

ALCOHOL (IN)JUSTICE

Position on people with an alcohol use disorder in the justice system

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SHAAP

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Purpose of Paper

This paper sets out why and how people with alcohol use disorders who come into contact with the justice system should have the best opportunities to access treatment and support. This approach would reduce reoffending and tackle inequalities – improving the health and lives of the people concerned and the lives of their families and wider communities, as well as alleviating pressure on the justice system.

This paper aims to influence national policy makers, can be used as an advocacy tool for improving the journey of individuals with alcohol use disorders in the justice system, as well as being a resource for those working in public health and the justice system, locally and nationally.

Definitions

For the purposes of this paper an **alcohol use disorder** is defined as hazardous or harmful drinking, or dependence on alcohol.

The definition of justice system is as outlined in this overview of a person's journey through the criminal justice system, see 'Exhibit 1' of the [Audit Scotland overview of Scotland's criminal justice system](#).
[1]

SHAAP Work

SHAAP has undertaken work to understand the current journey of people with alcohol use disorders in the justice system and how this could be improved, including:

- Stakeholder scoping
- Desktop research
- Discussion with key informants
- Hosted the *Alcohol (in)Justice Symposium*
- Assembled the *Alcohol (in)Justice Working Group*

 WE FOUND:	 HOWEVER, WE ALSO FOUND:
Multiple delivery partners in a complex landscape	Gaps in implementation
Extensive policy, guidelines and research	Lack of clarity surrounding governance and accountability
Examples of dedicated practitioners	Lack of national leadership

The Case for Change

The number of people with alcohol use disorders is disproportionately high within the Scottish justice system. Almost two thirds (63%) of people in prison have an alcohol use disorder, with almost half of those (31%) possibly dependent on alcohol.^[2] This compares to 22% of hazardous or harmful drinkers in the population as a whole.^[3]

Risk of death from alcohol causes is three times higher in men and nine times higher for women who have been in prison than for the general population.^[4] In the 2019 Scottish Prisoner Survey, 40% of prisoners involved reported being drunk at the time of their offence, which was an increase of 5% since 2017.^[5] Nearly one fifth (19%) of prisoners who took part in the survey were worried alcohol would be a problem for them when they got out.^[5] Forty one percent of participants said that if they were offered help for their alcohol use disorder (both inside and outside of prison) that they would take it.^[5] However, only 22% of participants reported that they had been given the chance to receive treatment for an alcohol use disorder during their sentence (down from 25% in 2015 and 23% in 2017).^[5] For Alcohol Brief Interventions (ABIs) in justice settings, delivery sits at about 29% in prison and 3% in police custody (based on 2019/20 data when assuming 63% of individuals have an alcohol use disorder). Referrals to drug and alcohol specialist treatment in Scottish prisons has fallen significantly in recent years – treatment referrals for alcohol and co-dependency fell from 1,047 in 17/18 to just 549 in 21/22.^[6] Reasons for this decline are being investigated as part of a wider work by Public Health Scotland (PHS) looking into falling alcohol referrals to Alcohol and Drug Partnerships.

It should be noted that people in the justice system and prisons experience high levels of disadvantage, including trauma, Adverse Childhood Experiences and mental health conditions: 25% of people in Scottish prisons are care-experienced, 47% have experienced physical abuse in childhood, and around a third (34%) of people lived with someone who was a problematic drinker during childhood.^[5] A 2022 study

commissioned by the Scottish Government found that the prevalence of mental health needs is significantly higher in prisons than in the general population.^[7] There are also significant disadvantages in the prison population in other areas, namely: housing, finance, and health literacy. People with Foetal Alcohol Spectrum Disorder (FASD) are also over-represented in the justice system.^[8] People in the justice system additionally experience high levels of other health conditions and poorer overall wellbeing than in comparison to the general population.^[9]

In 2007/8 an estimated £17.2million was spent on criminal justice social work for alcohol-related crimes, and the estimated cost to the criminal justice system in response to alcohol specific crime is between £86.2 million and £197.3 million, with a mid-point of £141.8 million.^[10] However, it should be noted that these statistics have not been recalculated since 2007/8 and therefore the true current figure is likely much higher.

