the system, by holding each bit of the system accountable and by being accountable to the public

and in so doing create a climate where we don't have to choose between doing the right things and doing the tough things.

I have painted a pretty negative picture of my experiences with the criminal justice system and I'm sorry if that offends. I did see examples where it does work: I did see a bunch of professional, dedicated and well meaning individuals doing a very valuable public service, but I have to say I saw a system which is fundamentally not working and therefore is something, in my view, that requires significant overhaul. If you can think of a profession that has changed less than the criminal justice system, please let me know. I tried to think of an industry or a sector of society that has changed less in the last two hundred years than the criminal justice system. If I look at healthcare, engineering, technology, science, in fact everywhere I look I see more change than I do in the world of crime and punishment. Is this because the system we have is perfect? I think not.

Finally, research from Finland convinced me that, ultimately, excessive use of prison is not a mechanism for creating a safer society: it is a political response to a fear of crime, which in turn is a response to social inequality. There is a better, more effective and cheaper way of reducing crime and a more extensive use of prison is not it.

Ladies and gentlemen, thank you very much.







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SKILLS  JUSTICE

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