

DUNDEE CITY COUNCIL

REPORT TO: SOCIAL WORK COMMITTEE – 18 September 2000

REPORT ON: THE RESPONSE TO MACLEAN COMMITTEE ON SERIOUS VIOLENT AND SEXUAL OFFENDERS

REPORT BY: DIRECTOR OF SOCIAL WORK

REPORT NO: 584-2000

1.0 PURPOSE OF THE REPORT

The report informs members of the principle recommendations from the consultation document and outlines the proposed response to the Scottish Executive.

2.0 RECOMMENDATIONS

It is recommended that the Social Work Committee:-

2.1 It is recommended that the Social Work Committee approves the submission to the Scottish Executive as contained in Appendix 1.

3.0 FINANCIAL IMPLICATIONS

There are no financial implications arising from this report.

4.0 AGENDA 21

The report supports key theme 9 which acknowledges the right of “people to live without fear of personal violence from crime or persecution.”

5.0 EQUAL OPPORTUNITIES IMPLICATIONS

None.

6.0 MAIN TEXT

The MacLean Committee on Serious Violent and Sexual Offenders was established in March 1999 by the Government “To consider experience in Scotland and elsewhere to make proposals for the sentencing disposals and for the future management and treatment of serious sexual and violent offenders who may present a continuing danger to the public.”

The Committee produced a consultation document which formed the basis of Report number 618/99. Further work by the Committee since then has resulted in this report on the Committee’s work and responses are required by 29 September.

The report makes 52 separate recommendations which are set out under several key headings:

- Risk Assessment – Those offenders who may present a continuing danger to the public. The report suggests the need for improved research, greater consistency in the application of risk assessment techniques and ensuring that staff who make decisions based on risk are appropriately trained.

- The Committee Proposes the establishment of a Risk Management Authority (RMA) with a view to securing the protection of the public from seriously violent and sexual offenders while restricting their freedoms no more than is necessary in the public interest. The new authority will be an independent board which will have three roles: policy, standard setting and operational which will report to Ministers.
- The report recommends the introduction of an Order of Lifelong Restriction (OLR) of which the main features will be:
 - Based on risk
 - Lifelong and imposed by the High Court only
 - Imposed after an accredited risk assessment
 - It will begin with a custodial sentence which will be indeterminate
 - Close supervision on release
 - Recall to custody where licence conditions are breached

The Order of Lifelong Restriction could only be imposed following conviction for a violent or sexual offence and where there are reasonable grounds for believing that the offender presents a substantial risk.

The report also deals with offenders with mental disorders by ensuring that both the assessment and management of risk posed is thorough and subject to scrutiny by the Risk Management Authority.

The MacLean Report places the problem of public concern in context. It outlines that on the basis of sentencing in 1998, only 50 people were imprisoned for four years or more for a sexual or violent crime, having previously (since 1989) received a sentence for a similarly sexual or serious violent crime. The principal recommendations are welcomed although further clarification will be required with regards to the operation of the Risk Management Authority and the Order of Lifelong Restrictions.

7.0 CONSULTATION

7.1 The Chief Executive, Director of Support Services, Director of Corporate Planning, Director of Housing and Director of Finance were consulted in the preparation of this report.

8.0 BACKGROUND PAPERS

Report number 618/99 was referred to in the preparation of this report.

9.0 SIGNATURE

Director of Social Work

Date

Dundee City Council
Response to the Report of Lord MacLean's Committee on Serious Violent and
Sexual Offenders.

September 2000.

The MacLean Committee on Serious Violent and Sexual Offenders was established in March 1999 by the UK Government, to make proposals for the sentencing, future management and treatment of serious sexual and violent offenders who may present a continuing danger to the public. Its remit was

- to consider whether the current legislative framework matches the present level of knowledge of the subject, provides the courts with an appropriate range of options and affords the general public adequate protection from these offenders;
- to compare practice, diagnosis and treatment with that elsewhere; to build on current expertise and research to inform the development of a medical protocol to respond to the needs of personality disordered offenders;
- to specify the services required by this group of offenders and the means of delivery;
- to consider the question of release/discharge into the community and service needs in the community for supervising those offenders.'