This spending is in the context of a criminal justice system which is under immense pressure. Scotland has the highest imprisonment rate in Western Europe, with over 150 individuals per 100,000 population entering prison in 2021-2022.^[11] The Scottish Parliament's Criminal Justice Committee stated in November 2023 that the funding situation in the Scottish criminal justice system is unsustainable and requires a new approach.^[12] In May 2024, the Justice Secretary, Angela Constance MSP, made a statement to the Scottish Parliament outlining the extreme constraints the Scottish Prison Service is under and measures she intends to undertake to release prisoners to ease pressure on the service.^[13]

Coming into contact with the justice system provides an opportunity to recognise and address alcohol use disorders, including offering treatment and support, and this opportunity should be utilised to improve outcomes for people with alcohol use disorders. This may be one of the first opportunities individuals who have previously not engaged with healthcare or support organisations have had to address their alcohol use disorder.

Yet people in the system are not always likely to get the support they need, given “the available literature on alcohol use in prisons is sparse

and often overshadowed by a drugs-focus.”^[14] Additionally, of the over 12,000 community payback orders imposed in 2021-22, only 1% received alcohol treatment as part of the order.^[15]

There is an abundance of policy and guidance on how people with alcohol use disorders in the justice system – particularly in police custody and prison – should be afforded treatment and support, from guidance on alcohol, drugs and tobacco health services in police custody and prisons through to more recent broader approaches to justice like the PHS Health and Justice Strategy and the Bail and Release Act. Yet to date, this does not always translate into consistent practice on the frontline to support people with alcohol use disorders. There is no overarching set of frameworks or standards which distils this into a practical approach that results in improved experiences for people, their families and wider communities. Neither is there a clear mechanism of accountability for the whole system in its entirety, as it relates to people with alcohol use disorders, despite the prevalence and impacts of alcohol use disorders amongst people in the justice system.

Our Position

Standard approach for support and treatment for people with alcohol use disorders in the justice system

Now that the draft UK Alcohol Treatment Guidelines have been published (with full guidelines to follow),^[16] the Scottish Government plans to use this as the basis for developing a National Service Specification. This is an opportunity to publish a clear specification for justice settings as well as develop standards for alcohol treatment and support at each stage of the justice system. A “standard” is a statement, outlining principles of care which should underpin all support for people experiencing problems with alcohol. Standards are based on evidence, and should cover the key issues for safe, effective, non-stigmatising, trauma informed and person-centred care and treatment. As well as outcomes for the individual affected, the new standards should set out service specifications including staffing and training requirements to help meet these outcomes, and align with or be part of the National Service Specification for Drugs and Alcohol that the Scottish Government is planning to develop.

The implementation of these standards must then be measured and a system for accountability must also be put in place for each individual standard, and as a whole at a national level.

The following section outlines potential standards (or in some cases, policies) that if taken forward, could make a significant impact. These standards should be guided and underpinned by a set of overarching principles, including those of trauma informed care, safety, choice, collaboration, empowerment, trust, and the right to health.

1. Police Contact

Stage of Journey

Police are in contact with someone who they suspect is intoxicated and/or has an alcohol use disorder. This could involve a crime having been committed.

Current Approach

In the course of their core duties, police officers may come into contact with people who would benefit from intervention in relation to an alcohol problem. As part of Police Scotland's public health approach, officers may provide brief advice or signpost to services.

Aspiration

Police divisions should be included and seek to support development of a local alcohol strategy, designed with people with experience (lived and professional), Alcohol and Drug Partnerships (ADPs) and service providers.

Police should be trauma-informed, recognising that any suspected alcohol use disorder is likely linked to other factors and experiences, and where possible provide the person concerned with information on sources of support that they can seek locally or online, including recovery communities.

Our aspiration is that individuals who are identified as being at risk (and could benefit from alcohol treatment or support) are encouraged to be engaged with services and build trusted relationships to improve their outcomes.

Oversight and governance

Police Scotland, Scottish Police Authority (SPA).

2. Police Custody Centres

Stage of Journey

Someone enters police custody who is intoxicated and/or has an alcohol use disorder.

Current Approach

Police officers and staff risk assess each individual who has been detained on arrival (e.g. for likelihood of alcohol dependence and risk of alcohol withdrawal) in custody and throughout their detention.

