Dear Fergus,

CONSIDERATION OF PETITION PE1171

Thank you for your letter of 23 September in which you requested the Scottish Government's written response to the issues raised in petition PE1171.

The petitioner, Mr John Muir, calls on the Scottish Parliament to urge the Scottish Government to introduce mandatory sentencing for persons found carrying knives or other dangerous weapons in public.

The primary role of the Scottish Government is to ensure that the courts have a range of suitable penalties available to deal with the variety of cases that come before them. It has the responsibility of ensuring that there is the appropriate framework in place to promote fairness and justice in sentencing.

Tackling knife crime

The Scottish Government is taking action to tackle our problem with violence and knife crime - from tough enforcement to educating young people about the dangers of carrying a weapon.

The Police, Public Order and Criminal Justice (Scotland) Act 2006 raised the maximum sentence for carrying a knife in public from two years to four years, removed limitations on police powers of arrest for such offences and increased the age at which non-domestic knives may be sold from 16 to 18.
These changes are already having an impact and are feeding through to the figures for the prison population. The numbers sentenced to more than 6 months in custody increased during the second half of 2006-07. Most of this increase related to those sentenced to between 6 months and 2 years. We also saw an increasing number sentenced to more than 2 years. Sentence lengths remained broadly steady at these new levels throughout 2007-08. There was a further increase in numbers sentenced to more than 6 months at the start of the financial year, reaching a peak in June 2008.

In 2006, the Lord Advocate introduced new guidelines on the prosecution of knife offences which means that those caught carrying or using a knife will normally be kept in police custody until they appear in court. Where they have previous convictions for a similar offence the Crown will oppose bail and normally prosecute the case before a judge and jury and, therefore before a court with higher sentencing powers.

Records of how a customer's age and identity were verified, full descriptions of knives sold and a ban on displays visible from the street or public entrance are among the conditions proposed as part of the recent consultation by the Scottish Government on introducing a licensing scheme for knife dealers as provided for by the Custodial Sentences and Weapons (Scotland) Act 2007. In autumn last year, I launched year 2 of the VRU's anti-violence campaign. The campaign again focussed on young men carrying weapons and saw the police working closely with their partners to deliver tough enforcement measures. During the phase on knives in October 2007, the police across Scotland searched over 14,000 individuals looking for weapons and over 500 knives and weapons were seized. Disposal bins were also placed in police stations and other areas and over 1500 knives and weapons were surrendered.

I am committed to ensuring a tougher enforcement regime but it is insufficient to simply hammer knife crime. We must tackle the underlying culture of knife carrying. That is why it is so important to focus more effort on education, diversion and tackling the root causes. It is through this work that I believe we will see real change in the future. We have invested £1.6m to support the work of the national Violence Reduction Unit which in December 2007 launched a 10 year action plan with education, prevention and rehabilitation at its heart. We continue to support tough enforcement by the Police with effective and co-ordinated action resulting in more than 2,000 knives being taken off the streets since May 2007.

We need to understand what motivates young people to carry a blade and what more importantly will make them stop. That's why we place a high priority on working with relevant partners to tackle wide range of cultural issues that fuel knife crime. We are tackling the underlying causes of crime, drink, drugs and deprivation. Alcohol fuelled violence is a particular problem and our proposals for tackling alcohol misuse will help to combat this.

Our most recent initiative is 'Medics Against Violence', which will see over 65 senior medics from the Glasgow area working directly with young people to educate them about the dangers and consequences of carrying a knife. I am convinced this initiative will make a positive impact.

Over the next 12 months we are committed to taking more action across a number of fronts that will build on the solid platform of action that has been delivered over the past 2 years. While these actions take hold and feed through into outcomes, we will ensure that our police forces continue to contain and manage the existing problem on our streets and our criminal justice system comes down hard on those who use knives.

Sentencing & Independence of Justiciary

St Andrew's House, Regent Road, Edinburgh  EH1 3DG
www.scotland.gov.uk
The Scottish Government is clear that the complete independence of the judiciary in making sentencing decisions is at the heart of our criminal justice system. However, we do believe that we have a responsibility to make sure that Scotland has the right framework in place to promote fairness and clarity in sentencing.

