



The law and social work in Scotland

The sheriff's court

Nick Balneaves

For a number of years Sheriff Frank Crowe was a prosecutor before being called to the bench to sit as a Sheriff. These days he's Director of the Judicial Studies Committee which provides training for the Judges and Sheriffs in Scotland.

When I meet him in his offices in Edinburgh, I began by asking how important it was for the judiciary to understand the role of social workers?

Sheriff Frank Crowe

I think it's very important because they are colleagues. You know, social workers are an important resource we have and we need to have social workers on board and a good degree of mutual understanding if we're to get the right information to consider the best sentence for a particular accused.

Nick Balneaves

Can we talk about sentencing in a bit more detail? That is one of your primary roles. Can you talk us through what the Sheriff's responsibilities are in that regard?

Sheriff Frank Crowe

The judge is independent, the judge is the public figure, he or she passes sentence and is responsible for that to the Appeal Court. There are principles in sentencing which are fairly well established that may involve retribution, they may involve public safety, in the more serious cases, but they may also involve rehabilitation. There could be a restorative justice element - this is a very fashionable concept nowadays - but the concept of restitution as it's known in Scots law, has been around for a considerable period of time. I think there's also parsimony too, that one can perhaps consider what the least obtrusive and expensive option might when considering their appropriate sentence.

Nick Balneaves

What about the process that you go through to come to a decision though? Are there, is there a formal process, are there boxes you have to tick?

Sheriff Frank Crowe

Not as, not as such. We do have materials in judicial studies, if you like, a sentencing check list, but that is not a ticked box thing, it's more about a aid memoir to all of the legislation and all of the alternatives that are out there, and when they might be appropriate to use. But I suppose one would start off by looking at the gravity of the offence; the offenders record and personal circumstances, and as I say, whether there was a victim element, their means for example, a fine might be appropriate. But really if someone has no money and the offence is quite serious, then one is definitely looking at other alternatives.

Nick Balneaves

Compared to England and Wales, the judiciary in Scotland do have considerable discretion. How important is that discretion, that independence?

Sheriff Frank Crowe

Well the thing is a double-edged sword. It's certainly very helpful in that each case can be considered on its own merits, but then if one is seen to get it wrong then there may be a public clamour and perhaps a difference of view by the Appeal Court if the case is successfully appealed.

So you're right, in England they have very many more sentencing guidelines, but then there's a much bigger bench, it's a bigger country and all of the summary work is carried out by lay magistrates. Scotland's a smaller system, traditionally I suppose most people knew one another, and perhaps Sheriffs very quickly got into a way of thinking. But on the other hand I suppose increasingly there may be criticisms that there's a lack of consistency, some would wish greater uniformity, although I wouldn't use that word myself. But in the Scottish setting there are view guidelines but that does I think place a great responsibility on the sentencer to weigh out the factors, to approach and consider what the right sentence is and be able to articulate that in a sentencing report if called upon to do so.

Nick Balneaves

How far can you allow your personal opinions to come into play?

Sheriff Frank Crowe

Well I think they all come to Court with personal baggage. We're all appointed as judges from somewhere, not from thin air, so that our experience, our background will I think have, have blended our general approach. I think inevitably there'll be some sentencers who are perceived as being more severe than others, or more severe in particular cases than others. But I'd like to think that there is a measure of consistency.

Nick Balneaves

How important in that regard though is it for a social worker coming to Court to know their Judge?

Sheriff Frank Crowe

Well I think particularly with resident Sheriffs who are in a town or city for many years, inevitably their views about a range of cases will become known, and to some extent lawyers will react to these known policies, and I think it, I think it's certainly helpful to social workers to know those local Sheriffs to understand the problems they face on their approach. So that I'm not saying the reports can be in tune with that, but there are reports can recognise and cover what the Sheriff is interested in. I mean from my particular background as having been a prosecutor, I suppose I always home in on the attitude to offence section of a report, that would be my particular thing.

Nick Balneaves

How far do social work reports assist the judiciary in the decision?

Sheriff Frank Crowe:

Well I think they go a great way because obviously in a busy Court one has limitations and time, so if the offence is of such seriousness that background reports are sought, then one has, through that report, opportunity to find out more about the person. And that can mean basic things like does the person have a fixed address? Do they have a stable family or relationships? Do they have employment, or training or some possibility of a job or a career? Or do they have serious health or other difficulties that may make certain of these disposals problematic? So when you're contemplating these alternatives, you do need to have a proper report that sets out the background.

So when you're contemplating these alternatives, you do need to have a proper report that sets out the background and lists certain features and comes in a form and ... and ends up with some reference or assessment to the various disposals to assist you in what sentence you feel appropriate to impose.

Nick Balneaves

That would be the ideal report, but what do you dread seeing in reports?

