

**Cross-Party Group on Children and Families
Affected by Imprisonment**

Wednesday 30 January 2013

1 – 2pm

Attendance: Mary Fee MSP, Margret McDougall MSP, Richard Lyle MSP, Nancy Loucks, Michelle Martin, Maggie Melon, Janice McGowan, Lorraine Johnstone, Kathleen Bryson, Kirsty Primrose, Sara Watkin, Roberta Reid, Irene Kitson, Marina Shaw, Tim Parkinson, Carol Robinson, Cara Jardine, Dinah Aitken, Lucy Connelly, Gareth Brown, Don Millar, Robert McGeachy

Apologies: Sarah Roberts, Christine Baird, Simon McLean, Erica Clarkson, Sharron Stirrat, Sue Maxwell, Ginny Jackson, Winne Delany, Evelyn Reid, Donald Dickie, John Newton, Viv Dickinson, Justina Murray, Kate Philbrick

Welcome and apologies

Mary Fee MSP welcomed those in attendance. Apologies were noted prior to meeting and were not read out.

ANNUAL GENERAL MEETING:

Election of office bearers

In accordance with the terms of Cross-Party Groups for the Scottish Parliament, election of office bearers is held on an annual basis. Nancy reminded the group that Ms Mary Fee was the current Convenor of the Cross Party Group, Ms Margret McDougall and Mr Richard Lyle Vice Convenors, and Gareth Brown as Secretariat, with no Treasurer due to the group having no budget or income. The group nominated and re-elected all post holders.

MEETING OF THE CROSS-PARTY GROUP:

Minutes of last meeting

Minutes of previous meeting were agreed unanimously.

Update on Parliamentary Business

Ms Fee informed the group that she had put a number of Parliamentary Questions to the Scottish Government. These were included at the end of the minutes. Ms Fee informed the group that she had been told, for a third time, that no prison should be describing bonding visits between a prisoner and their child as a contract. However, Ms Fee had received a copy of the contract issued by HMP Shotts. The Justice Minister had informed Ms Fee in the chamber that the word 'contract' was a colloquialism. Ms Fee is currently waiting on a

number of Freedom of Information requests from the Scottish Prison Service concerning bonding visits, which will hopefully be available before the next meeting of the Cross Party Group.

Since the last meeting, Ms Fee has spoken twice in the Chamber on justice issues - the first on the debate of the Scottish Police Force, and latterly on the Scottish Government Mental Health Strategy. Ms Fee informed the group that she has spoken in Parliament previously on The Scottish Mental Health Strategy, focusing specifically on lack of strategy to help new offenders and the substantial gap for prisoners with regard to support for mental health. Ms Fee also highlighted the impact on children in having a parent in prison and discussed the Government's focus on Early Years Interventions and reoffending polices. Ms Fee informed the group that she was still surprised that there was no specific Act or commitment to improve the mental health of children of imprisoned parents.

Presentation and discussion:

Maggie Mellon, an independent social work consultant and writer, provided a presentation on Human Rights, the Courts and the impact on children and families.

Maggie informed the group that, earlier this month in a Scottish court, a Sheriff decided that a woman should not go to prison because she was a single mother of a 17-month old boy who would go into an orphanage. The Sheriff and the Crown had been concerned about the implications of sending the woman to prison, and they agreed with her defence lawyer that a special report was needed to look at the child's situation should his mother be imprisoned. Maggie provided this report to the court, which was considered in the context of the human rights of the child, and the Sheriff decided that the woman should not go to prison.

Maggie suggested that the group might be surprised by this turn of events, given what goes on daily in the Scottish Courts, and explained that the prison was in Slovakia, and the court was a hearing an application by the Slovak authorities for an extradition warrant for the woman to serve her sentence in Slovakia for breaching her probation order.

Maggie informed the group that she had not yet seen the Sheriff's written explanation but could confirm that the case was decided upon the best interest of the child. Maggie asked the group why this did not happen routinely in the Scottish Courts, a question she had asked widely to human rights lawyers, criminal court lawyers and advocates, and academics. No one had been able to provide an explanation. Maggie explained the case was based on the child's best interest under Article 3 of the UN Convention on the Rights of the Child. Also of importance in this case was Article 8 of European Convention on Human Rights. Maggie informed the group that previous immigration rulings had accepted the child's best interest as reasons for not deporting a parent or carer. Maggie also highlighted the case of an Extradition Ruling in which the Supreme Court ruled that a woman due to complete a prison sentence in Poland should not be deported because of the impact on her two youngest children, despite her husband being available to care, as the evidence suggested these two young children would suffer disproportionately from their mother being imprisoned. Maggie

also related a recent of a man being spared a prison sentence for domestic violence on the grounds that he had a highly paid job and, were he to be sent to prison, he wouldn't be able to pay the mortgage, which would affect the children disproportionately.

