

# A CRITICAL APPRAISAL OF PENAL PHILOSOPHIES AND THE CRIMINAL JUSTICE SYSTEM WITHIN SOCIAL WORK PRACTICE IN SCOTLAND

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*Abstract: This research has set out to investigate the current over-population of prisons in Scotland. Using a narrative approach to literature, it has evaluated, summarized and drawn conclusions on sources identified. It has analyzed current penal policy in Scotland through the lens of the philosophies of punishment, exploring how the theories identified translate from policy to practice and from practice to the lived experiences of service-user. The research findings suggest that culture of risk aversion and the use of short-term prison sentences have contributed significantly to the current prison populations. This research argue further that the risk approaches do not only infringe on the rights of the vulnerable but seem to be more expensive than the rehabilitation approaches in terms of the budgetary allocations for prisons and community services. It also opinioned that the Presumption Against Short Periods of Imprisonment (Scotland) Order 2019 and section 17 of the Criminal Justice and Licensing (Scotland) Act 2010 have the potential to increase the current prison population, therefore, consideration should be given to repealing it as it defeats the purpose of the Community Payback Order.*

*Keywords: Prison, punishment, social control, imprisonment and rehabilitation*

## **Introduction**

The idea of punishment is an age-old concept that is used as a form of social control to maintain law and order in society. It is practiced in homes, schools, at workplaces and can also be administered by the state. One of the state's medium of punishment is Prison. Historically, prisons were used as holding houses for those who were about to be shipped out to the colonies. The present system prison practiced was established in 1839. During the period, 178 buildings were known be functioning as prisons (Scottish Centre for Crime and Justice Research, (SCCJR, 2015). Fast forward in 1905, this city of Glasgow introduced probation schemes in response the high number of debts defaulters who had been incarcerated. By 1990's many legislations and policies been put in place to address the ever-persisting problem of prison overcrowding. To tackle issues of prison overcrowding the McLeish Commission was inaugurated in 2007 to evaluate Scotland's use of imprisonment. During this period the prison population was estimated to be 7,183, (Scottish Prisons Service, 2019), the second highest, after Spain in the whole of western Europe. The increase in population was driven by the frequent use of remand and short sentences. This report was directed at identifying and pointing out how the nation's punitive choices was doing little to depress the high prison populations. This report leaned heavily on the established research knowledge that prison does not work. It further highlighted that since prison does not work it should be used sparingly for serious offences while community sentences increased to accommodate non-serious offences.

### *Statement of the problem*

A recent report by European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), (2019) suggests that majority of Scottish prisons are faced with problems such as overcrowding, mental health issues and relatively easy access to drugs. Presently, in Western Europe, Scotland ranks third after England and Wales, with the highest rate of 145 persons per 100, 000 population. Prior to this research, the McLeish Commission in 2007 had projected an annual the population of Scottish prisons to reach 8,700 inmates by 2016 based on its annual rate of increment. Although the current the current prison is 8198, 508 shy of the predicted figure is indicative that prison population is still increasing at an alarming rate despite best of efforts to tackle the problem at hand.

### *Rationale*

Given the current economic landscape that the world finds itself with a potential financial crisis looming over, there is bound to budgetary cuts to lots of services. Bottoms (2004) notes that though many complex factors account for the increase in crime, economic factors cannot be ruled out of the equation. This invariably suggests that there is bound to be a further increase in offending. Now given that resources are being stretched their limits, it most likely that if nothing is done to find and address the root cause of the matter, it's the vulnerable prisoners who are bound to bear the brunt of it all. Research conducted by Young et al, (2019) suggest that prison has over-representation of people who experience mental health challenges. Now if care is not taking the vulnerable might be left to their own affairs in dire circumstances.

### *Research methodology*

The research aims to analyze current penal policy in Scotland through the lens of the philosophies of punishment in relation to community sentences since community Payback Order is the modus operandi for community sanctions. The study will focus on three questions namely:

- What philosophies or theories of punishment are evident in Scottish penal policy documents relating to community sentences from 2010?
- How are these narratives of punishment translated into practice guidance?
- To what extent do service users' experiences connect and cohere with the objectives of punishment? This research provides an overview of the main theories of punishment, exploring theoretical research that engages with the theories of punishment relevant to community sentences. It further examines Scottish penal policy documents to identify what theories of punishment are implicitly or explicitly referred to, how these narratives of punishment translate into practice guidance. Additionally, it will investigate the extent to which service user's experiences connect and cohere with the objectives of punishment.

### **Methodological approach to literature**

The research sought to analyze current penal policy in Scotland through the lens of the philosophies of punishment and seeks to explore how this translates into practice. It did this by focusing on three questions:

- What philosophies or theories of punishment are evident in Scottish penal policy documents relating to community sentences from 2010?
- How are these narratives of punishment (point d above) translated into practice guidance?

To what extent do service users' experiences connect and cohere with the objectives of punishment? The research sought to provide an overview of the main theories of punishment and explored theoretical research that engages with the theories of punishment relevant to community sentences. It further examined Scottish penal policy documents to identify what theories of punishment are implicitly or explicitly referred to, how these narratives of punishment translated into practice guidance. It also sought the extent to which service user's experiences connected and cohered with the objectives of punishment.

### **From theory to policy**

This section seeks to provide an overview of the main theories of punishment. It further explores the theoretical writing on the theories of punishment relevant to community sentences. It recognises and analyses relevant policy document to identify what theories of punishment are being implicitly or explicitly referred to and considering how they map on to the theories of punishment earlier discussed.

The idea of punishment has been explored by philosophers, sociologist, penologists to gain a better understanding of the concept, its place within the penal system and society in general. The Encyclopædia Britannica (2020) defines punishment as the infliction of a kind of pain or loss upon a person because of unacceptable conduct. Punishment takes many forms such as flogging, death penalty, fines, prisons, community service, electronic tagging, [Eley, McIvor, Malloch and Munro, (2005): Cameron,1983]. Though the death penalty has been abolished in the UK, some states in the USA like Florida still practice it (Willis, 2017).

Different disciplines approach the topic from different perspectives. Philosophers, for example, are of the view that idea of punishment is a multifaceted phenomenon and requires input from various disciplines (Lacey, 2002: Canton,2017). For instance, Garland in his book, *Punishment and Society*, argues that the main aim of punishment is to reduce offending. Garland however argues that, to better understand punishment, it is necessary to know the "ought" of punishment since the concept of punishment is complex and requires further answers around its purpose, goals and values in the bid to justifying it.

While Criminologists and policy makers approach the subject from the viewpoint of consequences and insist on guidelines relevant to offending (Garland, 2001), Sociology, are much more concerned with the definition and nature of punishment, that is the "is" of punishment (Hudson, 2003).

