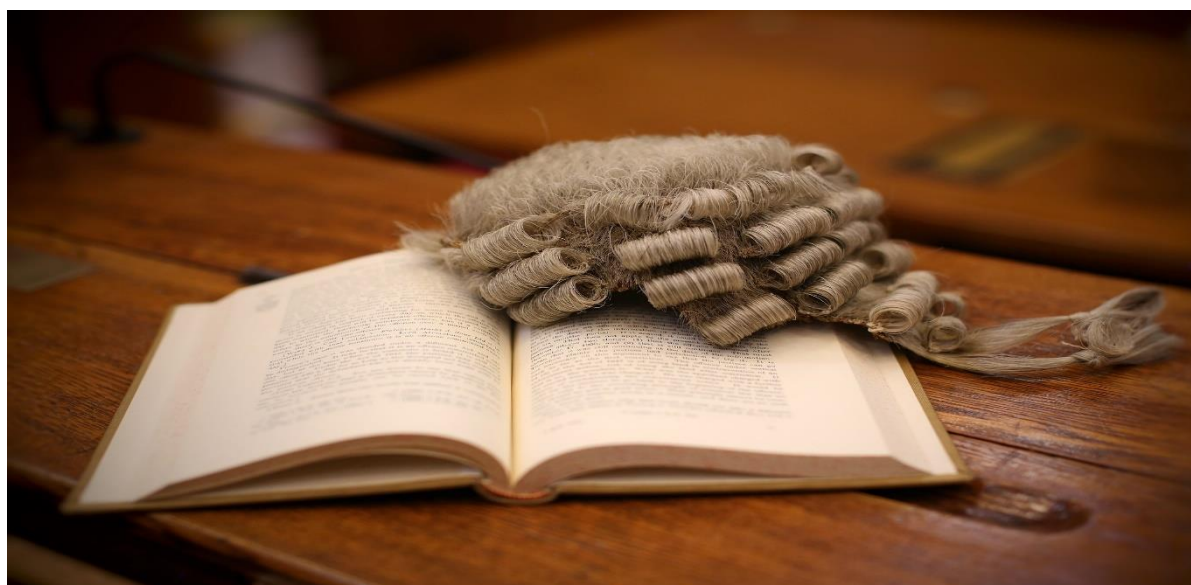


Does the mental health of offenders' impact sentencing in Scotland?



Policy Clinic, Open Justice Centre, Open University Law School

***Research report for the Scottish Sentencing Council undertaken by Chanelle
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Introduction

This research was undertaken by the Policy Clinic, which is part of the Open Justice Centre, Open University Law School. Open Justice provides free legal advice and education to members of the public in a variety of legal areas. In 2019 Open Justice established the Policy Clinic, to undertake research on behalf of organisations and charities. The purpose of the Policy Clinic is to provide research and evidence, aiming to influence policy and law reform. All work in the Policy Clinic is overseen by experienced Open University tutors who have a background in policy and advocacy work. The students taking part in the policy clinic are in their final year of their degree.

The aim of the research was to inform the Scottish Sentencing Council as to whether the mental health of offenders' impacts sentencing in Scotland. This research was carried out by Open University students via various methods; in person court hearings by student volunteers, a review of sentencing statements over the past 12 months (January 2022 – January 2023) and feedback forms completed by Scottish Solicitors. The data collection was carried out over a period of 2 months (January – February 2023). The results were reviewed by the Policy Clinic and the general conclusion is that whilst in the general court setting mental health may be considered, it is unclear whether the mental health of offenders is taken into consideration when sentencing.

For the purposes of this report a mental disorder shall be defined, as per s328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 as a mental illness, personality disorder or learning disability, however caused, with related expressions being construed accordingly. A person is not mentally disordered by reason **only** of any of the following: sexual orientation or deviancy, transsexualism, transvestism, dependence on, or use of, alcohol or drugs, behaviour that causes, or is likely to cause, harassment, alarm, or distress to any other person.

We would like to thank all those who participated in this research.

Background and Aims of Study

The Scottish Sentencing Council was established as an independent advisory body in 2015 and carries out a range of work concerning sentencing in Scotland. This includes preparing sentencing guidelines for the courts, publishing guideline judgments issued by the courts and publishing information about sentences handed down by the courts. They also conduct research into sentencing matters in relation to Scotland. The aims of the Scottish Sentencing Council are to promote consistency in sentencing, assist the development of sentencing policy and promote greater awareness and understanding of sentencing.

The Scottish Sentencing Council is interested in finding out how the mental health of offenders' impacts sentencing in Scotland. This exploratory research will then be used by the Council to develop further research and policy in this area going forward. The research will aim to identify:

1. The proportion of sentencing cases where the poor mental health of offenders is referred to in the proceedings.
2. Whether the poor mental health of offenders is considered in any way by the High Court and Sheriff Court (both solemn and summary procedures).
3. How the poor mental health of offenders is reflected in the sentence that is passed, particularly in cases where the offender's poor mental health does not reach the threshold to make a mental health disposal appropriate.

[...]

Research Methods

Research was undertaken to evaluate the use of the current Scottish guidelines when sentencing offenders with mental health conditions and whether these guidelines are sufficient. The research looked at whether mental health and mental health disposals are considered by the courts within the Scottish criminal justice system. The creation of two feedback forms, one for the use by student volunteers and one for solicitors was peer-reviewed.

The research methods used involved data being collected from multiple approaches. A survey for use by solicitors was sent to criminal law solicitors in Scotland, to obtain qualitative evidence into their experiences of the frequency of poor mental health references in sentencing proceedings and whether / how that is considered by the courts. The feedback forms were completed by Scottish solicitors who were contacted via the Scottish Law Society.

Field work was carried out by Open University students who attended a number of Sheriff Court hearings around Scotland over a three-week period (9th January 2023 – 2nd February 2023) to identify the extent to which the mental health of offenders

impacted sentencing. The fieldwork involved students attending Sheriff Court (summary) proceedings as observing members of the public to document the proportion of sentencing proceedings where poor mental health is referred to and whether / how that is considered by the courts.

[....]

In addition to the responses gained from feedback forms through the feedback, the researchers also used the feedback forms to analyse sentencing statements. Sentencing statements published by the Judiciary of Scotland were reviewed to determine the proportion of cases where the poor mental health of the offender was referred to in High Court and Sheriff Court (solemn) proceedings during a 12-month period from 17th January 2022 – 13th January 2023. This data once quantified allowed the researchers to determine what percentage of sentences passed consider the mental health of the offender.

Data from both the feedback forms given to the volunteer students at the Sheriff Courts, the survey of Scottish criminal law solicitors and the investigations into sentencing statements carried out by the research team were compared to highlight any correlation between the sentencing statements and mental health.

[....]