The Healthcare Improvement Scotland Framework for inspection of healthcare provision within police custody centres states that patients should receive medication to provide relief for alcohol withdrawal symptoms, that an assessment process should be in place to identify people who use alcohol and any contact with an alcohol worker is recorded in the custody record.^[17] This is achieved through a referral to NHS Custody Healthcare services who take responsibility for any health care treatment of individuals in police custody. There is no current guidance on treatment and support for people with alcohol use disorder in police custody. However there has previously been guidance on the delivery of substance use services by the Police Care Network which outlined recommendations for the delivery of ABIs.^[18] The previous Quality and Outcome Framework developed to assess the quality of care in police custody included an indicator on the delivery of ABIs but this is no longer in use. Arrest referral for people with alcohol use disorder can take place.^[19]

Aspiration

There should be a standard in place for the identification and treatment of people with an alcohol use disorder in police custody both for the police and NHS healthcare staff.

Everyone in police custody who is suspecting of having alcohol use

disorder is referred to healthcare or addictions service to be screened for alcohol use using a validated tool such as AUDIT (or FAST) [20], and appropriate action taken in response (i.e. no action, brief advice on reducing consumption, or arrest referral for alcohol treatment and support – as per the Community Justice Strategy [21]).

Anyone identified as requiring advice or alcohol treatment or support should then be flagged and this information shared with other parties if and when the individual enters other elements of the justice system (court, prison, third sector organisations, and onward support for those leaving custody) as well as in the NHS police custody system (Adastra).

Custody staff and clinical staff should be trained in interacting with someone thought to have an alcohol use disorder in a non-stigmatising manner. The workforce should be underpinned by a basis of trauma-informed care, psychological safety and psychological first aid.

If someone is in police custody and they are intoxicated, this should be managed safely via baseline observations and a risk assessment of withdrawal carried out by a clinical member of staff. An agreed protocol for managing potential withdrawal must then be implemented involving regular observations by trained custody staff, communicated to the clinical staff responsible, and a protocol for transfer to hospital should this be necessary. Services need to work to Healthcare Improvement Scotland's standards for police custody healthcare (section 3: medicine and 4: substance use).[22]

Custody staff should also be trained to recognise that there are likely to be many other factors and experiences that have contributed towards the problem and should therefore respond in a trauma-informed way. Factors such as security and resources (housing, finances, etc.), the contribution of other health conditions, and other notable social factors should be explored with the individual.

This stage of the justice journey is also an opportunity to identify individuals who are frequently entering police custody due to alcohol-related offences, and to address the underlying reasons for this. There

should be an integrated approach with other community-based services (such as housing services, access to foodbanks, debt advice etc.) to address the root causes of alcohol-related crimes, and information on recovery communities should be shared.

Oversight and governance

Police Scotland; SPA; HM Inspectorate of Constabulary Scotland (HMICS)/HIS; NHS; IJBs/ADPs.

3. Crown Office and Procurator Fiscal Service (COPFS)

Stage of Journey

The police send a report to the Procurator Fiscal about somebody who has allegedly committed an offence under the influence of alcohol and/or has an alcohol use disorder.

Current Approach

When the police detect a crime, they report the accused person to COPFS via a Standard Prosecution Report (SPR). The SPR template features an antecedent section in which the police should record information relating to the accused's mental health, alcohol or drug use, risk, vulnerability (such as FASD), disability, attitude to offending, family dynamics and education or employment status.

Aspiration

The SPR template should be used routinely to record information as described above.

There is also an opportunity for the police to express a view on the

accused's potential suitability for diversion from prosecution, based on their knowledge of the incident, circumstances, history and the individual themselves.

Prosecutors are provided with information relating to the individual's alcohol use disorder and willingness to engage with support and wider services. It should be made clear how prosecutors will use this information in the decision on what action (if any) to take.

Oversight and governance

Police Scotland; COPFS; SPA.

4. Diversion/liaison

Stage of Journey

Under current prosecution policy set by the Lord Advocate, prosecutors within COPFS have the option to divert someone with an alcohol use disorder from prosecution.

Current Approach

The National Strategy for Community Justice [23] described the Scottish Government's understanding of the aim of diversion from prosecution as being to prevent individuals entering the wider criminal justice system by addressing the underlying causes of offending, and to help ensure people get access to the alcohol, drug and mental health services they need. The COPFS prosecution policy is set independently by the Lord Advocate: who recently welcomed a review of diversion from prosecution in Scotland [24], carried out by HM Inspectorate of Prosecution in Scotland, HMICS, the Care Inspectorate and HM Inspectorate of Prisons for Scotland (HMIPS).

It is already the COPFS policy that diversion from prosecution will be

considered in any case where the person reported to COPFS has an identifiable need shared by police that has contributed to the offending, such as an alcohol use disorder, and where it is assessed there is a sufficiency of evidence and that diversion is the most appropriate outcome in the public interest.