Although the Committee has already completed a full consultation exercise on the issues, Lord MacLean is currently seeking the Authority's views on a range of broad proposals included in his Committee's report.

The Committee is proposing the establishment of a Risk Management Authority (RMA), which will undertake responsibility for the management of a very small group of offenders who constitute a very serious risk to the public. It is not clear how many offenders would be included. The RMA would have 3 key roles:

- to develop best practice in risk assessment,
- to set standards of competence for practitioners and accredit methods of risk assessment/management and
- to oversee the management of high-risk offenders, commissioning services from different agencies on a Best Value principle.

The key tool for risk management will be the Order for Lifelong Restriction (OLR). Offenders convicted on indictment of violent or sexual offences could be referred for a risk assessment if there is evidence from their antecedents or personal characteristics that they are likely to be a risk to the public. A structured risk assessment would be completed and potentially an OLR would be imposed. Risk would therefore be a more explicit element in sentencing.

The OLR can only be imposed by the High Court after an indeterminate custodial sentence. It is life-long and involves close supervision upon release, the nature of which would also be based upon risk. Swift and predictable recall to custody would follow at any time if licence conditions were breached.

Part of the OLR is a risk management plan that the RMA would approve. The RMA would commission various services from different agencies. It is not clear how the commissioning process would interact with the statutory duties of the Local Authority.

The committee sought views on the following questions:

1. The general approach to the sentencing and treatment of serious violent and sexual offenders. In particular, the focus on “risk” as the key factor in determining whether someone should be managed under the scope of its recommendations.

It is agreed that special sentencing considerations are necessary for persons convicted of a violent or sexual offence or exceptionally people convicted of other offences whose antecedents or personal characteristics indicate that they are a risk to the public. However there are issues of definition. The very narrow definition adopted by the committee will mean that very many offenders who are potentially dangerous would fall outside the remit of the report. It offers little help in addressing the problems raised by offenders convicted of relatively minor offences about whom there are considerable concerns and limited options for their management and supervision.

If risk is to be the determining factor in the management of these offenders it is vital to be clear about the definition of risk. The report does not make clear what risk is being assessed. The current guidance from the Scottish Executive is to pay regard to both the risk of re-offending and the risk of serious harm. The danger to the public is determined by the interplay of these two factors. The risk management plan then seeks primarily to reduce the risk of re-offending. There are legitimate concerns about the accuracy and validity of all risk assessment methods and these concerns are all the more important when risk assessment is to determine sentencing. However given the indeterminate life sentences are already being imposed on the basis of an intuitive assessment of risk, any formalisation must be an improvement.

The Council is concerned that the language used in the report and in discussions about this group of offenders should be clear and precise. It is for example not helpful to use the word paedophile to refer to all child sex abusers. Equally it is important to distinguish between risk assessment and risk management, as they are distinct although complementary activities. The challenge that faced the Committee was huge and this perhaps accounts for some slight ambiguities. For example whether the report is making recommendations for risk assessment/risk management per se or only for that relatively small group of offenders who would be subject to discretionary life sentences. Para 3.11.1 discusses sex offenders with a low probability of re-offending, presumably this group would not come within the remit of the RMA.

2. The recommendation for the new sentence of an Order for Lifelong Restriction

The Council welcomes the proposal for a new sentence called an order of lifelong restriction (OLR) for the lifetime control of serious violent and sexual offenders who present a high and continuing risk to the public. The Council would however wish to clarify the Committee's proposals for dealing with offenders whose risk is unmanageable within the community and who may therefore have to remain in prison without release.

It is vital, as the report points out, that the decision to submit an offender to a risk assessment with a view to imposing an OLR, is made with the fullest possible information. It will in general be for the Crown to recommend a risk assessment and therefore the Crown Office will need to develop an information system that will allow them to flag up those offenders on indictment for violent or sexual offences, whose previous offending is of concern. Directly analogous offences will be relatively easy to determine. The problem will arise for the Crown Office in the exceptional cases where the index offence is not a clear indication of increasing risk.