Critics like Bean (1981) contend criminologists tend to focus on the penal institutions, processes of social control and individual personality of the offender to the neglect of moral and sociological effects of punishment. Walker (1991) argues that the aims of penalizing and dispensing punishment tend not to give much consideration to the philosophical and sociological ends of punishment though it can have a damaging outcome on relations, careers, and future ambitions. He proposes a just policy that possess three components namely an assessment of harm done, accountability and the impact an intended punishment might have on the circumstances of an individual as an effective means of addressing offending. However, Walker in his work fails to directly engage with government policy

of the day. Canton and Padfield (2019) posit the need for a new way of responding to wrongdoing which ought to be more than a philosophy of punishment. They suggest, “there is little in most contemporary writing in the philosophy of punishment to help enhance the quality of the decisions to be made by policy makers, sentencers, or practitioners charged with putting the court’s sentence into effect.” The statement above suggests the existence of knowledge gap between philosophy, policy, and practice as they seem to suggest that breaching the gap between these can enhance policy and practice. Although, Canton and Padfield’s work relates to England as their work addresses practice in England. In Scotland, while many work has been undertaken (McNeill, 2005, Tata 2008, ) in an effort to address the problem of penal crisis, they have not been undertaken from the viewpoints of theory, philosophy, practice and with a view to service user perspectives.

Given the incessant problem of high prison rates and reoffending persisting, this study seeks to investigate the matter by endeavouring to answer the question of what philosophies of punishment are evident within the Scottish penal system. This will be accomplished by examining policy documents relevant to community sentences from 2010. The study will outline some philosophies of punishment review and provide an overview of the main theories of punishment; explore theoretical research that engages with theories of punishment relevant to community sentences. It will further identify the appropriate policy documents that discuss community sentences; and the need to analyse these documents to identify what theories of punishment are being explicitly and implicitly referred to. Additionally, it will look at how these theories map on to the theories of punishment discussed earlier. These identified goals will be answered in the subsequent paragraphs.

## **An Overview of the Main Theories of Punishment**

### *Deterrence*

This theory seeks to deter people from undertaking certain actions due to the repercussions attached to them including being caught and punished (Banks, 2005, p. 106). Advocates of this theory postulate that punishments should be prompt, guaranteed and proportionate to the crime in order to properly dissuade individuals from breaching the law (Tomlison, 2016, p.33). Bentham (1971) suggests that humans are rational beings capable of making informed choices based on reasoning. This means humans are constantly making judgements in relation to acts that will bring them the highest pleasure leading to an act of commission or omission. Deterrence is classified into two groups, namely special or individual deterrence and general deterrence (Harrison, 2020, p7). Questions around its justifiability in terms of the death penalty persists (Hudson, 2003).

### *Incapacitation*

The main aim of incapacitation is to prevent future offending and to keep the public safe from dangerous criminals (Morris,1994: Willis, 2017). This is done by taking away any opportunity the offender might have to commit further crime; examples include parole and imprisonment (Willis, 2017). Under the traditional rehab ethos, those who could not be cured of their criminal tendencies were imprisoned. Harrison (2020) notes that incapacitation in present times represent the use of life imprisonment for serious offenders such as murderers, terrorist, and sexual offenders. Critics like Harrison (2020) and Willis (2017) have questioned the accuracy of variables that determine how risky a person may

be, raising questions of whether the offender is punished for the crime they have committed or the potential crime they might commit in future.

#### *Rehabilitation*

Rotman (1990:6) defines rehabilitation as putting in minutest support to ‘reintegrate the offender as a use human being’.

Lewis (2005) defines rehabilitation as giving offenders the chance to utilize their skill in paying back to their communities thereby making amends and earning their redemption and restoring their relationship with the community. Lewis proposes that rehabilitation has two approaches, namely the control and supports narratives to community sanctions. He proposes that control narratives see the offender as a rational and free willed being, capable of making logical decisions demanding that they are penalized when they err. The support narratives on the other hand portray the individual as one influenced by biological, sociological, and psychological situations and may need help to combat such situation.

Rehabilitation benefits both the offender and the society at large (Robinson, 2008). From the above literature, it can be deduced that there is a complex relationship between punishment, the culprit, and a concern for their background. According to Hollin (2004) Rehabilitation seeks the moral reformation of a culprit by providing the right form of support for the offender, be it economic, social, or personal. Harrison (2020) suggests that rehabilitation seeks to address the problem of inequality which contributes to reducing reconvictions. The focus of Traditional model of rehabilitation was on trying to cure offenders of their criminogenic ways. This later metamorphosed into modern rehabilitation after a decline in its use due to the argument that it was ineffective “nothing works” (Martinson, 1974). Modern rehabilitation theory employs a social model as opposed to the medical model utilized previously (Harrison, 2020) within this social model, the offender has the responsibility to practice learned behaviour

#### *Retributive Theory*

This theory of Punishment proposes that when an offender does any evil, he suffers evil in return (Banks, 2005). It emphasizes paying back the offender with their own coin, Hudson (1996) refers to this type of punishment as the *lex talionis* (as in an “eye for an eye”). Van den Haag (1975) and Kleinig (1973) argue that the *lex talionis* serves to limit the penalty for each crime distinguishing it from revenge, it is personal and has no limits. Bradley (2003) argues that this type of punishment upholds the rights of individuals in society from not being deliberately harmed by others. Bradley further proposes that this promotes social equilibrium through the neutralization of any unfair advantage an offender may have over the victim.

#### *Just Deserts*

Just Deserts may be viewed as the rebranding of retribution (Banks, 2005). The gravity of the crime committed determines the punishment meted out to the offender. The form of punishment seeks to lay blame on the offender and ensures the offender is punished accordingly (Frase, 2012). This sets the balance in the sentencing process as it ensures one is not punished severely or liberally. The primary focus of Just deserts is punishment and nothing else not even what happens after punishment. Given that it focuses on the degree of harm involved and culpability, Harrison (2020) suggest philosophers may have questions around the level of punishment one might consider commensurate to the crime

committed and the determinant factors etcetera. For instance, Hegel (1991, P.245) is of the view that excessive or a smaller amount of punishment can be ineffective.

