

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

Wednesday 21st November 2012

1 – 3pm

Attendance: Mary Fee MSP, Nancy Loucks, Janice McGowan, Kerry Watson, Marina Shaw, Robert McGeachy, Don Millar, Maggie Mellon, Cara Jardine, Michelle Martin, Gareth Brown, Dawn Cairney, Sarah Watkin, Nico Juetten, Ina Hirschberger, Winnie Delaney, Kerry Watson, Nicola Ceesay, Collete Lyons, Yvonne Robson, Graham Blout, John Newton, Howard Llewellyn.

Apologies: Sarah Roberts, Christine Baird, Peter Willox, Donald Dickie, Tim Parkinson, Justina Murraray, Donny Scott, Simon Mclean, Alan Montgomery, Gillian Bell, Lisa Bettie, Petter Willox, Oliver Alridge, Anne Pinkman, Sue Maxwell, Kirsty Primrose, Kate Philbrick, Ann Darlington.

Welcome and apologies

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

Minutes of last meeting

Minutes of previous meeting were agreed unanimously.

Matters Arising

Nancy informed the group that the Scottish Prison Service has planned a new prison for women at HMP Inverclyde and a new unit at HMP Edinburgh as an interim measure until a single purpose built facility for women is developed. HMP Cornton Vale will be undergoing refurbishment, and one house block of women at a time will be moving to HYMOI Polmont. All prisons have now received an email from the Chief Executive Colin McConnell to have some provision for visitors support, in form of a Visitors Centre or 'help hub'. A National Steering Group focusing on how to organise funding and how Visitors' Centres will be commissioned and operated has been formed and convened by the Church of Scotland. Their first meeting is due to take place next week.

Update on Parliamentary Business

Ms Fee informed the group that since the last meeting she has put a number of questions to the Scottish Parliament around the role of education and children of incarcerated parents as well as general questions about prisoners with mental health issues. Answers were received on the 4th of Dec and are included at the end of the minutes.

Ms Fee has also lodged motions on the role of Family Support Workers and on the UPR accepting the recommendation on children of prisoners.

Since the last meeting Ms Fee has spoken to Justice debates in the Parliament, the first on the role of media in criminal trials. Ms Fee debated against the use of video cameras in court, arguing it may cause harms to victims, the accused, and the families of the accused. Ms Fee has also spoken in the debate of Scottish Civil Justice Council and Criminal Legal Assistance Bill Stage 1 currently making its way through Parliament. With over half the cases involving women in some form, Ms Fee argued that there could be an impact on family relationships and children in the family unit. Anyone wishing to read the context of Ms Fee speech should contact her office for a copy.

At the last meeting, Ms Fee informed the group of a complaint from a prisoner in HMP Shotts who had his bonding visits removed as form of punishment for breaking prison rules. Ms Fee wrote to the Chief Executive of the Scottish Prison Service outlining her concerns and received a reply on the 4th October. Colin McConnell replied that it was unacceptable to withdraw such visits as a punishment. Furthermore he has instructed a review of current arrangement for family visit schemes including the criteria for inclusions and exclusions and would be issuing revised guidelines for all prisons. Ms Fee, in her reply, will ask for a copy of the revised guidelines as well as the results of the review. However, Ms Fee has also been informed that withdrawal of family visits is still being used as a punishment, and the prisoner in questions has not yet received an apology. Ms Fee intends to bring this to the attention of Colin McConnell in her reply.

The group discussed that, in some cases, not only are removal of family visits being used as a punishment for breaking prison rules, but some prisoners are also being deprived family visits on administrative grounds. Ms Fee agreed to highlight this in her letter to Colin McConnell.

Update on Universal Periodic Review

Nancy updated the group that a number of organisations are lobbying the government to account for what has been done against the recommendations accepted.

Presentation and discussion:

Dinah Aitken, a post-graduate research student and a qualified solicitor, with approximately 16 years in practice with previous experience working for the Scottish Legal Aid Board (SLAB) discussed the reforms to legal aid and repercussions for families.

Dinah informed the group that there were currently negotiations going on about the content of the Legal Aid Bill. The Bill is in two parts, with the first about creating a Civil Justice Council. Part two of the Bill makes changes to the availability of legal and administration of criminal legal aid. The Bill has passed stage 1 and 2 with a date of the 3rd stage yet to be set. The proposed changes within the Bill aim to make savings for the legal aid budget and

ensure that those who can afford to pay towards their criminal legal aid costs do so, also equalising some disparities between the criminal and civil legal aid systems.

