



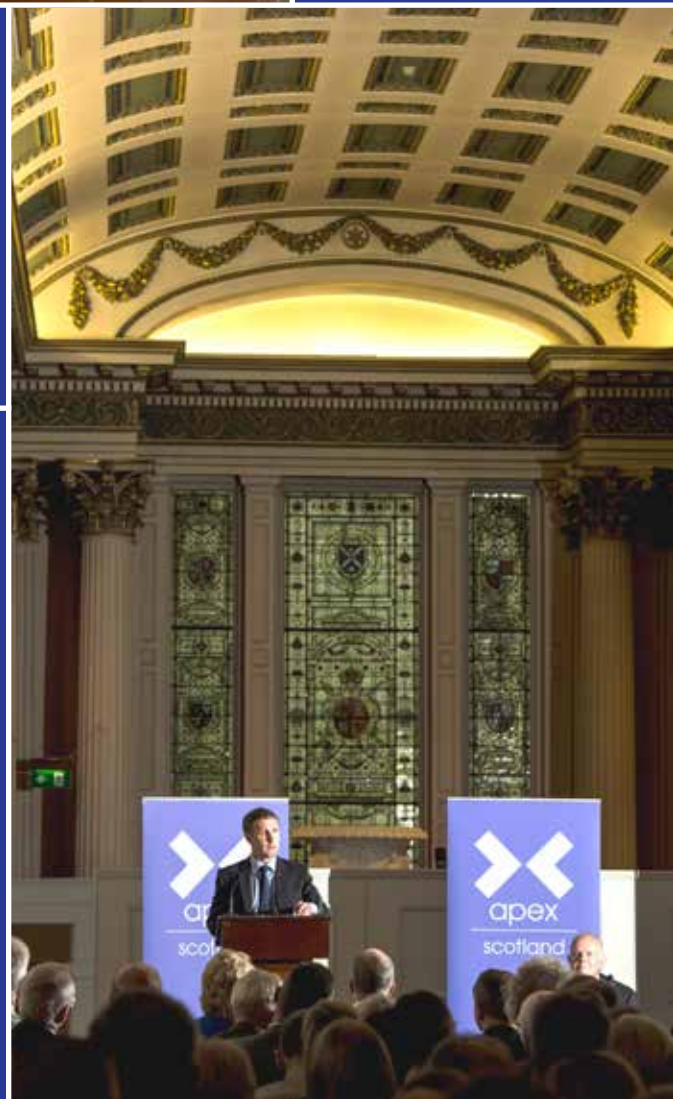
# Fairer Justice:

## A Vision for Scotland

Michael Matheson MSP  
Cabinet Secretary for Justice

Apex Scotland  
Annual Lecture

**SIGNET LIBRARY**  
**1 SEPTEMBER 2015**



## **Previous Apex Scotland Annual Lectures have been delivered by:**

3 September 2014

Professor Lesley McAra

Co-Director, Edinburgh Study of Youth Transitions and Crime, University of Edinburgh

3 September 2013

Sir Stephen House

Chief Constable of Police Scotland

4 September 2012

Jeane Freeman OBE

6 September 2011

Tam Baillie

Scotland's Commissioner for Children and Young People

7 September 2010

Baroness Vivien Stern CBE

Senior Research Fellow at the International Centre for Prison Studies, King's College, London

8 September 2009

Professor Fergus McNeill

Professor of Criminology and Social Work, University of Glasgow

9 September 2008

Kenny MacAskill

Cabinet Secretary for Justice and Richard Jeffrey, The Prisons Commission

11 September 2007

Professor Wesley Skogan

Institute for Policy Research (IPR), Northwestern University, Illinois

12 September 2006

The Rt Hon Lord Cullen of Whitekirk

13 September 2005

Cathy Jamieson MSP

Justice Minister

15 September 2004

Duncan L Murray WS

President of the Law Society of Scotland

16 September 2003

The First Minister, The Rt Hon Jack McConnell MSP

18 May 1998

Henry McLeish MP

Minister for Home Affairs and Devolution, Scottish Office

## Foreword

The appointment of a new Cabinet Justice Secretary in itself is probably not likely to generate high levels of interest and, although we were delighted to welcome Michael Matheson MSP to deliver the 2015 Apex Lecture, we were pleasantly surprised by the response we received. The fact that we were inundated by requests to attend therefore says something not only about the speaker but also about the times we live in. At a period of unprecedented change in the justice sector the chance to hear the vision for the future from the man who will be responsible for taking it forward clearly touched a nerve across many disciplines and interest groups, and a packed Signet Library gave evidence to this.