Aspiration

A standard approach for diversion of individuals with alcohol use disorders and liaison with community justice partnerships should be developed by Community Justice Scotland with input from experts by lived experience, third sector providers, Criminal Justice Social Work and Alcohol and Drugs Partnerships (ADPs).

Prosecutors should be trained in relation to alcohol use disorders, the diverse factors underpinning them, how they manifest, and the potential positive impact of diversion. This should be a key part of continuing professional development.

When someone with an alcohol use disorder is diverted from prosecution, they should automatically be given an appropriate level of support from local alcohol treatment and support services to understand and manage their problem (options include but not limited to motivational interviewing, local support groups and recovery communities, counselling) and that this is consistently available and utilised across Scotland. Other support for factors that may be linked to the alcohol use disorder should also be accessed - coordinated by justice social work team, linked to all other local services.

Oversight and governance

COPFS, Scottish Government (in terms of delivery of effective diversion programmes by Local Authorities).

5. Court

Stage of Journey

Someone with an alcohol use disorder appears in court.

Current Approach

Courts have the option to include alcohol treatment within community payback orders either by attaching treatment as a condition of a supervision requirement or by making alcohol treatment a requirement. [25]

Aspiration

A standard approach relating to the care provided within the courts system should be developed, with input from: the Scottish Courts and Tribunals and the COPFS, experts by lived experience, Justice Social Work, ADPs, Healthcare Improvement Scotland (HIS), and Community Justice Scotland.

In the first instance, all Scottish courts should enable a problem solving approach and thus be equipped with the ability, tools and skills to understand, manage and support individuals with an alcohol use disorder. All courts should have the option to include alcohol treatment as part of any sentence.

Based on demand, consideration should also be given to the establishment of Alcohol Courts. This would mean that when appearing in a Sheriff Court, the Sheriff would have the option to refer someone to an Alcohol Court so that appropriate sentencing and support can be put in place. Alcohol Courts must be resourced adequately and work in an integrated manner with local alcohol treatment and support services and wider social and statutory services.

Regardless of Court model, coordinated by Justice Social Work, continuity

of care must extend through to courts to ensure that people who have received treatment for withdrawal or an alcohol use disorder earlier in their journey through the justice system have this care maintained, with support for additional factors contributing to the alcohol use disorder also being put in place.

Social background reports should include details on the history of an individual which may have contributed to their development of an alcohol use disorder.

Oversight and governance

Scottish Courts and Tribunals Service; COPFS; Scottish Government oversight of Justice Social Work (Local Authorities).

6. Community Sentencing

Stage of Journey

Someone with an alcohol use disorder is given a community sentence.

Current Approach

People with an alcohol use disorder who are given community sentences can have treatment attached to their orders but it is not well utilised.

Aspiration

People with alcohol use disorders given community sentences should have appropriate level alcohol treatment orders attached to their sentence to improve their health and reduce reoffending, as well as access to other services and recovery communities that may assist with dealing with experiences and factors that are linked to the alcohol use disorder. This would ensure that they have alcohol treatment to help tackle the reasons they have committed crimes in the first place.

Justice social work reports assist in the sentencing process by providing information related to an individual's risk and need. They support sheriffs to make an evidence based decision as to what disposal is or is not appropriate. Social workers completing these reports are highly skilled professionals who take into account a wide range of information pertaining to the individual's circumstances, needs, and risk of recidivism prior to making a professional assessment of sentencing options available. Those undertaking the assessment and writing the report should make clear what, if any, alcohol treatment needs an individual might have, how they could be managed within the community, and be clear whether an alcohol treatment requirement is suitable and recommended or not.

Oversight and governance

Scottish Government oversight of Justice Social Work.

7. Prison

Stage of Journey

Someone with an alcohol use disorder enters prison/a Young Offenders' Institution.

Current Approach

The Scottish Prison Healthcare Network previously published guidance [26] for the delivery of substance misuse services which includes recommendations for the delivery of ABIs in prison and custody settings, but this is no longer in use.

Aspiration

Scottish Prison Service staff and NHS healthcare staff must be trained in treating someone thought to have an alcohol use disorder in a non-

stigmatising manner, recognising the complexity of life circumstances and trauma the individual is likely to have experienced. Everyone who is placed in custody should be screened for alcohol use using a validated tool (such as AUDIT or FAST), and appropriate action taken in response (motivational interviewing through to treatment, introduction to recovery communities and peer support through to psychological treatment).