Dinah provided the group with a brief overview of the current system and explained that the Criminal Justice System has two levels of prosecution through the courts: summary cases for minor cases and solemn cases for more serious case. To deal with this there are three form of legal aid assistance. Firstly, advice on assistance is advice from a solicitor without court representation. Secondly, advice by way of representation, known as ABWOR, allows for limited representation in court and tends to be used in summary cases where there is a guilty plea. Lastly there is legal aid itself for representation in summary with non-guilty pleas, high court cases and appeals.

ABWOR clients are assessed by solicitors for eligibility involving a simple assessment based on capital income. If eligible, a client will either have to pay nothing or make a one of contribution towards to the cost. This is collected by the solicitor and is set off against the final bill that the solicitor submits to SLAB at the end of the case.

To be eligible for legal aid in summary cases not covered by ABWOR, SLAB assesses the client according two tests. One is 'undue financial hardship' and the other is 'in the interest of justice'. For legal aid in solemn case, there is only the financial test. If you pass the test for any type of case you are undergoing then there are no costs from there on in. This is different for civil legal aid as you might be assessed as eligible for legal aid for civil case, but if you are within certain financial parameters you may have to pay towards the costs and individuals are usually able to do that by a series of monthly instalments. If you fail to pay under those regulations then legal aid is removed and the solicitor cannot do any further work on your behalf.

The proposals in the Bill will change the current situation to provide more consistencies across ABWOR. While this is largely uncontested, the new proposed changes will also mean taking the income of the accused's spouse or partner into account when testing for ability to pay. This already happens to some extent for advice and assistance in ABWOR but is a new thing in relation to civil legal aid for representation in court.

The Bill also proposes that it will be the solicitor's responsibility to collect the contribution in summary cases and SLAB in the solemn cases. The way the contributions will be calculated is complicated and will be based on a number of factors such as type and anticipated length of case. The level of contribution is a key proposal as a client has to start paying if they have £68 of disposable income per week. The cut off for eligibility is £222 of net disposable income per week. There is also a Capital element, so if you have £700 or more in Capital then you may have to make a contribution from that Capital. Those individuals on passport benefits such as income support and jobseekers allowance will be entitled to free legal aid however they may need to make a contribution if they have £700 or more in capital.

Criticisms of proposed changes include the fear that more people will not access a solicitor and will represent themselves in criminal cases if they can't or don't want to make a contribution, which may result in more wrongful convictions. More people may plead guilty because it's all they can afford to do, and there may be a decrease in choice of representation as small firms may not have the administrative capacity to manage the assessment of contributions. There is also nothing in the Bill to allow for those found not guilty to claim their contributions back, therefore potentially innocent individuals and their families will be penalised for being prosecuted. There may be cases delayed as solicitors chase clients for payments which could impact on the general administration of justice. The proposed changes are another disincentive to come of benefits if there is a case coming up. Families also rely on defence agents as a source of advice and information, and there is the potential to alienate families from this source of support if tensions over payments arise. Those who make a false declaration will also be referred to the Prosecutor Fiscal. The Government hope to make up to 3.9 million in savings from the Legal Aid Bill with these changes. At the moment 82% of people qualify for free legal aid.

Dinah informed the group that solicitors are making a stand against the proposed changes. On Monday the Edinburgh agents withdrew their services from the custody court, and all Bar Associations have voted to take industrial action if some changes are not made to Bill. The Cabinet Secretary has met with members of the Law Society and has said he will consider amending the threshold of £68, albeit no other figure has been discussed to date. He has also agreed to discuss with SLAB whether they will take on collection of contribution on a commercial basis.

The group discussed the implications for the accused and their families. Ms Fee suggested that there may be an increase in guilty pleas, and there would be a perception that pleading guilty would be the preferred and easier option. Given the amount of women that would be put in that position, the impact on them and their families is of huge concern.

Dinah informed the group that the disposable income would be calculated after things such as rent/mortgage and child maintenance and other unavoidable expenditures such as loan repayments were taken in to account. Marina Shaw suggested that this would catapult individuals into the criminal justice system if they chose to plead guilty and was concerned about how this would impact on individual's life chances.

Don Millar noted that in the past most individuals would plead guilty at summary court. After the introduction of wider Legal Aid, there was a shift to most individuals pleading innocent. Don suggested that the proposed changes may be an attempt by the Government to balance these two extremes. Dinah suggested that there was some attempt to address the imbalance with the introduction of ABWOR.

