

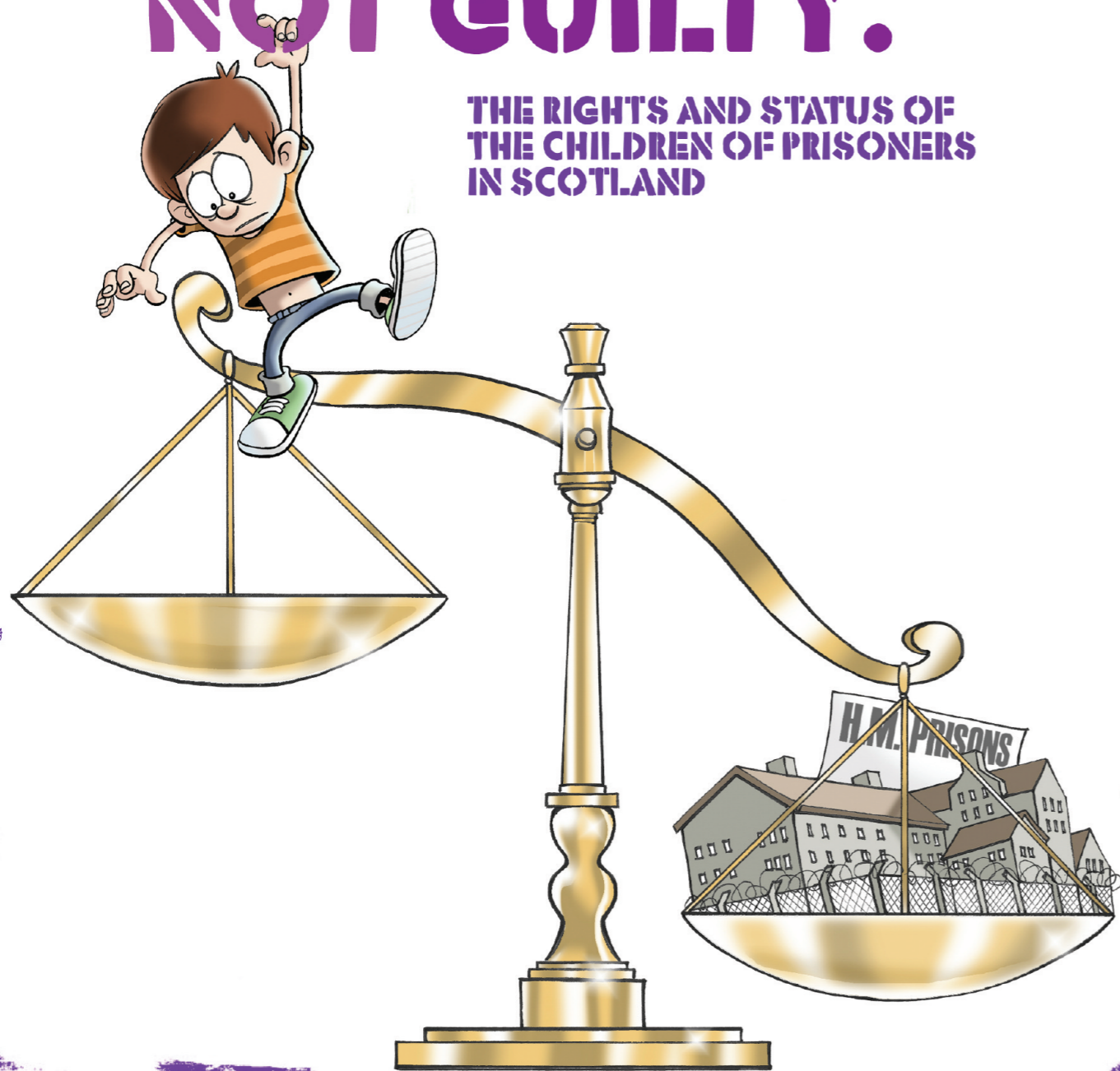
**REVIEW 2011**

**SCCYP**

Scotland's Commissioner  
for Children & Young People

**NOT SEEN.  
NOT HEARD.  
NOT GUILTY.**

**THE RIGHTS AND STATUS OF  
THE CHILDREN OF PRISONERS  
IN SCOTLAND**



# Not Seen. Not Heard. Not Guilty.

The Rights and Status of the Children  
of Prisoners in Scotland.