A well-written social enquiry report including a structured clinical risk assessment might be a useful adjunct to this information system especially where the index offence is relatively minor. To use this resource to its fullest extent the High Court might wish to consider changing its practice so that it calls for an SER post-conviction.

At the time of sentencing for any offence of a violent or sexual nature prosecuted on indictment, the Committee recommends that the judge or sheriff should prepare a report setting out the circumstances of the offence. It would be very useful if this report could be made available to any

social worker required to write an SER as it would inform the risk assessment and the report, and would facilitate focused intervention if there is a community disposal or any post–custodial supervision

The recommendation that only a High Court can impose an OLR seriously restricts the use of the Order unless Sheriffs are encouraged to remit serious cases to the High Court and more offences are prosecuted on indictment. Many highly dangerous offenders appear on relatively minor offences due to plea-bargaining and the perception that certain vulnerable groups (including very young children and people with learning disabilities) are not “good” witnesses or when many other cases are allowed to lie on file. If it is legitimate (as suggested in Recommendation 15) to include information on unconvicted allegations in the risk assessment it is not clear why the Court may not take this information into account when determining if a risk assessment is necessary.

3. The recommendation for a new authority for the management of serious offenders, the Risk Management Authority.

This recommendation is welcomed if it leads to the development of greater expertise in risk assessment and risk management and access to the level of resources that these very dangerous individuals require. The Council is particularly interested in the make up of the RMA.

The role of the RMA should cover the development of policy and standard setting. It is important that the policy/research work of the RMA is applied to all potentially dangerous offenders. In addition the RMA should have a role in promoting public confidence in the statutory management of serious sexual and violent offenders. It is particularly important that the RMA take some responsibility for helping people set the risk posed by this group of offenders in context.

Clarification is still required about the operational working of the RMA. It may be that the RMA will have a role in approving any risk management plan and providing the additional resources needed for the management of this group. However it is the opinion of the Council that the day-to-day management of these offenders is best left to the statutory agencies that will continue to hold the case, not least because of the need for swift intervention when problems arise. The police currently have a key role in risk management through the Sex Offender Act and it is unfortunate that the Committee’s Report does not recognise this. It is recognised that closer co-operation may be needed between SPS, Local Authorities and the police but the working relationships between the Local Authority and the police locally are a good example of what can be achieved.

The suggestion in para 3.39 about the possible extension of the operational role to include all serious offenders is of concern. Despite the high risk of serious harm posed by some of this group, serious offenders do not always pose the highest risk of re-offending. The extension of the operational remit of the RMA to this group would therefore threaten an extra layer of bureaucracy without necessarily assisting the agencies in their task of risk assessment and risk management. The risk of re-offending that offenders pose may well vary through a sentence depending on their motivation, the response to interventions, any life crisis, the stability of their situations etc. To hand over operational responsibility for these offenders just when the risk they pose increases seems fraught with difficulties. Risk assessment is becoming an integral part of the work of social work departments. Expertise is growing in the management of this group and while the advice and guidance of an expert body would be very useful, operational responsibility must lie firmly with the case holding agencies.

4. The recommendations on risk assessment

It is agreed that the systems of risk assessment should be based on the best available research with the emphasis being on the use of structured clinical approaches, although the limitations of even this model should be recognised. There remain the danger of wrongly identifying people who do not actually pose a risk and therefore taking up valuable resources as well as unnecessarily infringing their rights, equally there is the continuing danger of not identifying offenders who later go on to commit further serious offences.

Para 2.43 suggests that quality of risk assessment should be standardised. It is not clear whether the responsibility for this lies with the Risk Management Authority for risk assessment for all offenders.

It is agreed wholeheartedly that there is a need for research on risk assessment issues, although more emphasis should perhaps have been placed on disseminating current good practice. There is also a need for research and guidance into risk management.