Howard Llewellyn provided anecdotal evidence that women are more likely to take a guilty plea for reasons that are related to their circumstances. Howard wondered if there was any way to evidence the anecdotal evidence that individuals plead guilty if they feel that will

allow them to return home that night. Nico Juetten said there was some evidence of individuals' lack of understanding of the process in general of what happens in court and the consequences of pleading guilty.

Nancy asked Dinah if the family would be held liable to pay any prosecutions of a false declaration made to the Legal Aid Board. Dinah suggested that it would be the individuals' responsibility to pay, however it is like to impact on the family as it is another criminal case. The Capital cost applies to savings and other realisable property such as a classic car.

Maggie Melon commentated that the savings the Government hopes to make does not seem like a large amount overall and asked if anyone had broken down how Legal Aid was spent and who gets the bulk of the money. Dinah suggest SLAB should have the figures and suggested that in Solemn cases 84% of individuals get legal aid because of their benefits. Ms Fee suggested that her office would be willing to try and source this information.

ACTION: Gareth to access information regarding how legal aid is spent.

The group discussed the fact that, if a sentence is imposed or an individual spends a period of time on remand, this ultimately restricts an individual's ability to work and make any payments. Dinah explained that in civil cases there is a period of assessment, and the amount you have to pay is determined at a certain point and period of assessment lasts for the next 12 months. If your income varies, you are meant to notify the Board for a re-assessment. Dinah suggested that an individual may be processed through the courts relatively quickly however may have to make contributions for quite some time after.

Howard noted there was an ethical concern of a family being affected by the actions of one individual within the family. Dinah suggested that it would be the accused person that the solicitors would chase for any non-payments. However, agreed that as the assessments where based on more than just an individual's income, then the whole family is likely to suffer.

Ms Fee agreed that this could be taken forward as a group through Parliamentary Questions to highlight the ethical principle of whole family being assessed; stating the risk of collateral damage to families; and the possible disproportionate effects this might have on women.

AOCB

Nancy informed the group that EUROCHIPS had completed the COPING study on children affected by parental imprisonment and presented finding in Brussels last week with a report available in December. Preliminary findings are available on the Eurochips website.

Kim, from the office of Tavish Scott, MSP for Shetland, raised a complaint on behalf of a family member who has had difficulty with payments into Scottish Prisons. The family member had written to the Scottish Prison Service raising the issue of electronic payments. The Scottish Prison Service former Chief Executive, John Ewing, replied in February that

discussions were taking place to establish a system that would make it easier for families to make payments in to prison. In August they wrote again to follow this up and were informed by Colin McConnell that SPS did not have the staff or financial resources that would be required to invest and implement a system that would allow these types of payments to be made in a safe and secure manner with auditable receipt of funds and did not anticipate any change due to such limited fund and competing demands. The family member was advised to make payments in the form of postal orders or cheques.

Nancy agreed that this was a common concern for families evidenced by the calls received to Families Outside helpline, who have and continue to raise this matter with the Scottish Prison Service. Frustrations arise as there is an electronic payment system currently operated in England and Wales. However past discussions with individual prisons confirm that the Scottish Prison Service as a whole has to sign up to it.

Sarah Watkin raised some concerns about communication and joining up of services at the prison she works in and felt that the needs of women were not always being understood. Sara raised some concerns about members of staff working closely with women were not benefiting from training that is available to other staff. There had also been problems with outside agencies being granted access at the front desk because they had not been informed of their attendance.

Date of Next Meeting: TBC

Question S4W-11337: Mary Fee, West Scotland, Scottish Labour, Date Lodged: 19/11/2012

To ask the Scottish Government what training is provided to teachers regarding giving support to children with imprisoned parents.

Answered by Alasdair Allan (28/11/2012):

The teaching standards set by the General Teaching Council for Scotland require teachers to be able to identify and respond appropriately to pupils with difficulties in or barriers to learning and recognise when to seek advice in relation to their additional support needs. A child with a parent in prison would be likely to fall into this category.

One and four year courses of initial teacher education in each of Scotland's eight teacher education universities address, to differing extents, children's family circumstances and contexts, including those of children whose parents are imprisoned. Beyond that, schools and local authorities are responsible for ensuring that continuing professional development is provided to meet teachers' agreed development needs both during their induction year and throughout their careers.

Current Status: Answered by Alasdair Allan on 28/11/2012

Question S4W-11336: Mary Fee, West Scotland, Scottish Labour, Date Lodged: 19/11/2012

To ask the Scottish Government how schools support children with imprisoned parents.