Maggie quoted of Article 3 of the UNCRC: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration" and highlighted that the rights of a child should be a primary consideration but was not a 'trumps all' consideration. Maggie also quoted Article 8 of the ECHR and suggested that right to private home and family life is qualified by the certain conditions, namely that 'There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.' Maggie suggested that the courts can breach the right to a private and family life for necessity in a social democracy and explained that the European Court held that necessity implies 1) that interference corresponds to a pressing social need; and (2) that it is proportionate to the legitimate aim pursued. Maggie suggested that proportionality should be key in the decision to send a parent, particularly when they are the sole carer, to prison.

Maggie highlighted that, in the majority of cases in Britain where carers go to prison, particularly women, this is for petty crime and often for remand hearings. She also noted that discussions about the best interest of the child do not routinely go on. Maggie had looked at the guidance for Criminal Justice Social Work reports and found that it stated that social workers should state the care arrangements for any child/ren, but it doesn't ask what would be the best interest of the child.

Maggie informed the group that she had looked at the general accepted knowledge regarding children's developmental needs at different ages and the impact of separation on children in the terms of developmental delay, distress, later emotional problems, and failure to achieve educational goals. Maggie also included information about the particular circumstance of the child on which she was asked to comment.

Maggie suggested that the issue of proportionality was of interest as she highlighted the cost to the state of taking children in to care and remarked on how imprisoning a sole carer can lead to disproportionate harm done to the child and to the cost to the state.

Maggie highlighted that the issue was not covered in the report from the Angiolini Commission on Women Offenders, which she found surprising given the potential to cut the number of women in prison if there were more focus on how a sentence would impact on children, which should be of interest to the Justice Minister. Maggie posited whether there was any need for further legislation or to build up case law on the matter.

Nancy informed the group that she had given evidence on this to the Commission on Women Offenders, who had chosen not to include the issue as they believed social work reports already take the best interest of the child into account. In agreement with Maggie's presentation, Nancy commented that Social Work reports do not routinely do this. She

added that the Children's Commissioner had focused the recommendation for child impact assessments on the UNCRC but did not note that the need to query proportionality was already a requirement in domestic law under the Human Rights Act. Nancy argued the need for a report to be completed in order to assess proportionality.

Maggie commented that, during her background research for the case, she had read Lord Judge's qualified opinion on extradition cases which stated that if a woman was to be extradited to serve a sentence in a foreign country, then a decision would be based upon how punitive the receiving criminal justice system is compared to the British system. Maggie suggested there was an assumption that the British Criminal Justice System was therefore the 'gold standard' of sentencing but argued that the human rights discussed were not being routinely addressed, as women were still being put on remand for crimes they wouldn't go to prison for.

Ms Fee commented that she had always been assured that social workers completed comprehensive assessments for children that look at everything. Maggie again highlighted that the guidance for social work is narrow in that it only describes reporting the child care arrangements.

Tim Parkinson highlighted that the guidance for Criminal Justice Social Work reports should state that the Human Rights Act article 8 ought to be considered under this. Tim also raised that social work should also have to consider article 8 when recommending children aged between 16-18 with previous convictions going back to the Children's Hearing as a matter of course.

Ms Fee suggested there were a number of questions that she could put to the Scottish Parliament and suggested that her office could work with Maggie to draft these questions. Ms Fee suggested questions such as the cost to the state when children go in to care and how many mothers are in prison.

ACTION: Ms Fee's office to discuss possible PQs with Maggie

Don Millar suggested that the Cross Party Group ask the Justice Minister if he intends to revise the guidance for Criminal Justice Social Workers to take account of the two articles and to ask the Community Justice Division if they have any plans to revise the national standards further for Criminal Justice Social Work reports. Nancy noted that Criminal Justice Social Work reports were not requested in most cases and that there was no assessment prior to remands to prison. Maggie suggested there might be a need for guidance for Sheriffs and suggested the need for an automatic assumption against sole carers being remanded into custody. Nancy suggested that in any instances when someone is going in to prison that an assessment is needed to make sure the proper care arrangements are put into place.