## Review 2011

**Scotland's Commissioner for  
Children and Young People**

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## How to use this report

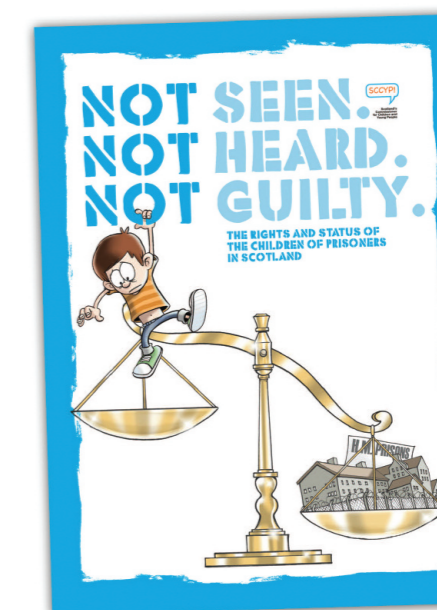
While taking up some new issues for children of prisoners in Scotland, this review report largely builds on the findings and recommendations of *Not Seen. Not Heard. Not Guilty. The Rights and Status of the Children of Prisoners in Scotland*. It is recommended that this report be read alongside that report, which is available **here**:

## About Scotland's Commissioner for Children and Young People

The Office of Scotland's Commissioner for Children and Young People was established in 2004 as an independent public body with a remit to promote and safeguard the rights of children and young people in Scotland.

Key statutory functions of the Commissioner include raising awareness of the United Nations Convention on the Rights of the Child (UNCRC); reviewing relevant law, policy and practice that pertains to children and young people; promoting best practice by service providers; and undertaking or commissioning and publishing research.

The Commissioner further has a duty to encourage the involvement of children and young people in its work, and to promote equal opportunities.



## Foreword

In her 2008 report on the rights and status of the children of prisoners, my predecessor Kathleen Marshall argued that they are 'the invisible victims of crime and our penal system', who are 'not seen, not heard, and importantly, not guilty'.

In response, she asked for the rights of children to be made a prominent feature of the debates about criminal justice, and of judicial decision-making about parents who offend. That is to recognise that the administration of justice affects the children of offenders in a variety of ways, and that fact needs to be reflected in the way the system goes about its business.

This is asking for nothing less than culture change in the institutions concerned with criminal justice, and the services that support them. Changing culture is a formidable task. It takes time, and more importantly, decisive and sustained action and leadership, nationally and locally.

This document charts the progress made three years on from *Not Seen. Not Heard. Not Guilty. The Rights and Status of the Children of Prisoners in Scotland*. It shows that while we have seen progress on some of the issues

the report identified, more action is needed to embed the children's rights perspective in the law, policy and practice of criminal justice, and to ensure that those affected by parental imprisonment are properly supported.

I urge you to help renew the momentum behind this important cause, and to join my call for more action to improve the lives of the children of prisoners.