Services should be working to HIS/HMIPS standards for inspection - standard 9.7 [27] which covers alcohol and drugs: "Everyone who is dependent on drugs and/or alcohol receives treatment equitable to that available in the community, and is supported with their wellbeing throughout their stay in prison, on transfer and on release."

Where NHS healthcare staff, the police, prosecutors, or court has identified an alcohol use disorder, this information should be automatically shared with prison admission staff with clear and efficient information sharing processes in place.

When someone with an alcohol use disorder is placed in custody, a risk assessment of withdrawal should be carried out by a clinical member of staff at the reception stage, and an agreed protocol for managing potential withdrawal must be implemented involving regular observations by trained prison staff, communicated to the clinical staff responsible so that medically assisted withdrawal can be put in place if necessary, and a protocol for transfer to hospital should this be necessary (for extreme intoxication or for withdrawal).

The underlying causes relating to an individual's alcohol use disorder should also be explored and addressed, as recommended through the Prison Healthcare Target Operating Model.[28]

Whilst in prison, there must be access to recovery communities and where prison or healthcare staff have identified someone with an alcohol use disorder whose health is at particular risk they should be referred to the mental health nursing team or alcohol treatment and support service.

An individual's alcohol use disorder must be on all relevant records so that

as they then progress through the courts and any future sentencing, appropriate support and services are put in place at each stage.

Standards for prisons, YOIs and custodial sentences should be developed by HIS and HMICS/HMIPS with input from experts by lived experience and ADPs.

Oversight and governance

Scottish Prison Service; HMIP/HIS; NHS; IJBs/ADPs.

8. Through care/ liberation from prison

Stage of Journey

Someone with an alcohol use disorder is liberated from prison.

Current Approach

People are provided with a plan in place for managing their alcohol use disorder upon release, including in line with the Scottish Government Prison to Rehab Protocol.^[29] However this is currently only used in limited circumstances.

Aspiration

Starting at reception, a multidisciplinary plan for ongoing care, multiple transfers, and through care should be put in place which is developed throughout the person's time in prison to ensure that appropriate support is in place for liberation. This plan should include signposting to support services, automatic referral into alcohol treatment and support through to rehabilitation upon liberation. Plans for liberation should be shared with primary care.

People should leave prison with a clear plan in place for managing their alcohol use disorder (such as relapse prevention), harm reduction advice, appropriate medications and a clear referral pathway for treatment/support, information on and links to recovery communities and aftercare after liberation from prison - which they can continually access after release to improve their health and reduce chances of reoffending whilst under the influence of alcohol. This should build on the Scottish Government's Prison to Rehab Protocol, should be integrated with other services and support designed to address factors related to the alcohol use disorder, and throughcare should apply to all people in prison including people on remand.

Accountability and Governance

SPS; HIS/HMIPS.

Accountability and governance of the system as a whole

Despite the existence of a number of frameworks and policies already in place surrounding the care of people with alcohol use disorders in the criminal justice system, there are major gaps in implementation and a lack of clarity around governance and accountability, with multiple agencies providing oversight. Separation of powers and independence of decision-making between the organisations and bodies involved in the justice system can pose a challenge for overall coordination of care and support. These issues must be addressed with urgency to ensure that people with alcohol use disorders coming into contact with the justice system have the best opportunities to access treatment and support. A standard approach to identifying and treating/supporting alcohol use disorders at each stage of the justice journey is necessary with clear accountability and oversight.

Oversight of the development and subsequent performance against these standard approaches so that they enable coordinated pathways of care is key. This should be carried out by a Scottish Government-led working group which reports to the Cabinet Secretary for Justice and Minister for Drugs and Alcohol, who are then held jointly accountable by an annual report to the Scottish Parliament. In turn, there should be clear accountability for local provision. This work should be aligned with the forthcoming National Service Specification for Drugs and Alcohol. Justice settings should be considered and these standards reflected in the needs assessment and strategic plans of Alcohol and Drug Partnerships, Community Planning Partnerships, Health and Social Care Partnerships, and Children's Services Planning Partnerships.

It should be noted that each section of the justice system has its own statutory partners, powers and duties, and it is understood that in cases, a standard is not the right concept/descriptor of accountability and governance. However, in these cases the governance and accountability initiatives should be underpinned by the same values and principles as described above and facilitate coordinated pathways of care.

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