We believe that there is a strong case for a system of sentencing guidelines to help deliver more consistent and transparent sentencing and a judicially-led Sentencing Council to develop that system.

The greater clarity and openness this will provide will help to improve public confidence in our criminal justice system so that victims' interests are properly taken into account.

As a result, on 1 September this year, we launched a consultation on our proposals for a Scottish Sentencing Council to develop and maintain a system of sentencing guidelines. The principle of judicial independence remains central to our approach to proposals for mandatory sentences. The proposed membership of the Council will include a representative of a victims' organisation or a specialist in issues that affect victims, and the process for developing guidelines will include public consultation.

While the Scottish Government will not be able to dictate which guidelines are produced, we would be keen for the Scottish Sentencing Council to consider the issue of knife crime and to draft sentencing guidelines for knife-related offences.

**Deterrent & rehabilitative effect of short sentences**

I am committed to delivering a modern, coherent penal policy that has public safety at its heart. This must protect the public by imprisoning those who commit serious crimes or who are a threat to the public. It must also give communities payback from those who offend against them.

Where appropriate and where offenders are willing, it must also give offenders the opportunity to turn their lives around - because reducing reoffending is the best way to reduce offending, and so protect our communities.

As a result, we must have a credible and robust package of community penalties coupled with a strong and proportionate sentence management regime for those offenders for whom prison will remain the appropriate disposal. Prison, if necessary for a long time, will always be the right punishment for those involved in serious crime and those who are a danger to the community.

I am not, however, persuaded of the deterrent and rehabilitative effect of short sentences. There is considerable evidence that short term sentences are generally ineffective, and we need to be moving towards tougher community sentences. Short sentences make it harder for the Scottish Prison Service to invest the time required in intensive rehabilitation of more serious offenders. We need to strike the right balance between diverting people from prison and ensuring that there are robust sanctions falling short of custody where they continue to offend. There will be occasions when a short custodial sentence is entirely appropriate, and this will be up to the court. Guidelines from the Sentencing Council will ensure that the views of the public are heard.

Following last year's review of community penalties, work is being carried forward across the following three broad workstreams;
• Preparation of legislation for a flexible single reparative community penalty (this will broadly reflect the Prison Commission’s findings),

• Work with external stakeholders to produce a framework to allow orders to be implemented and completed more quickly and to develop a more flexible range of placements suited to the full range of needs, particularly those of more vulnerable groups such as women offenders,

• Through the Community Justice Authorities, developing more effective methods of making community payback orders visible to the community and highlighting the benefits they bring.

Keeping our communities safe and helping offenders turn their lives around are inextricably linked. I believe the work we are taking forward on penal policy strikes the right balance to protect our communities.

Conclusion

Taking all this into account, I believe that rather than pursue statutory mandatory or minimum penalties, it would be more appropriate for the Scottish Sentencing Council to consider the appropriate disposals for persons found carrying knives or other dangerous weapons in public and to produce guidelines on this. This will allow the sentencing judge to have flexibility in sentencing and would not restrict the independence of the judiciary. It will also ensure consistency and transparency in sentencing as well as allowing the views of the general public to be taken into account. Were the Sentencing Council to decide that there should be a presumption that an individual will go to prison if they are found carrying a knife unless there are strong mitigating factors, I would not be unhappy.

Whilst there is no doubt that an effective criminal justice system is an important part of our efforts in tackling knife crime it is clear that these measures alone cannot solve a deep-seated problem that has existed in many parts of Scotland for decades. Given the scale of the challenge that confronts us there is no one single easy solution and I am in no doubt that action is required across a number of fronts before we will begin to see a difference. In particular, I believe that now is the time for us to focus much more on prevention, education, and earlier and more effective intervention.

I hope this is helpful.

St Andrew’s House, Regent Road, Edinburgh EH1 3DG
www.scotland.gov.uk
INVESTOR IN PEOPLE

KENNY MACASKILL