It is also agreed that all criminal justice agencies involved in risk assessment should be appropriately trained. It is important that the members of the Parole board are included in the training. This recommendation needs to be placed in the context of the work on accreditation and the development of a training strategy for criminal justice social work by the Getting Best Results Group. Joint training across professional boundaries has already been shown to work well where the same system is being used. However it is very difficult to achieve compatibility between different systems e.g. how do the "high risk offenders" relate to the potentially dangerous offenders identified through the Scottish Executive framework or to those who score very high on the LSI(R). Unless each organisation has a shared vocabulary, misunderstandings are almost inevitable.

It is important that the multidisciplinary team undertaking the assessment should be highly specialised in forensic work. The Council would argue that there is a role for social workers in this team both because of their expertise in assessing the risk posed by certain groups of offenders (especially sex offenders) and for their expertise in assessing the range of need which has an impact on the risk of re-offending.

5. The recommendation on the management of offenders in the prison system and the community

Once an OLR is imposed the offender will be subject to a Risk Management Plan prepared and approved by the RMA. It is not clear what role the Local Authorities would have in this. Para 8.2 implies a role, as the RMA would "jointly with the SPS, the social work department for the area in which the offender normally lives and any other agencies it considers may have an active role at this stage" draw up the plan. The RMA would however "contract" with each agency that is to play a part in that plan for their delivery of what is intended". The contractual language is problematic where agencies have statutory responsibility and there is no statement that the Social Work Department would hold the Order or that Local Authorities would be required to provide services.

Para 8.3 indicates that Scottish Prison Service (SPS) will have a significant role in the development of the Plan, inevitably given that the OLR will begin with an indeterminate period in custody. However there may be concerns with SPS with Recommendation 38 in which decisions about security categorisation and placement are determined by the RMA.

Standards will be set for the review of the plan and the Council believes that the plan should also be reviewed when there are significant life changes for the offenders. Given the risk of harm that this group of offenders poses it may be necessary with this group of offenders to react quickly to any non-compliance. It is important therefore to have provision for the speedy return to prison of individual offenders.

The Council does not consider that it is appropriate for any agency other than the Social Work Department to hold the OLR. The Council also considers that the Local Authority should have a key and explicit role in the development of the Plan. This will require very close co-operation between SPS, the RMA and the local authority. National Standards, agreed by all the agencies involved, are needed to determine the development of plans for supervision and risk management in the community. Standards are also required for the management and supervisions of all potentially dangerous offenders over and above those laid down in NOS. Additional levels of supervision will inevitably require additional resources.

The services required by this group are likely to be heterogeneous however the Council welcomes recommendation 44 which suggests that the proposed local authority groupings should have access to specialist services. It is of course necessary to remember that the What Works research suggests that sound assessment and referral are key elements to effective practice and some of the high risk offenders may not be suitable for specific groups.

The Council would also take issue with the assertion in para 9.12 that the sources of success of various programmes are not found in their therapeutic input. The What Works research and the various meta analyses that underpin it are clear about what can be shown to work with offenders. It

would be very problematic for criminal justice social work, which has over the past few years worked hard to promote the efficacy of the Cognitive-Behavioural approach combined with high levels of programme integrity, to abandon this in its dealings with offenders. A recent Conference run by the Cognitive Centre examined the evidence for what works with very risky people. The research suggested that more intensive focused therapeutic intervention guided by the Risk Principle could be effective with this group.

Recommendation 45 with its requirement that "community services for high risk offenders should develop techniques for intensive supervision and monitoring" would in any case be beyond the budgetary capacities of the Local Authorities. The provision of this type of infrastructure e.g. electronic monitoring is beyond current Local Authority criminal justice budgets and would require substantial investment from the RMA. The Council considers that the half way house type provision should be part of the responsibility of SPS to provide training for freedom.

The Council also has some concern with Recommendation 46. Although the Council agrees in principle with the development of a range of accommodation for offenders, this must be placed in the context of the National Accommodation Strategy for Offenders. The Council does not believe that it is appropriate to house groups of sex offenders together.