#### *Restorative Justice*

Restorative justice also known as relational or reparative justice aims to repair broken down relationships which occur between an offender, victim and society when a crime is committed (Cavadino, Dignan et al 2013). They further suggest restorative justice seeks to re-integrate an offender back into society. It makes amends for the humiliation and disempowerment felt by the victim thereby restoring a sense of security within the community (Braithwaite, 1998). Restorative justice is conducted via mediation once the offender acknowledges responsibility for the crime committed. Burnside and Baker (2004) emphasize that victims who suffer both material and psychological harm may be able to attain closure through this mediation, as a result of compensation Ness and Strong (1997:8-9) enunciate three basic principles of restorative justice as follows:

Providing healing to all individuals affected by crime, that is the victim, offender and the community at large.

It provides the platform for all affected to actively engage in the practice of justice.

Government has a responsibility to show commitment and initiative in the justice process while the community is responsible for establishing peace.

Critics suggest restorative justice leans heavily on the assumption that parties are willing to repair their broken relationships and the fact that this can really be attained. Von Hirsch (1998) argues that no clear principle has been formulated for restoring wrong undertaken by offender.

#### **Community Punishment in Scotland**

Community sentences or probation is considered an alternative to imprisonment (Garland, 2001). Community sentences are traditionally underpinned by rehabilitation. The practice however, may vary from jurisdiction to jurisdiction (McNeill, Bracken and Clarke, 2010; Garland, 2001). Rotman (1990) postulates four models of rehabilitation namely penitentiary, therapeutic, social learning and rights based. The Heatherbank Museum of Social Work print 4014 suggests the existence of penitentiary rehabilitation dating to the 1850's where prisoners were supported to regain the paths of virtue and sobriety after being released from prison. This stage was later replaced by the disciplinary supervisory phase (1905-1931) which was developed to tackle the high levels of incarceration among fine defaulters (McNeill, 2016; Kelly, 2017). Though the initial concern for the establishment of probation service was the "demoralising impact of imprisonment" and its effects on the "welfare of the community" (City of Glasgow 1955), the model was later seen to be inadequate as it merely engaged in overseeing offenders (McNeill, 2019). The enactment of the Probation of Offenders (Scotland) Act 1931 transformed the face of probation services from supervision to the idea of treatment, training, and reformation of offenders. The 1960's marked the third stage of the social and penal welfarism (McNeill and Whyte, 2007, Croall, 2006). The Kilbrandon Commission was set up to scrutinise the structures of the instrument of government of the United Kingdom (Scottish Government, 2003). Its legacy includes the establishment of the children's hearing system and the development of the Kilbrandon philosophy which changed how adult criminal justice was organised in Scotland (Moore and Whyte, 1998). The new approach targeted early but minor intervention and the prevention of criminalization and labelling making sure that the

welfare of the child always remained paramount (McAra, 2008). It also ensured that offenders were treated as a group of people in need as enshrined in the Social Work (Scotland) Act 1968. This Act transferred the duties of supervising offenders from the probation service to criminal justice social workers employed by the Local Authorities (LA). The effect of creating generic social work and abandoning the use of probation resulted in penal crisis of high rates of incarceration, unrest and prison overcrowding in the 80's (McNeill, 2010). This crisis was attributed to organisational failure (McIvor, 2010) resulting in the last stage of model not being followed through. While Scotland tackled the crisis via managerial methods elsewhere in Europe, attention was being paid to the effectiveness of rehabilitation in the 1980's (McNeill, 2016). The 1990's saw an increased in social work cases due to post-release supervision of long-term prisoners, thus enhancing and strengthening public protection and risk management approaches (McIvor and McNeill 2007; Weaver and McNeill 2010). To tackle the problem, the Scottish Office in 1991 introduced ring fencing fund (McIvor, 2010) and the National Standards for Criminal Justice Social Work Services (SWSG, 1991) to promote community sanctions and reduce unwarranted use of prisons as community-based interventions which were deemed more effective in behavioural change (McAra, 2008).

From this point on, the focus of policy drivers has been responsabilization, public protection and the reparation. Although the Scottish criminal justice landscape had been flooded by a plethora of policies after the devolution in 1998 (Croall, 2006), the 2003 the Labour government-maintained rehabilitation – highlighting respect, responsibility, and rehabilitation. McConnell (2003) suggested that if the government did not get the right balance between the need for protection, punishment and the opportunity for reintegration, the penal system will fail due to lack of trust and confidence. The Labour government-maintained rehabilitation as part of the three R's, translated as rehabilitation, responsibility, and respect. The acknowledgement of the offence and the need to balance such with the ideas of tolerance and reintegration have been central to Criminal Justice policy since the introduction of the National standards in 1991. According to (Robinson and McNeill, 2015) the promotion of reintegration through rehabilitation with the hope of reducing reoffending underpins much of criminal Justice Social work practice which is evident in the National Priorities for 2001-2002 (Justice Department 2001). The aim of this is to produce the dual result of reducing crime as well as promote the creation of responsible citizens in the process. McNeill (2010) suggests that despite the increased use, the problem of high rate of incarceration persisted since community sentences sought to replace financial penalties; with community sentences consequently increasing indiscipline thus escalating reoffending. The Scottish Nationalist Party (SNP) upon their election in 2007, appointed the Scottish Prison Commission to review the use of custody in Scotland. The Commission issued its report in 2008 titled Scotland's choice commonly referred to as McLeish Report. This report was directed at identifying and pointing out how the nation's punitive choices was doing little to depress the high prison populations. This report leaned heavily on the established research knowledge that prison does not work, highlighting the need for it to be used sparingly for serious offences while community sentences become the reserve of non-serious crimes. Its proposal included paying back to the community the main form of punishment for less serious offences. This led to the enactment of the Criminal Justice and Licensing (Scotland) Act 2010.

Section 14 of the Criminal Justice and Licensing (Scotland) Act 2010 introduced Community Payback order (CPO). This amended the Criminal Procedure (Scotland) Act 1995 by inserting sections 227A-227ZN. The sections displaced the probation, community service and supervised attendance orders. The CPO has a three-fold purpose which includes ensuring offenders make reparation through unpaid work. It also demands that offenders consider the impact their offending behaviour have on their community and ensure steps are taken to make positive changes thereby promoting safety within their local communities. The CPO also seeks to reintegrate offenders back into the community. It usually requires consent of the offender; however, this can be imposed on an individual for defaulting a fine under the section 227M (2).

The Community Payback Order subsequently became employed as an alternative form of punishment for persons convicted of non-serious offences with a significant number of convictions being subjected to CPOs by 2012 (Scottish Government, 2018). The CPO had requirements attached to it with one or more requirements being imposed at a time. These requirements were (a)an offender supervision requirement, (b)a compensation requirement, (c)an unpaid work or other activity requirement, (d)a programme requirement, (e)a residence requirement, (f) a mental health treatment requirement, (g) a drug treatment requirement, (h) an alcohol treatment requirement, and (i)a conduct requirement.