In his address Mr Matheson talked about the scope of his vision for a fairer and more progressive justice system in Scotland, one that we can feel proud of and which is based on evidence and good practice. In a wide-ranging discourse he looked at everything from rethinking custody to redefining offending and spoke of reframing the debate, especially around public perceptions and historical approaches. Starting

from a position which compares unfavorably with our international neighbors insofar as our imprisonment rates go, he described a pathway to change which offers a new and more person-centered community and criminal justice approach.

Apex Scotland is pleased to have been able to host this event which fits well with our desire to promote forward thinking and fresh discussion in the Scottish Justice field. I hope that as well as reading this you will take the opportunity to look at some of the activity of Apex - very well illustrated in our Annual Report which you can find in the Resources section of our website ([www.apexscotland.org.uk/resources/publications](http://www.apexscotland.org.uk/resources/publications)) and perhaps make the link between what we seek to do in service delivery and where the policy intent expressed by the Cabinet Secretary is taking us.

### **Alan Staff**

Chief Executive  
Apex Scotland

It's a pleasure to be able to join you this evening ladies and gentlemen, and I would like to offer my thanks for your invitation to deliver this lecture tonight in what are absolutely splendid surroundings for such an event.

My interest in justice didn't just come about since I became Cabinet Secretary for Justice last November. It's a matter of public record that my interest in justice matters has been long standing. I was one of our party's opposition spokespersons for justice for a number of years and I had at one point the pleasure of being the longest serving member of the Parliament Justice Committee. I was on the Justice Committee for approximately six years and at one point I thought that our party whips had forgotten that I still existed and I hadn't been shifted on to another committee!

I have always maintained a very strong and keen interest in particular around sentencing policy, around the way in which we run our prisons and how we can best deliver better outcomes for people who find themselves caught up in our justice system. It's my pleasure tonight to be able to use this opportunity to lay out my vision of fairer justice for Scotland.

This afternoon the First Minister launched our Programme for Government for 2015/16. I am sure each and every one of you has now had the opportunity to read it from cover to cover! If you'll forgive me I want to cover a few areas that you may already know about, and I would like to start by pulling out some of the areas from the Programme for Government that was announced today which I think are of particular interest.

The Programme for Government is about laying the foundations for the long term in order to equip Scotland for the challenges of the next decade and beyond. It is about making sure that we, as a Government, use the powers at our disposal to deliver the best outcomes we can for the people of Scotland. And, perhaps most importantly of all, it is about reducing the inequality that still scars too many of the communities in our country. Inequality is a complex problem and, in any attempt to reduce it, we need to focus

on the *causes* rather than the *consequences* of inequality. For me this is an extremely important distinction and one which raises questions about how we can best target our resources in order to achieve that.

As many of you will know my previous Ministerial role in the Scottish Government was as Minister for Public Health. During my time in that role I saw first-hand how we as a nation often look towards our health service to address health inequalities. But in doing so we forget that these inequalities are in fact driven by deep-seated social inequalities. In this respect I continue to be struck by what the health service and the justice system often have in common: our most deprived communities are those most likely to experience poor health outcomes and also higher levels of crime. Therefore, if we are to be effective in reducing the number of people coming into contact with the criminal justice system, we need to make sure that we focus on tackling social inequality within our communities. And in tackling social inequality we also need to ensure that we do not cause further unintended polarisation. This is why I believe that it is extremely important that programmes such as CashBack for Communities can assist us in helping to focus our efforts and resources on those areas and communities most in need.

Both the health service and the justice system are responsible for dealing very often with the consequences of social inequality, but neither can provide the solution on their own. The root causes lie across a number of different spheres of public interests and addressing them will require a collaborative approach, working across and beyond the Scottish Government itself. I am pleased to say that I think there are already some positive signs that this is becoming more meaningfully recognised and addressed.