Marina Shaw informed the group that, in the absence of formal structures, Circle has been providing Sheriffs for the last four years with a one-page overview of the strengths and weaknesses and consequences for the children if their parents are imprisoned, which has been largely welcomed by Sheriffs. Two copies are sent: one to the defence solicitor and one for the defence solicitor to give to the Sheriff. Marina agreed to send a copy of a sample letter to the Cross-Party Group.

ACTION: Marina to send a copy of a sample Child Impact Assessment letter to the Cross-Party Group.

Sarah Watkin suggested that child impact assessments could also be used as a therapeutic piece of work to be fed between mother and agency so she could understand herself, as a sole carer, the impact of her behaviour.

Dinah suggested that defence agents could do more to consider routinely what other agencies they could use to draw in and felt that solicitors may have become reliant on the Criminal Justice Social Work report, if there is one.

Robert McGeachy highlighted that Kenny MacAskill MSP, the Justice Minister, and MSP Aileen Campbell had some years previously taken forward a proposed amendment to the Criminal Justice and Licensing Bill, in terms of a requirement for sentencing processes to take into account the impact of parental imprisonment upon the offender's child or children. This was rejected by the Justice Committee, but Robert suggested that, at the time, the Justice Minister had seemed interested in the proposals and felt now was the time to revisit the previous 'good will' expressed by the Justice Minister, and by Aileen Campbell particularly as she is now the Minister for Children and Young People to take forward these important issues.

Maggie wondered if there was any scope for this in the Children & Young People's Bill and also questioned whether any legislation was needed as it was simply a case of people using the rights already set out in the UNCRC and ECHR.

Ms Fee suggested that the CPG could write to both the Justice Minister and the Children's Minister highlighting the issues covered today and how they intend to take these issues forward. Robert McGeachy suggested that, given the Scottish Government's Bill Team for the Children and Young People Bill was now meeting various organisations to discuss the Children and Young People Bill that the Cross Party Group might wish to consider meeting the Bill team to explore how the Bill could address the issue of the impact of parental imprisonment upon children. Richard Lyle MSP agreed to take this forward.

ACTION: CPG to write to Ministers regarding Child Impact Assessments. The CPG also to request a meeting with the Scottish Government's Bill Team for the Children and Young People Bill.

Ms Fee also suggested inviting the aforementioned Ministers along to a CPG meeting. Ms Fee suggested that committee rooms are available in the evenings and free of charge and felt they could be used as an event to gather the views of Ministers. Ms Fee suggested the CPG could host a few themed events throughout the year. Mr Lyle also suggested that they could be sponsored. Maggie commented that the Scottish Child Law Centre had hosted annual events using committee rooms at the Parliament where they invited topical speakers which had always been well attended, including from Ministers. Ms Fee suggested that her office would look at the diary commitments for committee rooms and suggested a themed event before summer recess and one about October time.

ACTION: Ms Fee's office to check diary commitments for committee rooms with in view arranging an evening event on child impact assessments

Dinah spoke about the potential for Judicial training, as they are not constrained only to request Criminal Justice Social Work reports and can ask for any information they feel is necessary. Irene Kitson informed the group that the Howard League had previously raised this issue with training for Sheriffs.

Sara suggested there seemed to be a cultural difference in reporting as, for example, Children & Families Social Workers arguably focus on the best interest of the child more than Criminal Justice Social Workers. Lorraine Johnstone raised concerns about how the argument would be presented and suggested it need to be a sophisticated, joined up assessment. Lorraine commented that the GIRFEC principles set out what individuals should be doing and was unsure why this didn't cross into criminal justice thinking. Ms Fee suggested that felt there need to be more joined up thinking and commented that GIRFEC has to work in tandem with more partnership working. Lorraine suggested that she felt it was more than a cultural issue but also a resource issue to conduct the assessments and meet the needs that were being identified. Maggie highlighted some concerns about the use of statutory social work or psychology services conducting the assessments due the aforementioned cultural issues and possibly that they would not report impassionately when discussing the rights of the child.

AOCB

Nancy informed Families Outside would be hosting their next National Conference on 9 May 2013, and the University of West of Scotland would be hosting an academic conference on the impact of imprisonment on children on 31 May 2013.

Marina highlighted a case heard in England whereby the court determined that Disclosure Scotland showing offences committed when the adult was a child was a breach of their human rights under article 8. Maggie suggested that Scotland was ahead on this front, as the Children's Hearings Act prohibited a child's offence record from being carried on.