### **Analysis of Theories and Policy**

The Scottish penal system has been transformed massively since the election of the SNP to power in 2007. The key policy documents that have shaped the criminal justice system include The Reforming and Revitalising (2007), the McLeish Report 2008, Criminal Justice and Licensing (Scotland) Act 2010, National Outcomes and Standards for Social Work Services in the Criminal Justice System 2010, National Outcomes and Standards for Social Work Services in the Criminal Justice System Community Payback Orders Practice Guidance 2010, Criminal Justice Social Work Reports and the Presumption Against Short Sentences; just to mention a few.

The Reforming and Revitalizing (2007) review was one of the Scottish Government foremost attempt at developing a coherent criminal justice system which will tackle the problem of reoffending by considering various appropriate options for dealing with non-serious offenders who are caught within the endless cycle of offending. The review found that community penalties should be built on effective practices that already exist. The review proposed Community punishment should be high quality, efficient, speedy, noticeable, adaptable, and appropriate. The outcome of this was directed at increasing the public and judiciary's confidence in community sentences. The review proposed the use of effective breach procedures that will not only improve compliance but nip problems in the bud, thus ensuring a successful completion of the sentence. At the core of its practice will be the use of risk management to assess the needs and the risk of recidivism to develop the type of supervision that will effectively reduce reoffending and promote re-integration.

This review was subsequently followed by the McLeish 2008 report "Scotland's choice commissioned in 2007 to evaluate Scotland's use of imprisonment. During this period, the prison population was estimated to be 7,183, the second highest in western Europe. The increase in population was driven by the frequent use of remand and short sentences. This report was directed at identifying and pointing out how the nation's punitive choices was



doing little to depress the high prison populations. This report leaned heavily on the established research knowledge that prison does not work. It further highlighted that since prison does not work it should be used sparingly for serious offences while community sentences increased to accommodate non-serious offences. “Ultimately one of the best ways for offenders to pay back is by turning their lives around” (McLeish, 2008:27). This suggest the ultimate aim of payback is rehabilitation which is further supported by NOS (CJSW, 2010).

The National Outcomes and Standards Criminal Justice Social Work Services (NOS for CJSW, 2010) aligns with the Scottish Government’s National performance framework (2016 a) to promote a safer community nationally. A further fifteen sub-objectives have been put in place in which Criminal Justice social work is to has responsibility for three of these. These three are promoting public safety, holding offenders for their actions to reduce the risk offending, and providing help for offenders to desist from offending through re-integration. It uses a risk approach to managing cases through assessing the likelihood of individual to offend as well as seeking that errant citizen makes reparation for their misdeed.

From the above, it can be recognized that risk rather than rehabilitation is the driving force of the policies discussed. Combining risk approaches with the theory of rehabilitation, creates and promotes the control module of rehabilitation rather than a support model (Lewis, 2005). This is because the control model puts the needs of the public above and beyond that of the offender. For instance, the statement, “nipping problems in the bud” found in *Reforming and Revitalising* (2007, p22) suggests there is no room for error within this policy hence the inevitable use of the control model of rehabilitation thus making the practice of rehabilitation explicitly punitive.

More so, Douglas (1992) contends the promise to protect which confirms the existence of threat, thereby legitimising anxiety. Robinson and McNeill (2004) and McNeill (2010) suggest that, an over-reliance on risk managerial process will result in failure to rehabilitate the offender. This is because an inclination towards public safety does not only weaken the traditional values of rehabilitating the offender but dichotomizes the interest of the public and offender in a game where the offender is bound to loose (McCulloch and McNeill, 2007). Duff (2003) points out that such division tends to lead to a declaration of war on offenders rather than on the crime itself.

Similarly, (McNeill ,2011: McNeill and Robinson, 2011) advise that discriminatory punishment raises doubts about the agent administering punishment. Duff (2003) recommends the state plays its part in making sure that offender’s rights are upheld before it can be justified in punishing. Duff (2001) posits that the state’s refusal to uphold the right of the offender makes the state liable for the crimes committed. This because this refusal to do so can cause the punished to perceive punishment as unjust thereby hindering his/her rehabilitation. He highlights that both the state and social workers have a duty to promote social justice and it is after this that constructive punishment which is aimed at letting the offender understand the effect of their offending and the need for a change or reparation, can be pursued.

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traditional value of rehabilitation to the offender but dichotomizes the interest of the public and offender in a game where the offender is bound to lose (McCulloch and McNeill, 2007). Duff (2003) points out that such division tends to lead to a declaration of war on offenders rather than on the crime itself.

### **Conclusion**

This chapter has provided an overview of some theories of punishment. It has further provided an overview of the history of probation in Scotland and analysed its contemporary policies in place. From the analysis, it was obvious that the penal system is characterized by risk and rehabilitation, with risk being dominant. It was further argued that rehabilitation theory practiced by the penal system appears to be on point, however, when translated into policy, there are obvious strains between the need to rehabilitate and the need to protect the public. Leaning heavily on public protection results in inevitable failure to rehabilitate.

### **From policy to practice**

This chapter will examine how policy around community sentences, specifically the community Pay back order, translates into practice. Here, policy documents such as the National Outcomes Standards for CJSW and CPO will be examined in conjunction with any other relevant policies identified, analysing the extent to which what is being said about how practices should be conducted reflects the given theories or narratives of the punishment identified in earlier. The purpose of the NOS for CJSW is to ensure public protection, individuals taking responsibility for how their actions affect other members of the community thus reducing reoffending and promoting social inclusion through desistance (NOS for CPO, 2010, p16). Within this context the community is seen as a direct beneficiary of the punishment undertaken as it is responsible for organizing the unpaid work as stipulated in (NOS CPO, p.14). Since the imposition of the CPO, there has been relatively little literature on the CPO policy given its robustness (Buchan, 2020). Anderson et al., (2015) in their evaluation of the CPO state that despite the CPO having met set short to medium term targets, it has also increased judicial confidence in community sentences. There, however, remains few tensions in its practice. The subsequent paragraphs will discuss some of the challenges that is encountered in practice or reality thereby drawing conclusions on the type of punishment CPO in practice with. The Criminal Justice Social Work Statistics in Scotland (CJSWSS), 2018-2019) suggest an increased use of the CPO in the first few years of implementation in 2011 following its replacement of legacy orders for offences committed prior and post 1 February 2011. The total number of orders increased steadily to about 19000 between 2013/14 and 2016/17. However, between the 2017/18 and 2018/19 it dropped to about 16,400 which makes up about 8% of the orders imposed. The report suggests that there were 6,000 breach applications made in 2018/19 with main outcome for CPO's revoked due to breach being imprisonment. Paragraph 5.2.26 suggest that 15% of orders revoked as a result of a review ended up being incarcerated totaling about 900 offenders in a year. Scottish Prison population figures for 2019 suggest an increase from 7,464 in 2017/18 to about 8,195. Although this figure is negligible in comparison to England and Wales whose prison population stand at 82,710 (HM Prison Service, 2019). It makes up a significant portion of the current prison population.