Over the past two years some of you may be aware that the Ministerial Group on Offender Reintegration has been looking at ways in which we can address the demand for better integration between the criminal justice system and wider public services. The remit of this group was to identify and direct activity across



Scotland's public and voluntary sectors which would help to secure the successful reintegration of individuals serving short-term sentences back into our communities. Each Minister on the group was called upon to consider their role and the need to address more effective reintegration of individuals leaving custody and how that could be influenced by their own portfolio area. I was a member of that group throughout its existence - originally in my previous role as Minister for Public Health, and then as chair in my role as Cabinet Secretary for Justice.

The group met on five separate occasions between October 2013 and June 2015, and I believe that we are already starting to see the benefits of this particular group's work. We heard evidence, for example, that people coming out of prison rely on key public services and third sector organisations to help them address a range of basic practical requirements, and that failing to do so in a timely manner was likely to hinder their ability to reintegrate into the community. We also heard that release on the days preceding weekends and public holidays was a key barrier to accessing wider services in the community on release. To make matters worse, around 40% of all liberations from custody were on Fridays or Thursdays preceding a public holiday. We were, in effect, setting people up to fail.

The Ministerial group agreed that this was an area in which we should take steps in addressing. We agreed that legislation should be introduced to provide the Scottish Prison Service with greater flexibility over release dates as a way of avoiding the disproportionate number of Friday liberations. We have delivered on this particular commitment already. The Prisoners (Control of Release) (Scotland) Act 2015 which received royal assent on 4 August this year contains a provision that allows the release date of a prisoner to be brought forward by up to two days, if doing so would be better for their reintegration into the community. This seemingly small change will allow for the closer integration of prison and the community and will help to secure the vital support needed to stabilise the lives of people coming out of prison.

This is by no means the only concrete action to come out of the Ministerial group. On 20 May this year the Scottish Government, in partnership with Scottish Business in the Community and the Scottish Prison Service, held a one day Employability Summit to promote employability opportunities for people with convictions. This summit brought together key national, local, private and public sector employers, as well as partners within the third sector. Our intention was to help foster a better understanding about the current employment environment for those with a criminal conviction. Importantly, it also provided a forum for attendees to meet key employers who have benefited from including people from this sector of our communities in their workforce. It also provided an opportunity for employers to discuss the barriers that they face in their own line of work and to identify ways in which to overcome them.

My colleague, Paul Wheelhouse [MSP], opened that event and I quote his opening remarks: *"There is clear evidence that gaining employment is one of the strongest positive influences on any individual's chances of desisting from crime. It is common sense that a steady job and a decent wage can change someone's life in the most basic of ways."*

The summit served as a timely reminder, I believe, that if we can deliver the best possible outcomes for the people of Scotland, we must consider the needs of all the people of Scotland. A fairer justice system is one which recognises that fact. Doing this means recognising that people with convictions - and most especially people who have served a custodial sentence - are not only likely to carry with them the scars of social inequality, but also to experience further discrimination as they attempt to reintegrate back into their communities.

That is why my vision for penal reform in Scotland is one which I believe reflects the values of a modern and progressive nation, in which prison - and in particular short-term imprisonment - is used less frequently as a disposal; where there is a stronger emphasis on robust community sentences focused on actively addressing the underlying causes of offending behaviour.

It is a well-known fact that the prison population has doubled in size since the late 1960s, and, more alarmingly in my view, that the most dramatic and consistent rise happened during the last 15 years. In just the first decade of this century the average prison population rose from less than 6,000 to over 8,000. Whilst we may have seen some recent success in stabilising that growth - in fact there have been some signs of a small year-on-year decrease since 2011/12 - we are a long way from being able to rest on our laurels. In Scotland today, our rate of imprisonment is 144 people per 100,000 of our population. Put another way that means that at any given time, for every 700 people in the community there is one person in prison. In and of itself that number may not mean very much, but when placed comparably with other European countries it makes for stark reading. In Ireland that figure is one person in prison for every 1,200 citizens; in Denmark, Norway and Finland that number goes up to over 1,600. And it's not just our Nordic neighbours who lock up fewer people than we do. Other than England and Wales, the only countries in Northern or Western Europe with a higher prison population rate than Scotland are the three Baltic nations of Latvia, Lithuania and Estonia.