Answered by Alasdair Allan (03/12/2012):

The Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) places duties on education authorities and other agencies to provide support to children and young people who have an additional support need which is causing a barrier to their learning. Education authorities must identify, plan and make provision for the support to be provided and review that support to ensure it is appropriate. This would include support for those who have an imprisoned parent.

Current Status: Answered by Alasdair Allan on 03/12/2012

Question S4W-11335: Mary Fee, West Scotland, Scottish Labour, Date Lodged: 19/11/2012

To ask the Scottish Government how many cases of self-harm have been reported in prisons in each year since 2008.

Answered by Kenny MacAskill (03/12/2012):

I have asked Colin McConnell, chief executive of the Scottish prison service, to respond. His response is as follows: "The following table illustrates the total number of self-harm incidents recorded as such on the prisoner records system."

20122011201020092008

244 217 217 184 153

Current Status: Answered by Kenny MacAskill on 03/12/2012

Question S4W-11334: Mary Fee, West Scotland, Scottish Labour, Date Lodged: 19/11/2012

To ask the Scottish Government how many hours per week a psychiatrist is on duty at each prison.

Answered by Michael Matheson (03/12/2012):

The information requested is not held centrally.

Current Status: Answered by Michael Matheson on 03/12/2012

Question S4W-11333: Mary Fee, West Scotland, Scottish Labour, Date Lodged: 19/11/2012

To ask the Scottish Government how many referrals there have been in prisons for mental health treatment in each year since 2008.

Answered by Kenny MacAskill (03/12/2012):

I have asked Colin McConnell, chief executive of the Scottish prison service, to respond. His response is as follows:

“This information is not held by the Scottish prison service (SPS). You will be aware that responsibility and accountability for the provision of health care services to prisoners transferred from the SPS to the national health service on 1 November 2011, and these services are now provided by the respective local health boards. As part of this transition, all prisoner health care records, including mental health records, transferred from SPS to the respective health boards.”

Current Status: Answered by Kenny MacAskill on 03/12/2012

Question S4W-11332: Mary Fee, West Scotland, Scottish Labour, Date Lodged: 19/11/2012

To ask the Scottish Government how many prisoners are receiving treatment for mental health problems.

Answered by Michael Matheson (03/12/2012):

The information requested is not held centrally.

Current Status: Answered by Michael Matheson on 03/12/2012

Question S4W-11331: Mary Fee, West Scotland, Scottish Labour, Date Lodged: 19/11/2012

To ask the Scottish Government what the reoffending rates are for each prison.

Answered by Kenny MacAskill (03/12/2012):

I have asked Colin McConnell, chief executive of the Scottish prison service, to respond. His response is as follows:

“It is not possible to accurately align reconviction rates with individual prisons as prisoners may transfer between prisons on a number of occasions during their sentence. However,

reconviction rates for offenders released from a custodial sentence are published by the Scottish Government and can be accessed on-line at:

<http://www.scotland.gov.uk/Topics/Statistics/Browse/Crime-Justice/PubReconvictions.>”

Current Status: Answered by Kenny MacAskill on 03/12/2012

Question S4W-11330: Mary Fee, West Scotland, Scottish Labour, Date Lodged: 19/11/2012

To ask the Scottish Government how many third sector organisations are involved in the criminal justice system.

Answered by Kenny MacAskill (03/12/2012):

The information requested is not held centrally.

The scope of the criminal justice sector is broad, encompassing policing, courts, imprisonment, community justice, victims concerns and general public safety concerns. This is reflected in the wide range of third sector organisations that contribute to criminal justice issues, whether as their main focus, or in broader public services which can respond to the circumstances of victims, offenders, or others effected by crime (including housing, mental health, learning, employability, or disability focussed activities, for example).

As such it is difficult to quantify the exact numbers of third sector organisations who contribute to the criminal justice sector.

However, informal discussion with third sector representative groups would suggest that there are over a hundred third sector organisations in Scotland which are active on criminal justice sector activities, whether at national or local levels.

Current Status: Answered by Kenny MacAskill on 03/12/2012

Question S4W-11329: Mary Fee, West Scotland, Scottish Labour, Date Lodged: 19/11/2012

To ask the Scottish Government how many rehabilitation programmes there are in prisons.

Answered by Kenny MacAskill (03/12/2012):

I have asked Colin McConnell, chief executive of the Scottish prison service (SPS), to respond. His response is as follows: “SPS currently delivers seven offending behaviour programmes that focus on promoting change in the attitudes, thinking and behaviours that drive offending.”

Current Status: Answered by Kenny MacAskill on 03/12/2012