Furthermore, given that the above figure makes up about 10% of the current prison population. There is the need to critically consider the effect this 10% can have in terms of budgetary allocations and nip any unhelpful cost to the taxpayer in the bud given the financial risk it poses to the economy. Prison cost the UK government about £4.1 billion in 2018/19 (Clark, 2019). According to Scottish Prison Service (2018) budget it cost about £37,542 prisoner placement annually. Therefore, incarcerating those breaching the order does not only defeat the purpose of the CPO which was to reduce prison populations (Scotland's Choice, 2008) but puts additional financial burden on the state. Again, Audit Scotland in 2012, published government spent £128 million on reducing reoffending in 2010/11. Granted that 2010/11, the reoffending rate during this period was about 30% as opposed to the 2016/17 rate of 27.2% which is about 2.8% improvement of the previous years, it can still be argued that imprisoning those who breach their orders may not be the best practice, as the budget for reoffending remains substantial.

Conversely, it may be argued that the use of short prison sentences may be a contributory factor to the problem of re-offending as clients do not tend to benefit from any form of rehabilitation (Tata and Thomson, 2011; Weaver et al, 2012). This is because it is usually difficult to conduct satisfactory risk assessment and individualized supervision for short-term prisoners due to their licences being nominal (Weaver et al., 2012). Knowing that their days in prison is few, they choose to spend their time and avoid engaging in any meaningful work before their time elapses. Scottish Government (2016) has argued that with the Presumption Against Short Periods of Imprisonment (Scotland) Order 2019, being increased to 12 months, short-term prisoners will have ample time to engage in rehabilitative programmes. However, this order can potentially increase custodial sentences given a recorded 8% decrease in the use of CPO (CJSWSS, 2018-2019). Considering the section 17 of the Criminal Justice and Licensing (S) Act 2010 encourages incarceration when no other means of dealing the offender is found appropriate, this opens up a "justifiable" adjoining door between community sentences and prison by making prison an automatic default punishment to community sentences thus defeating the prisons being reserved for dangerous criminals (Scotland's choice, 2008).

Current Scottish prison population statistics (2019 to 2020) suggest a rapid increase in the full-year population from 2,909 in 2017/18 to 3,417 in 2019/20 resulting in a sharp increase in the overall prison population. With current population on the rise, one questions whether all the people thrown in prison are hardened criminals at all. Tata (2016) contends that many people are imprisoned not because they commit serious offences or pose the risk of serious to society due to lack of help and of support for their physical, mental, addiction and personal problems. Weaver et al (2012) point out that women are more likely to breach bail conditions due to childcare commitment and insufficient funds to be able to travel to their placement (Malloch and McIvor, 2011). Though much progress has been made in relation to issues affecting women caught up in the criminal (Allcook and Smith, 2018), the presumption against short periods of sentencing and the imposition of custodial sentences on "recalcitrant offenders" can potentially be a great setback for work already undertaken in this area. Additionally, a survey conducted by Broderick and Carnie (2015) reveal that between a third to half of prison populations are care-experienced people. With further research by Young et al., (2018) suggesting that people with mental health issues are over-represented within the criminal justice system. This means majority of the people incarcerated have mental health problems. This finding is consistent with the World Health

Organization research on prisons (Møller et al., 2007). This attitude of the CJS raises questions about the human rights of the vulnerable.

Another challenge posed to the CPO in practice is present culture of risk aversion which results in low thresholds of tolerance for non-compliance. A classic illustration of this is the three strikes and you are out stipulation on pages 50 and 11 of the NOS for CPO (2010 & 2019) respectively which suggest that 3 unacceptable absences is grounds enough to instigate breach proceedings against the individual. On the other hand, the NOS for CPO (2010, p. 48; 2019, p 90.) requires case managers to exercise professional discretion should an individual fail to comply with the order. This allows a professional to decide whether an absence is unacceptable or not before proceeding to instigate breach proceedings. (Robinson and McNeill, 2008; Padfield and Maruna, 2006; Phillips, 2011) postulate that such mixed messages lead to contrariety in the use of discretion. Tomlinson (2016) suggest deterrence focused laws such as “three strikes laws” are accountable for the high prison population in the United States. Similarly, Philips (2011) in his article “target, audit and risk assessment cultures in the probation service” argues that the view of accountability is increasingly targeted upwards, in relation to obligations to the courts, or to the government or the public who have been recast as beneficiaries of the system (McCulloch and McNeill, 2007) as opposed to offenders. Though, Philips’ study broadly relates to practice in England and Wales, it can be contended that Scotland is not exempt from following findings from the evaluation the CPO by Anderson et al, (2015). The culture of risk is evidenced in Anderson et al (2015) survey of 72 sheriffs which revealed tensions between sheriffs and Criminal Justice Social Workers (CJSW) who feel they instigated breach when constructively contrary to the view that they are hesitant to initiate the breach processes and give too many warnings to the individual. This perspective coupled with high case volumes (Scottish Executive, 2006) can compel CJSW to want to appear tough (Fenton, 2015), on non-compliance despite Scottish Government (2011, p.94) highlighting that the path to desistance fluctuates with many floating in and out of offending at some point.

This potential increase has wider implications in terms of financial cost to the taxpayer. For instance, it cost £37,334 per prisoner place annually and £1,894, the annual cost for community order placement for non-dangerous offenders (Scottish Prison Service, 2018b). The projection is that within 10 years should current trends persist the government is likely to spend about four billion thirty-two million seventy-two thousand pounds on prison placement for close to a 1000 people (£ 4,032,072000) in comparison to two hundred four million five hundred fifty-two thousand (£204 552 000) for the same number of people subject to community orders. This makes 5% of the projected prison placement cost. This will enable government to make a 95% which can be reinvested into the community in the form of social capital hence taking the steps to breach the gap of social inequality (Lewis, 2005) thus addressing some of the underlying causes of offending as stipulated in national strategy for community justice (Scottish Government, 2016). Additionally, the Scottish Government (2018) publication of reconviction rates suggest community payback order tends to be lower (33.9%) compared to custodial sentences of 3 months (58.5%) and that of 12 months (51.0%). It cost a further budget on providing re-integration services support services to help re-settle prisoners back into the community case in point was £66.7 million (Audit Scotland, 2012) spent such services in 2011.