I say to you today that I truly believe that there is no good reason why Scotland should have such a high prison population. Of course, for some individuals - people who have committed the most serious offences and those who pose a risk to public safety - prison remains absolutely necessary. But for too long in this country prison has been seen as the default sentencing option when someone breaks the law. Community sentences are too often portrayed as being the soft option. Newspaper headlines suggest that people "*got off*" with a community sentence and will all too readily report how they "*walked free from court*" without any consideration of whether custody is actually the most appropriate or effective response for that individual.

In my view we need to reframe the debate. I have no doubt that in some quarters my remarks tonight may be described as, yet again,

"*soft touch justice*". That is an accusation I will not shy away from, but it is one which I think fundamentally misses the point. For too long we have been preoccupied with whether we are seen as being soft or strong on crime, when what we really need to be is smart on crime. We need to start asking ourselves important questions about what the role of prison actually is. The Scottish Prison Service speak of prison as punishment, not prison *for* punishment. That is an important distinction: the loss of an individual's liberty is the sanction to be imposed. It is worth noting that it is the ultimate sanction available to Scottish courts, and one which should not be imposed lightly.

Of course suggestions that we lock up too many people, and for the wrong reasons, are certainly not new. I am keenly aware that much of this, in one form or another, has all been said before. I can recall back in the late 1990s the former First Minister Henry McLeish, whilst a Minister at the old Scottish Office, was calling for the population of Cornton Vale to be halved. At that stage it stood at 250. It is now over 400. In 2008, when the overall prison population stood at 7,500, the Scottish Prison Commission recommended that the Government should pursue a target of reducing the prison population to 5,000. Instead it rose every year for the following four years.

What is needed therefore, I believe, is concrete action that starts to change this. I believe we need to act now to achieve the step change that we have failed to achieve to date. And I believe that the first steps on that progressive journey have been taken.

When I was first appointed as Cabinet Secretary for Justice back in November of last year, practically the first paper on my desk when I went from Bute House to St Andrew's House was to sign off on the new women's prison, HMP Inverclyde. I decided at that point to take some time out to consider the proposal before rushing to a decision on that matter.

The decision I took not to proceed with building HMP Inverclyde was not one that I arrived at

lightly. But it was borne out of my desire to use that particular opportunity that had been presented to me to make a step change that I believe had previously been missed. And as I have often learnt in politics those opportunities come along very infrequently. I said at the time that we needed to be bolder and more ambitious; that we needed to be smarter with the choices we make and more sophisticated in the way in which we deal with female offenders. In order to do this I took the time to try and understand the issues in more detail and engaged with experts at both national and international level. I believe that the new arrangements that we are planning to take forward truly offer the best support, appropriate to the needs of women, to help them maintain links with their communities.

This belief is backed up by evidence - just this morning the findings of a review of women's community justice services across the country was published on the Scottish Government's website. This review found that the provision of a flexible and holistic approach can help women to make positive changes in their lives and tackle the underlying issues behind their offending behaviour. It is exactly that type of tailored wrap-around service, working with women as individuals with strengths, needs and aspirations rather than simply seeing them as "offenders", that I want to see provided within the new custodial estate.

I said earlier that Scotland has one of the highest prison rates in Europe. Indeed, when we were looking at the options for the women's custodial estate here in Scotland I was encouraged to look at other countries, in particular the Nordic nations that I referred to. What I found was that, whilst many of those countries may have lower rates of imprisonment for women, no country has cracked the provision of truly joined up, collaborative working which really maximises the potential of the system and, importantly, of the women who come into contact with that system. We are embarking on what I believe is a unique journey, and we have the opportunity to develop a truly world-leading penal policy for women in the criminal justice system.

But this isn't just about women. I believe that the steps we have started to take in relation to the female custodial estate can pave the way for a different custodial approach for all offenders in Scotland.