Risk Management and the reduction of the risk of re-offending is a key objective for criminal justice programmes and the Authorities would welcome advice and guidance. Work on accreditation is currently being undertaken and should be allowed to come to fruition. The Council would however be concerned with any suggestion that the RMA should dictate the theoretical basis, content or delivery of its programmes

More guidance is needed on the management of potentially dangerous offenders in the community. In particular the committee refers to the relatively rarity of the use of additional conditions of license and orders. The Council would like to point out the use that the Tay Project makes of specific conditions for sex offenders which work well in helping social workers to manage risk.

6. The recommendations on personality disorder

The recommendation to continue to detain high risk offenders with personality disorders within the State Hospital solely for the protection of the public is welcomed given that they will now fall within the remit of the RMA for the purposes of risk assessment.

The definitional problems surrounding personality disorder and the apparent intractability of the problem are very challenging and we would agree that with Committee's suggestion that clinical guidelines be drawn up but that services for this group of offenders should focus on long-term risk management. Innovative work is needed and will inevitably take many years to evaluate.

This is a welcome recognition of the importance of personality disorder. However it would be helpful to have the Committee's comments on the impact of historic, family and social influences on offenders who do not suffer from a personality disorder and also on the importance of early intervention in dysfunctional families in order to reduce later offending.

There are also issues of offending by children including the identification of risk factors such as fire-raising, cruelty to animals and early sexualised behaviour, which might suggest a propensity for serious violent or sexual offending later in life.

7. The recommendations on mentally disordered offenders

Although it is important not to suggest that mental disorder can account for all serious violent or sexual offending it is clear that some high-risk offenders suffer from mental disorders. Their offending may, wholly or in part, or may not be related to their mental disorder. The Committee proposes a thorough risk assessment (subject to accreditation by the RMA) for this group of offenders with the possibility of an interim hospital order to allow for an extended assessment of their mental state.

The Council agrees with these recommendations broadly but has some concerns with Recommendation 33. This recommendation suggests that where a person who is mentally disordered is found insane in bar of trial or acquitted on the grounds of insanity and is found to be a high-risk offender, the disposal should be a hospital order with restrictions. It is suggested that risk assessment

and risk management should be key in the development of conditions in these cases where an OLR is not an option.

Recommendation 36 suggests that the standard for supervision and aftercare for this group of offenders should be the same as for other high-risk offenders. The Council would suggest that the needs of this group might well be higher than for other types of offenders because of the social exclusion that psychiatric patients suffer. The RMA should take cognisance of these needs in the development of risk management plans for this group of offenders.

The Council would also wish to see the accreditation of psychiatrists who will undertake reports on those convicted of serious violent or sexual offences so that this work is limited to those skilled in specialist forensic work rather than general psychiatry.

8. The resource implications of the new proposals.

The resource implications for these proposals are potentially huge. It is difficult to assess the likely costs without having a clearer notion of how many people are likely to fall within the remit of the RMA. Certainly there will be significant capital investment required for the establishment of electronic monitoring, halfway housing, the establishment of specialist services. In addition as the life-long plans for serious sexual and violent offenders are to be determined by the needs of risk management, it will be necessary for the Committee to consider funding the provision of standard community care services e.g. sheltered housing in old age, drug alcohol service, psychological or psychiatric services. The priorities of local community care providers may not match those of the RMA and the normal methods of service delivery may not be suitable for this group of clients. The question remains of how the RMA is to fund to high levels of intervention required by this group of offenders.

It is clear however that these are new and additional responsibilities and it is not acceptable that the budgets of existing criminal justice organisations should be expected to fund this innovation. Local Authorities are already sorely pressed by the need to fulfil the additional responsibilities of the Sex Offenders Act and the increased levels of surveillance and monitoring developed locally in response to the risks posed by potentially dangerous offenders. If the RMA is to function successfully it will be able to fully fund specialist service. For this, ring-fenced money from new budgets will be necessary otherwise there is the possibility that it will lose credibility before it has even begun.