The NOS for CJSW (2010: p2.5) states that “In achieving its aims, CJSW services must not only be effective but also be seen to be effective”. This statement has a dual

interpretation, the first is to boost public confidence in the criminal justice system that public safety remains a priority. Secondly, being “seen to be effective”, is suggestive of the fact that an extra effort is required by the Criminal Justice System to convince the public that services are very effective if not overly effective. This further conveys a form of warning to the public that crime is severely punished. This underlying ideology reflects the tone of general deterrence discussed in previous chapter, which research suggests is ineffective (Doob and Webster, 2003).

### *Conclusion*

Though the NOS (CPO and CJSW) seek to promote rehabilitation and reparation on the surface it is intrinsically deterrent in practice, not only is this type of theory costly but has little or no regard for the rights of the vulnerable who make up a large chunk of the people caught up in the Criminal Justice System (Matthews, 2019 & McNeill, 2019). It is arguable that this theory could lead to latter day agitations or call for redress any of the affected vulnerable persons in future.

### *From Practice to Lived Experience*

This Chapter will discuss the extent to which service users’ experiences connect and cohere with the objectives of punishment. It will undertake a review of empirical studies by examining the experiences and effects of punishment detailed in the study against findings in discussed in previous chapter. A number of empirical studies have been undertaken in relation to punishment outside (Sexton, 2015; Van Ginneken, 2016). However, within Scotland much user perspectives are sought on long term prison rather than short-term (Scottish Government, 2003:). Williams (2019) in an attempt to understand the practice of CPO a fairly recent research conducted on study to look at the interaction between Criminal Justice Social Workers, offenders and beneficiary organization. This study relied on a sample size of two social workers and their case loads of 5-7 workers and the beneficiary agencies. Due to the objective of the study being understanding of the practice of the CPO not much information is gotten about how the punished perceive punishment and its possible effect on them and their relations, therefore this study was not deemed relevant to the study of the subject of punishment. In view of the above, “user views of punishment: qualitative research comparative experience of short prison and community-based sentences” by Armstrong and Weaver (2010) was deemed more relevant and appropriate to the study of punishment. Their focuses on the characteristic feature of punishment in prison and within the community. Armstrong and Weaver’s methodology employed a semi-structured interview approach to getting information by using open-ended questions which allowed the interviewee to express themselves fully. Furthermore, social workers were asked to help identify sample individuals with have experienced both settings of punishment. A total of 13 people was identified, with 10 males and 3 females who were willing to undertake the study. Majority of the sentences ranged from a minimum of 4 months to a maximum of 18 months generally 180 to 300 hours. The large presence of the male population in the study is indicative of the fact male offenders outnumber female offenders (SPS, 2018). The issues discussed in this study remains very relevant presently though the components of community sentences discussed is probation and community service which have been replaced by CPO. These variables are considered negligible in the sense that the focus of punishment is on the setting that is prison and the community and

not the type of community punishment. Though this research was partially sponsored by Economic and Social Research Council. There is no reason to doubt the findings of the research.

The research sought to answer two overarching questions as follows:

What is the characteristic feature of the experience of prison and community punishment?

Which aspect of the experience proved beneficial or not

What emotions did such experiences trigger: anger, boredom, hope, fear, friendship?

How does offender compare prison with an analogous Community punishment?

What makes one harder than the other?

What makes one more useful than the other or less useful or provides an environment for desistance?

Research findings suggest community punishment is a constructive form of punishment which is deemed as a personal process as it helps the subject to make sense of their past and current experiences. It enables the punished get help in understanding their offending behaviour and be able to access supports to help them make the make a positive change in their lives which reflects the communicative nature of punishment posited by Duff (2001). For example, many subjects valued their presence in the community and the fact that supports including the attention of their worker were tailored to suit their needs. This is further supported by (Williams, 2019). This in no way suggests community sentences are easier in fact other interviewees have found it more punitive than prison, in the words of a 19-year-old “trying to teach you not to do it cos it’s a pain coming here all the time”. This is also in line with findings from Van Ginneken, (2016)’s study on punishment which found some participants found community punishment harder in comparison to prison.

Additionally, it emerged from their findings that the participants understood the messages that community sentences convey in relation to rehabilitation. For instance, participants had the that they had to give back to the community and learn to abide by the rules. Most participants experienced a positive self-image as they gave back to society in the form of helping the vulnerable or making a meaningful contribution to society this is further evidenced by Williams (2019). More so, one participant stated that “it is more like teaching you a lesson so you know you can’t just get away with stuff”. This is consistent with reasons that account for a lesser rate of reoffending in comparison to prison as suggested by (Graham and McNeill, 2018). The evidence suggests that

Furthermore, it was discovered that the pains of prison were unintended as the incarcerated had to endure loss of relationships such as family, social connections, career aspirations. This is because prison affects the family of the imprisoned as well (Codd, 2008). Given the definition of punishment is that an individual suffers harm or loss for their actions (Bradley (2003). However, can it be still be called punishment when the loss discussed is coincidental? Hudson, 2002 argues that the loss associated with punishment should be intentional and not accidental potentially unjustifiable. Given that current knowledge that the devastating impact of imprisonment goes far beyond individual and families lives but generally impacts negatively on society (Jardin, 2018).

Duff (2003) opines that punishment ought to be communicative whereby the offender understands the reason for his punishment. When an offender perceives punishment to be unjustifiable and uneven to the crime committed, there is the possibility of the offender being resentful towards society. This can hinder one’s willingness to accept the responsibility for one’s and make the effort to change. Some participants in the study saw

imprisonment as meaningless as it added nothing of great value to their being. Research by Schneider and Ervin (1990) shows that person who are severely punished are more essentially participate in more crimes.

*How do these cohere with the objectives of punishment?*

Sexton (2015) proposes that there is a significant difference between expectations and experiences of punishment where negative punishment gap is experienced when expectations are severe than actual occurrence. Van Ginneken, 2016 argues that the differences between occurrence and expectations simply means the stated aim of punishment translates differently in experience and practice. This section will consider how the objectives of punishment cohere with the experiences of the above reviewed.

Duff (2001) that punishment should be communicate understanding to the individual the need for reformation and rehabilitation. He further argues that community sentences are more effective in communicating to the individual than incarceration. From the above reviewed study can be seen that community sentences enabled individuals receive the right support in order to help the process of rehabilitation. For example, individuals experienced a positive sense of self at the ability to give back to the community.