Many of you will have heard me say this before, but it bears repeating: short-term prison sentences simply do not work in terms of rehabilitating offenders or reducing the risk of their reoffending. More than this, they disrupt families and communities; they can greatly affect an individual's employment opportunities and their stability around matters such as housing - the very things that evidence tells us that are important elements to support desistance from offending in the first place. There is even evidence to suggest that by weakening social bonds and decreasing job stability these sentences in some way can actually increase long-term reoffending behaviour. It can hardly be a surprise, therefore, that individuals released from short-term prison sentences are more likely to be reconvicted than those given a community sentence. That is clearly not a good use of public resources and, in my view, it is also a waste of human potential.

There are several important drivers to reducing the use of short sentences. The availability of robust community alternatives is a critical element and I will go on to talk about this facet of the penal system later. However, equally important are legislative mechanisms to influence sentencing decisions. The presumption against short sentences, as set out in the Criminal Justice and Licensing (Scotland) Act 2010, currently provides that legislative vehicle.

The presumption against a sentence of three months or less has been in place since 2011. This presumption underlines our intention to move away from short sentences. In practice, however, the three month limit has had little impact on sentencing decisions. It is therefore my view that more can be done by strengthening the current presumption so that it is more directed at achieving an impact on reducing short-term imprisonment.



I announced in June of this year that I would be consulting on the proposal to further strengthen this presumption. This consultation, which I'll be launching later this month, will seek responses and views on two main points: first, should the current presumption against sentences of three months or less be extended and, if so, by how much? Secondly, is a more radical review of the presumption against short sentences required?

These are wide ranging and complex issues and I will be encouraging responses and views from as wide a representation of Scottish society as possible. The responses we receive will be critical in informing the decisions we take on the future use of short-term imprisonment and the role of prison in Scotland. They will also inform decisions around how we can deliver improvements within our criminal justice system, providing genuine opportunities for people to pay back to their communities and to become contributing members of our society.

As well as looking at changes in the future, we should also be careful not to overlook the things we can do now. One of the obvious ways in which we can already start to look at alternatives to the traditional custodial estate is by the use of electronic monitoring. Each day in Scotland we currently monitor around 800 people, two-thirds of whom are serving community-based sentences, with the remaining one third transitioning from custody to the community. I believe that we can, and I also believe that we should, be doing more to increase this number. In 2013/14 *nine times* as many people received custodial sentences of less than six months as were issued with restriction of liberty orders. Evidence from other countries shows us that electronic monitoring can help people to maintain connections with their family, their community and their employment - the very things that short-term sentences are so disruptive of.

We also know that the wrap-around support services are just as important as the technology itself – if not more. We need to move the focus away from the devices themselves and on to the outcomes that they can help us to achieve. In

doing so I believe we can help build public and partner confidence in the use of this particular disposal. Electronic monitoring should no longer be seen as an end in itself, but one which, when set against a wider package of care, can be used as part of a credible community sentence which is effective at reducing reoffending in the longer term. We already have a legal framework which allows a person who is subject to a community sentence to have both electronic monitoring and a support package in place as part of a Community Payback Order. This means that right now we can, and should, be tailoring the use of electronic monitoring within person-centred disposals.

We have also taken firm steps to ensure the availability of effective and evidence-based community alternatives, and we will continue to promote their use in appropriate circumstances.

The Community Payback Order requires people who have committed offences to repay communities for the damage that they have caused by their crimes. Where appropriate, they can combine this unpaid work with structured intervention programmes to tackle the underlying causes of an individual's behaviour. There are hundreds of unpaid work projects taking place across Scotland at any one time, making tangible benefits to local communities. On Friday last week I had the pleasure of attending the opening of the Dollar Park walled garden in my own constituency in Falkirk, a fantastic facility for the local community achieved through some 15,000 hours of unpaid work. Further to this, the legislation enshrines the principle that local authorities should also be consulting their communities on the types of unpaid work to be undertaken by those sentenced to an Order. Community Payback Orders offer real opportunities for rehabilitation. For example, by allowing for drug or alcohol interventions to be targeted at the offender, forcing them to confront and address their offending behaviour and break the all too common link between drink, drugs and crime. I believe they represent the kind of robust community alternative that can carry the confidence of the public.