Tam Baillie

Scotland's Commissioner for Children and Young People

## Key Findings

- This review found that substantial progress has been made on the recommendations in *Not Seen. Not Heard. Not Guilty* (2008). However, this has been variable: while some recommendations have been fully addressed, there remains a considerable way to go on others.
- The rights and status of the children of prisoners, and of offenders more widely, is now generally considered a valid and relevant consideration in debates around criminal justice and penal policy. However, more action is required to ensure that the children's rights perspective features prominently and consistently in policy and practice. (3.1.1)
- Around 16,500 children are affected by the imprisonment of a parent in Scotland each year. However, this is an estimate, because no one is counting. Data collection should be improved to drive better support for children. (3.1.3)
- Continuing increases in prisoner numbers, including increased use of remand, mean more children are affected. Overcrowding puts significant pressure on prisons and prison staff, and affects the children of prisoners in a number of ways, including with regard to contact and visiting. (3.1.2)
- There continues to be a strong view among stakeholders that the rights and wellbeing of the children of offenders are not routinely considered in decisions to imprison or release a parent. Practice guidance on court reports has been improved, but these could play a stronger role in bringing more meaningful information about children of offenders before the courts, and help services identify children who may need support. (3.2.1 – 3.2.3, 3.3.3)
- Better cooperation and information-sharing between children and families services and criminal justice and other 'adult' services is required to improve support for the children of prisoners. The challenge is to provide timely, appropriate and non-stigmatising support, including at school. Forthcoming legislation may present opportunities for progress on the consistent provision of support to these children across Scotland. (3.3.2 – 3.3.3)
- The Scottish Prison Service (SPS) has taken a range of measures in relation to children and families, and it should be commended for this. While there is progress on many of the 2008 recommendations, there is considerable variation across the prison estate, and it is hoped that an ongoing review of progress within SPS will renew the momentum behind this work. (3.4)
- It is clear that many in the SPS do not yet see child-focused visits as a right of the child, but as a privilege of the prisoner and they may be withdrawn on the basis of the prisoner's behaviour. This indicates that there has not yet been a culture change within the SPS whereby the rights and wellbeing of the children of prisoners are a key aspect in SPS's 'core business'. This needs to be addressed by SPS. (3.4.3 and 3.4.4)

# 1. Background and Context

## 1.1 About this review

The children of prisoners are the invisible victims of crime and the penal system. They have done no wrong, yet they suffer the stigma of criminality. Their rights to nurture are affected both by the criminal action of their parent and by the state's response to it in the name of justice.<sup>1</sup>

This was the striking conclusion about the adverse effects of parental imprisonment on children in the 2008 report *Not Seen. Not Heard. Not Guilty. The Rights and Status of the Children of Prisoners in Scotland*. There were 28 recommendations in this report.

This review report charts progress against these recommendations and aims to renew the focus on the rights and status of the children of prisoners, and aid improvements to law, policy and practice. It reiterates the key children's rights arguments behind the original recommendations and makes follow-up recommendation for the Scottish Government, the Scottish Prison Service, Local Authorities, and others with the objective of improving the lives of the children of prisoners in Scotland.

Building on the expertise and experiences of stakeholders in both statutory and voluntary services who work with the children of offenders, the review team from the office of Scotland's Commissioner for Children and Young People considered evidence from site visits, policy and guidance

documents, inspection reports, and other sources to inform this report and the follow-up recommendations it makes. The circulation of briefing papers to addressees of the 2008 report and others who work with children and families of prisoners provided opportunities for stakeholders to provide input to the process. A round table discussion event helped to illuminate the key issues which participants believed should be highlighted in the review.

Before reporting on these issues, it is important to restate what is known about the impact of parental imprisonment on children, to look at some of the relevant developments since the 2008 report, and to place this in the wider context of the rights of children.

The 2008 report acknowledged the diversity of families in Scotland today. What matters to the Commissioner's work is not necessarily the legal relationships between family members, but the real-life impact of the imprisonment of a parent or other significant carer on the child. References to parent(s) in this report should therefore be interpreted as including any significant carer for the child.

## 1.2 Effects of parental imprisonment on children

Children are affected by parental imprisonment in a variety of ways<sup>2</sup>. The effects on a child will differ and depend on a range of factors, including the nature and quality of their

relationship with, and attachment to, the imprisoned parent and whether they were resident with the imprisoned parent, or whether there was contact. Apart from the emotional loss of contact with a parent or significant carer, children may suffer from financial disadvantage (caused, for example, by loss of wages, changes in benefits or costs associated with prison visits). Some are taken into care, or have to move home; either because their sole parent or carer has been imprisoned, because of problems within the community relating to the offence, or because of the family's need to be closer to the prison or to wider family networks.