Furthermore, undertaking work within their community did not only keep individuals out of trouble by the constructive use of their time but also empowered them with employability skills which will allow them to gain employment. On the other short-term prisoners, just while away in prison and loose their basic routines and skills in the process (Armstrong and Weaver, 2010) and find it difficult securing jobs when released. Grimwood and Berman 2012) point out that about 74% of prisoners who had issues employment and housing issues went on to reoffend. It is obvious the role employment in reducing reoffending cannot and the desistance process cannot be underestimated (Piacentini et al., 2018: Sampson and Laub, 1993: Weaver, 2015: Nugent & Schinkel, 2016). Farrall (2002) posits successful desistance leads to employment, building of broken relationships, starting new relationships, moving home etcetera

Additionally, Canton and Padfield (2019) argue that punishment ought to be just and censored. This means there must be a balance in the proportionality of punishment meted out to the offender making the punishment just to the victim, offender, and society. Walgrave (2003) highlights that harsher punishments hinder efforts at reparation and rehabilitation. Therefore, it can be argued that in relation to the review discussed above, community punishment affords the individual the chance to payback and the opportunity to reflect on their offending, a chance, short-term prison sentences do not offer.

Furthermore, one effect of prison is the pains of loss associated with the unintended consequences of incarceration such as enduring loss of relationships family, social connections, career aspirations, tenancy and college placements (Armstrong and Weaver, 2013: Codd, 2008). Granted that punishment one of the aims of punishment is that an individual suffers harm or loss for their actions (Bradley,2003). However, can the dual loss associated with spending time in prison and its coincidental consequence, justify the proportionality of the sentence meted out? Hudson (2002) argues that the loss associated with punishment should be intentional and not accidental and anything beyond this becomes unjustified. Current knowledge suggests that prison does not only affect individuals and their families who also serve time, but society at large (Jardin, 2018).

More so, when community sentences are looked at in the light of both short-prison terms and risk aversion, not only are community sentences way cheaper than prisons but it seems more effective than short-term prison. This because the offenders, majority of whom are usually from deprived backgrounds (Matthews, 2019), care-experienced (Who Cares? Scotland, 2019), experience both mental and physical health challenges (young et al, 2018) and have been victims of crimes themselves (Scottish Prisoner Survey, 2017) the opportunity to reform their lives. Rather than cast away and considered as threat to society for their repeat offences, their time is put to constructive use help them to develop a sense of pride in themselves.

Again, section 17 of the Criminal Justice and Licensing (S) Act 2010 encourages incarceration when no other means of dealing the offender is found appropriate, should be disambiguated or repealed. This is because this Act can potentially lead to a further increase in the prison population thereby sustaining the problem of overcrowding. It remains essential to bear in mind the words of the English prison Commissioner, Alexander Paterson, 1920 “Wherever prisons are built, the courts will make use of them” as cited by Coyle (2006). This can be interpreted as the courts will not hesitate to use “Acts and Orders” that permit them to imprison “recalcitrant” members of the community, particularly in cases where low risk repeat offenders.

Similarly, a more serious approach to reducing reoffending and the problem of overcrowding in prisons will be to totally scrap any leeway back to prison. When prison is no longer an alternative for recalcitrant offenders, better ways of handling repeat offending will be sought earnestly such as imposition of fines for those employed and for the unemployed repeat offender a small percentage deduction in his benefits should be continuously held back until he engages with the order actively where all the money held back will be paid back. This can be done by considering everyone’s circumstances. Prison is for dangerous criminals and not repeat offenders (Scotland’s Choice, 2008).

From the foregoing, it is obvious that not only are community sentences cheaper than risk averse short-term prison sentences, but they afford the punished the opportunity to understand and reflect on the need to reform. Community sentences equip the individual with employable skills and necessary support to help them make constructive of their time. Short-term prison sentences were found to de-skill the offender and inflict unintended losses on the offender thereby impeding desistance from crime. Finally, it is evident that choosing community sentences over short-prison sentence have great benefits for the offender, the victim, the community and the state at large.

## **Conclusion**

This research has set out to investigate the current over-population of prisons in Scotland. It deemed it necessary to focus on identifying what philosophies or theories of punishment are evident in Scottish penal policy documents relating to community sentences from 2010. It also considered how these narratives of punishment identified, translate into practice then sought to understand these from the perspective of the service-user. On the theoretical level, an analysis contemporary policy revealed that the penal system is characterized by risk managerialism and rehabilitation. It was discovered that on the surface rehabilitation fit in perfectly and appeared on point in theory, however, when changed into policy, there were obvious strains between the need to rehabilitate and the need to protect the public. It



was further discovered that policy makers leaned more heavily towards public protection thus making failure inevitable.

Furthermore, though the NOS (CPO and CJSW) seeks to promote rehabilitation and reparation on the surface it is intrinsically deterrent in practice, which the evidence suggest does not work. This research further argued that the risk approaches do not only infringe on the rights of the vulnerable but seem to be more expensive than the rehabilitation approaches in terms of the budgetary allocations for prisons and community services.

Additionally, service-user perspectives on punishment in relation to community sentences and short-term prison sentences were reviewed. It emerged that not only are community sentences cheaper than risk averse short-term prison sentences, but they afford the punished the opportunity to understand and reflect on the need to reform. They also equip the individual with employable skills and necessary support to help them make constructive use of their time. Short-term prison sentences were found to de-skill the offender and inflict unintended losses on the offender thereby impeding desistance from crime. Moreover, it suggests that the culture of risk aversion coupled with the use of short-prison sentences have accounted for the high population. It has also argued that the Presumption Against Short Periods of Imprisonment (Scotland) Order 2019 and section 17 of the Criminal Justice and Licensing (Scotland) Act 2010 have the potential to increase the current prison population, therefore, consideration should be given to repealing it as it defeats the purpose of the Community Payback Order.

All in all, though community sentences are main form of punishment in Scotland, the culture of risk aversion and the use of section 17 of the Criminal Justice and Licensing (Scotland) Act 2010 have significantly contributed to the problem of prison population in Scotland. Although this research has proposed that Presumption Against Short Periods of Imprisonment (Scotland) Order 2019 and section 17 of the Criminal Justice and Licensing (Scotland) Act 2010 should be repealed and has made suggestions about how repeat offenders should be handled in terms of engaging with services. These suggestions have been to fine the employed offender who is unwilling to engage with the order and for the unemployed, minute percentages of their benefits could be withheld until they start engaging then their entitlements paid back to them in full. However, further research will be needed to confirm or explore other possible avenues of dealing with repeat offenders without resorting to imprisonment.