Sheriff Frank Crowe

Well I think nowadays what I would dread seeing would be reference to so called risk assessment models, which do not appear to tie up with the material earlier in the report, so that suddenly after several pages of reading, you find that somebody's a high risk to the public or a low risk, and that seems to be at odds with what you've read earlier. But on the other hand sometimes their reports can be too mechanistic and ideally you want something

that flows, is interesting to read and, you know, comes together and gives you a nice set of alternatives. But I appreciate the pressures are terrific and, you know, the time too, and writing reports is an art, it's something that one builds up experience with over a period of years, until one can say there's a competency there. So I... you know, we're going to come across social workers with a variety of experience and I don't think we should be too picky about it. And I think it would be fair to say that over the last 15 years with the development of national standards, there has been a greater consistency and professionalism of approach.

Nick Balneaves

Do you think social workers should expect to be asked questions about the reports in Court?

Sheriff Frank Crowe

Yes. I mean once again, in an ideal world perhaps in the smaller not so frenetically busy place, it would be nice to have either the report writer, or a Court social worker who has knowledge of the cases there, so that the Sheriff can ask about particular disposals. Remember that the Sheriff on the day may be a visiting Sheriff from another Court, or a part time Sheriff, just because you've got a wig and a gown on, doesn't mean to say they know everything and all there is to know about particular disposals in that Court. So I find the presence of the Court social worker in Dundee immensely helpful. And by contrast I find the lack of social workers in Edinburgh, because of its size and the pressures, slightly disheartening at times.

Nick Balneaves

Standing up in Court can be an intimidating experience for anyone. Do you recognise that and do you make allowances for that as a Sheriff?

Sheriff Frank Crowe

Oh yes, I think with somebody new that I don't know, I would make allowances for that, and in a busy Court it can be quite dramatic to have to stand up in front of everybody. What the Sheriff should do and is trained to do, is to try and make people feel as relaxed as they can in the alien environment and try and reassure them.

Nick Balneaves

What advice would you give to trainee social workers in that regard?

Sheriff Frank Crowe

Well I think expect to be asked a question in public and be prepared for it. And it may be a good idea if you're coming to Court for the first time and being thrust into that role, would be to ask the Sheriff Clerk, if you could meet a Sheriff, or the Sheriff for the day and simply introduce yourself.

Nick Balneaves

How approachable are Sheriffs in that regard?

Sheriff Frank Crowe

(LAUGHS) That may vary. But I would hope that most of us would look at it positively. I'm sure there may be travelling Sheriffs who might be here today and never back again, so there may be less in it for them, but I think if the social worker can get an introduction to the resident Sheriff or some of the resident Sheriffs, then that's important because they are performing a role as officers of the Court.

Nick Balneaves

Do you think social workers have to earn credibility before the Court?

Sheriff Frank Crowe

Oh I think like everybody else, if you receive a report from someone whose signature is unfamiliar to you and perhaps never meet that person for some time and find some of their traits of language slightly odd, then you know, there may be an initial hesitation. But in my experience, particularly where social workers are able to come into Court on a regular basis

or we meet at meetings or some semi social events that our rapport can be built up, and in that way a credibility can follow. I mean if I can take an example in a related context. I once received a report from an external organisation about an accused. I'd never heard of this body before. Some rather badly dressed people came forward in Court and said they were the report writers, but they spoke very eloquently about the accused.

I was persuaded to follow a certain course of action with that organisation really in charge of supervision, and I was very pleased with the response and I've been pleased in subsequent instants, instances. So it's very easy to build a good credibility with the Court if you show you're a good player. You don't have to come in wearing a three piece suit and tie. I think if we find out that the social worker is interested in the client and prepared to stick their neck out and has a reasonable plan about what the future can hold, then I would like to think that most of us are optimistic and can meet that in the appropriate cases.

Nick Balneaves

Do you think social workers and the judiciary are working towards the same ends?

Sheriff Frank Crowe

I hope so. Because as I say, the information from social workers is a vital part in the sentencing process. Without that we'd often be taking a stab in the dark. I think without those reports we might be relying much more on our own prejudices. So that having a rounded report, which goes into the background, which discusses with the offender his record, his attitude to the offence, his personal circumstances, his hopes for the future, this is a very vital document if we are to approach and have any confidence in our sentencing.

Nick Balneaves

What would you, as a Sheriff, like social workers to remember about your role as a Sheriff?

Sheriff Frank Crowe

Well just that it's difficult. It can be very much the public eye, that any one of our disposals might make the front page of the next day's newspapers, or indeed that night's television news. The stakes are high if we get it wrong. If we bail someone, who then goes on to commit a serious crime, or we're seen to grant someone a liberty or give them a lenient disposal and then it follows up that once again a serious crime is committed, then we will be named and shamed. So that's always at our backs. But on the other hand we have to do our job independently and without fear or favour, so that on the facts before us we are making the best shot at the sentence on the day.

Nick Balneaves

So the buck does stop with you?

Sheriff Frank Crowe

Absolutely.

Nick Balneaves

Sheriff Frank Crowe, thank you very much.

Sheriff Frank Crowe

Thank you.