Imprisonment of a parent may also result in the loss of a carefree childhood, with the child experiencing shame, stigma and bullying as a result of their parent's actions and others' reaction to them. This may in some cases be exacerbated by media coverage of the parent's case. Visiting a parent in prison can be an alien and stressful experience. Some children may also take on additional caring responsibility for younger siblings or other family members. It is important to note, however, that for some children, the imprisonment of a parent may also be a relief.

## 1.3 Developments since Not Seen. Not Heard. Not Guilty.

Over the last three years, the Commissioner and others have used every opportunity to highlight the findings of *Not Seen. Not Heard. Not Guilty*, the need to make progress in ensuring adequate and timely support for children affected by parental imprisonment, and raise the profile of the children of prisoners in the criminal justice system. This included presenting the report's findings at

conferences, working with practitioners, and parliamentary and media work.

The United Nations Committee on the Rights of the Child considered the fourth UK state party report in 2008, and among other things recommended that support for the children of prisoners be improved. In response, the Scottish Government promised action<sup>3</sup>. The Scottish Prisons Commission urged a rethink about the way imprisonment is used in Scotland. In 2009, the Scottish Parliament's Equal Opportunities Committee held an inquiry into female offenders in the criminal justice system, and the issues affecting the children of prisoners were highlighted.

The office of Scotland's Commissioner for Children and Young People also organised a lecture by Justice Albie Sachs, who gave lead judgment in a landmark case on the same issue in the Constitutional Court of South Africa. Around 200 guests from the statutory and voluntary children's sectors, government, parliamentarians, the legal profession, and others attended to hear the compelling perspective of one of the world's foremost lawyers and human rights advocates on this issue.

In 2010, Parliament passed the Criminal Justice and Licensing (Scotland) Act, which introduced the new Community Payback Order, a presumption against prison sentences under three months, and provided for the establishment of a Scottish Sentencing Council. The Commissioner engaged Families Outside to undertake research into children's experiences of parental imprisonment<sup>4</sup>, which was debated in Parliament in summer 2010.

In Scotland, as in most other countries around the world, a very different public spending climate will affect all children in some way, and the Commissioner and many others are highlighting the ways in which this adversely affects children, and particular groups of children.

1. Kathleen Marshall (2008), *Not Seen. Not Heard. Not Guilty. The Rights and Status of the Children of Prisoners in Scotland*, Edinburgh: Scotland's Commissioner for Children and Young People (hereafter referred to as *Not Seen. Not Heard. Not Guilty*); p. 8.

2. See, for example, Tânia Loureiro (2010), *Perspectives of Children and Young People with a Parent in Prison*, Edinburgh: Scotland's Commissioner for Children and Young People & Families Outside.

3. See 2.1.

4. Tânia Loureiro (2010), *Perspectives of Children and Young People with a Parent in Prison*, Edinburgh: Scotland's Commissioner for Children and Young People & Families Outside.

## 2. The rights of children of prisoners

Building on the children's rights perspective on parental imprisonment presented in *Not Seen. Not Heard. Not Guilty*, this review revisits the progress made against that report's 28 recommendations. It should be emphasised that this focuses on the rights of the children of prisoners, rather than the rights of prisoners in relation to their children and families. To reiterate the rights imperatives, this chapter explores the relevant principles and provisions of the international legal framework for children's rights.



### 2.1 The United Nations Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child (UNCRC)<sup>5</sup> of 1989 was ratified by the UK Government on 16 December 1991. Its 54 articles articulate a comprehensive set of human rights that all children have, covering the three key dimensions often characterised as protection, provision and participation. The UNCRC recognises children as rights-holders in their own right, while also reflecting children's 'evolving capacities' and additional vulnerabilities owing to their age and stage of development, and their relative lack of social, political and economic power. Children's rights must not be misunderstood or misrepresented as aspirational goals or a 'gold standard', but recognised and acted upon as the *minimum* acceptable standards in the treatment of all children under the age of 18. Those states that ratified the UNCRC have made a commitment to deliver on its promises.