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Appendix A – CASP-Systematic-Review-Checklist-2018\_fillable-form

Appendix B - SAGE SEARCH TERMS

Appendix A

Appendix B

SAGE SEARCH:

\* COMMUNITY PAYBACK IN SCOTLAND (175 HITS) PUBLICATION DATE: 1958-2020 Further reduced by date to 2010-present = 88 hits



[Paying Back: 30 Years of Unpaid Work by Offenders in Scotland](#)  
[Gill McIvor](#)



European Journal of Probation, vol. 2, 1: pp. 41-61. , First Published March 1, 2010.

[Abstract](#)

Preview



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2.

[Compromise, partnership, control: Community Justice Authorities in Scotland](#)

[Jamie Buchan](#) , [Katrina Morrison](#)

Criminology & Criminal Justice, vol. 20, 2: pp. 226-243. , First Published November 29, 2018.

[Abstract](#)

Preview



NOT DOWNLOADED

3. [Unpaid Work as an Alternative to Imprisonment for Fine Default in Austria and Scotland](#)

[Gill McIvor](#), [Carlotta Pirnat](#)<sup>2</sup>, [Christian Graf](#)

European Journal of Probation, vol. 5, 2: pp. 3-28. , First Published August 1, 2013.

[Probation, Credibility and Justice](#)

[Fergus McNeill](#)

Probation Journal, vol. 58, 1: pp. 9-22., First Published April 4, 2011.

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4.



[Scottish criminal justice: Devolution, divergence and distinctiveness](#)

[Gerry Mooney](#), [Hazel Croall](#), [Mary Munro](#), [Gill Scott](#)

Criminology & Criminal Justice, vol. 15, 2: pp. 205-224. , First Published July 30, 2014.

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5.



[Women and community sentences](#)

[Margaret Malloch](#), [Gill McIvor](#)

Criminology & Criminal Justice, vol. 11, 4: pp. 325-344. , First Published June 6, 2011.

6.

[Restorative justice informed criminal justice social work and probation services](#)

[Steve Kirkwood](#) , [Rania Hamad](#)

Probation Journal, vol. 66, 4: pp. 398-415. , First Published October 10, 2019.

[Abstract](#)

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7.

[‘Walking on ice’: The future of parole in a risk-obsessed society](#)

[Monica Barry](#) 

Theoretical Criminology First Published 14 Oct 2019.

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8.

[Beyond compliance: Participation, co-production and change in justice sanctions](#)

[Trish McCulloch](#)

European Journal of Probation, vol. 7, 1: pp. 40-57. , First Published March 31, 2015.

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COMMUNITY SUPERVISION IN SCOTLAND = 8095 (date :1881-date) Further reduced 2011- date

[Unpaid Work as an Alternative to Imprisonment for Fine Default in Austria and Scotland](#)

[Gill McIvor](#), [Carlotta Pirnat](#)<sup>2</sup>, [Christian Graf](#)

European Journal of Probation, vol. 5, 2: pp. 3-28. , First Published August 1, 2013.

[The Failure of Recall to Prison: Early Release, Front-Door and Back-Door Sentencing and the Revolving Prison Door in Scotland](#)

[Beth Weaver](#), [Cyrus Tata](#), [Mary Munro](#), [Monica Barry](#)

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[Desistance by Design: Offenders' Reflections on Criminal Justice Theory, Policy and Practice](#)

[Monica Barry](#)<sup>1</sup>

European Journal of Probation, vol. 5, 2: pp. 47-65. , First Published August 1, 2013.

[The Failure of Recall to Prison: Early Release, Front-Door and Back-Door Sentencing and the Revolving Prison Door in Scotland](#)

[Beth Weaver](#), [Cyrus Tata](#), [Mary Munro](#), [Monica Barry](#)

European Journal of Probation, vol. 4, 1: pp. 85-98. , First Published March 1, 2012.

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**CASP Checklist:** 10 questions to help you make sense of a **Systematic Review**

**How to use this appraisal tool:** Three broad issues need to be considered when appraising a systematic review study:

- ▶ Are the results of the study valid? (Section A)
- ▶ What are the results? (Section B)
- ▶ Will the results help locally? (Section C)

The 10 questions on the following pages are designed to help you think about these issues systematically. The first two questions are screening questions and can be answered quickly. If the answer to both is “yes”, it is worth proceeding with the remaining questions. There is some degree of overlap between the questions, you are asked to record a “yes”, “no” or “can’t tell” to most of the questions. A number of italicised prompts are given after each question. These are designed to remind you why the question is important. Record your reasons for your answers in the spaces provided.

**About:** These checklists were designed to be used as educational pedagogic tools, as part of a workshop setting, therefore we do not suggest a scoring system. The core CASP checklists (randomised controlled trial & systematic review) were based on JAMA ‘Users’ guides to the medical literature 1994 (adapted from Guyatt GH, Sackett DL, and Cook DJ), and piloted with health care practitioners.

For each new checklist, a group of experts were assembled to develop and pilot the checklist and the workshop format with which it would be used. Over the years overall adjustments have been made to the format, but a recent survey of checklist users reiterated that the basic format continues to be useful and appropriate.

**Referencing:** we recommend using the Harvard style citation, i.e.: *Critical Appraisal Skills Programme (2018). CASP (insert name of checklist i.e. Systematic Review) Checklist. [online] Available at: URL. Accessed: Date Accessed.*

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Paper for appraisal and reference:

Section A: Are the results of the review valid?

1. Did the review address a clearly focused question?

|            |                                     |
|------------|-------------------------------------|
| Yes        | <input checked="" type="checkbox"/> |
| Can't Tell | <input type="checkbox"/>            |
| No         | <input type="checkbox"/>            |

HINT: An issue can be 'focused' in terms of

- the population studied
- the intervention given
- the outcome considered

Comments: User perspectives on punishment

2. Did the authors look for the right type of papers?

|            |                                     |
|------------|-------------------------------------|
| Yes        | <input checked="" type="checkbox"/> |
| Can't Tell | <input type="checkbox"/>            |
| No         | <input type="checkbox"/>            |

HINT: 'The best sort of studies' would

- address the review's question
- have an appropriate study design (usually RCTs for papers evaluating interventions)

Comments:

Is it worth continuing?

3. Do you think all the important, relevant studies were included?

|            |                                     |
|------------|-------------------------------------|
| Yes        | <input checked="" type="checkbox"/> |
| Can't Tell | <input type="checkbox"/>            |
| No         | <input type="checkbox"/>            |

HINT: Look for

- which bibliographic databases were used
- follow up from reference lists
- personal contact with experts
- unpublished as well as published studies
- non-English language studies

Comments: yes there were follow up references and personal contacts from experts attached



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