Of course any changes to the way in which we view and use the custodial estate will not just be about the bricks and mortar. There will also be an impact on the people who work within our prison estate. I would like to take this opportunity to commend the professionalism of the prison service in Scotland. We can, and should be, rightly proud of the staff who work in our prisons day in, day out. As I said earlier, prison remains necessary for people who have committed the most serious offences and those who pose a risk to public safety. When such a person is serving their sentence, the education, training and support they receive must all lead to the very best chance of rehabilitation and desistance from offending. The Scottish Prison Service recognises that it has a key role to play in creating opportunities in custody to help offenders transform their lives, by helping those who want to change, and by making that decision to want to change easier for them. The new model for the custodial estate that I have outlined will also assist us in creating that change in dealing with offenders. In examining the question of how prison sits within the community, it will also look at the role of prison staff. We also need to remember that any change to the custodial estate cannot happen in a vacuum, and there is a need for change in the wider justice system too.

The Scottish Government and partners are currently working together to implement the new model for community justice; a model which has been designed to deliver a community solution to achieving improved outcomes for community justice; to reducing re-offending; and to support desistance from offending. I know that my officials are working closely with Apex Scotland, the Criminal Justice Voluntary Sector Forum and their colleagues to ensure a strong voice for the third sector in this new model. A model which places decision making locally, with those who know their communities best and who are best placed to make decisions that affect them. Collective responsibility, through a partnership approach, will be vital to its success, and I am confident that colleagues throughout the justice sector will continue to perform to the highest standards to help deliver on this vision.

As I said at the start of my speech tonight, we as a Government will continue to strive to improve outcomes for all of Scotland. This ethos of improvement is at the heart of the new model with greater opportunities to share best practice as well as encouraging innovation and evidence-based approaches to service delivery. A set of common outcomes will ensure that we are working together to achieve what the evidence tells us will reduce the chances of a person reoffending and bring improved results for people and communities across Scotland.

A new National Strategy for Community Justice will provide us with a coherent vision to facilitate and drive improvement. Although work on this strategy is at an early stage, three main themes have already emerged. The first is the provision of effective, evidence-based, interventions at appropriate points in the system; the second is the need to empower communities to allow them to be truly involved in local community justice matters; and the third is the delivery of improved partnerships, planning and performance right across the sector. This strategy is being developed using a collaborative approach and the third sector have played a leading role in this work.

A new body, Community Justice Scotland, will be established in April 2017 and will work closely with community justice partners, the third sector and a range of other parties to provide support and leadership for community justice. The Chief Executive of Community Justice Scotland will be tasked with championing the role of community justice on a parity with that of our custodial estate. The body will bring enhanced opportunities for innovation, for the promotion of learning and development and will provide assurance to Scottish Ministers and Local Government Leaders on the delivery of improved outcomes for community justice. Bringing all of these elements together, the new model presents a more holistic and collaborative approach to community justice which will be driven forward at both local and national level by common aims of securing better outcomes for communities across Scotland.

This afternoon the First Minister described the Programme for Government as one built on the principles of fairness and participation which lays the foundations for a country fit for the challenges of the next decade and beyond. It is in that spirit that I want to start laying the building blocks of a penal system which reflects the values of a modern and progressive nation; blocks laid on the foundations of the hard work already being carried out by our partners across the justice system.

The journey I want to see us take is not one which will be over quickly. Change - real, permanent change - does not happen overnight. Each step needs to carry with it the confidence of the people who will be affected by it, from colleagues in social work and the prison service, through those on the bench, to the wider public and beyond. Nor can we go too fast too soon. We need to walk before we run, or we risk falling and failing the people who most need our help.

What I can do today is to signify my intent, by changing the tone of the debate, to bringing about a new approach. In 15 years' time I don't want to look back and say the same thing I am today. I want to be able to look back at a period of change, and be able to see the road we have travelled. I want to be able to see a Scotland in which very real improvements have been made in the use of custody for both men and women. A Scotland with an appreciably smaller prison population and a Scotland in which we have redefined what custody looks like.

As I said in my opening comments, this is not a road I can travel alone - tackling social inequality is a job for all of us. And not just all of us here in this room, or our colleagues in the justice sector. We need to empower our communities, in the widest sense of the word, to bring about truly collaborative partnership working.









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