There are four overarching principles contained within the UNCRC:

- non-discrimination (article 2),
- the principle that in all actions concerning children

the best interest of the child shall be a primary consideration (article 3),

- the right to life, survival and development (article 6), and
- the right of the child to express their views freely and have those views taken into account in all matters affecting them (article 12).

Unlike the European Convention on Human Rights, the UNCRC has not been given direct legal effect in UK or Scots law. However, ratification of the UNCRC placed binding international obligations on the UK Government,<sup>6</sup> as well as devolved governments and institutions<sup>7</sup> to implement its provisions and ensure the realisation of all rights in the UNCRC for all children in their jurisdiction.

The UN Committee on the Rights of the Child, an international group of experts that oversees the implementation of the UNCRC globally, has expressed its concern at 'the situation of children with one or both parents in prison' and called on the UK to

[e]nsure support to children with one or both parents in prison, in particular to maintain contact with the parent(s) (unless this is contrary to their best interests) and to prevent their stigmatization and discrimination against them<sup>8</sup>.

In its response to the UN Committee's recommendations, the Scottish Government made a number of pledges, including the establishment of Children and Families

Groups at every prison, and the development of 'Minimum Standards for Children and Families' covering a range of issues, such as the 'timing and structure of visits between prisoners and their children, particularly preventing enhanced family visits from being withdrawn as punishment'.<sup>9</sup>

#### 2.1.1 Children's best interests

The key children's rights argument that underpinned *Not Seen. Not Heard. Not Guilty* was that in all actions affecting the children of offenders, their best interests must be a primary consideration. Those actions are to be informed by the views, experiences and aspirations of children. This includes decisions to imprison or release a parent, and a range of matters relating to criminal justice policy and practice.

In his landmark judgment in *S v M* (2007), Justice Albie Sachs of the Constitutional Court of South Africa, said:

Every child has his or her own dignity. If a child is to be constitutionally imagined as an individual with a distinctive personality, and not merely as a miniature adult waiting to reach full size, he or she cannot be treated as a mere extension of his or her parents, umbilically destined to sink or swim with them. (...) [T]he sins and traumas of fathers and mothers should not be visited on their children.<sup>10</sup>

The purpose of imprisonment is, chiefly, to punish the offender; it is not to punish their children or family. This means that the rights of any child affected by the decision

5. The full text of the UNCRC is here: <http://www2.ohchr.org/english/law/crc.htm>.

6. Article 26 of the Vienna Convention on the Law of Treaties of 1969, United Nations, *Treaty Series*, Vol. 1155, p. 331.

7. UN Committee on the Rights of the Child (2003), General Comment No. 5: *General measures of implementation of the Convention on the Rights of the Child*, CRC/GC/2003/5, at paras 40f.

8. UN Committee on the Rights of the Child, *Consideration of Reports by States Parties under Article 44 of the Convention, Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, CRC/C/GBR/CO/4, 20 October 2008; paras 44 (c) and 45 (d).

9. Scottish Government (2009), *Do The Right Thing: A response by the Scottish Government to the 2008 concluding observations from the UN Committee on the Rights of the Child*, pp.30f.

10. *S v M* [2007] ZACC 18, at para 18.

to imprison must be taken into account and given due weight as a primary consideration, as required by article 3 of the UNCRC and pointed out by the UN Committee on the Rights of the Child.<sup>11</sup>

The UNCRC's best interest principle has gained considerable currency in the UK courts. In *ZH (Tanzania)*, the UK Supreme Court dealt with the question whether two UK-born children could be expected to follow their mother, who had no right to stay in the country, to Tanzania. Lord Kerr, concurring with the lead judgment, found that

(...) in reaching decisions that will affect a child, a primacy of importance must be accorded to his or her best interests. This is not, it is agreed, a factor of limitless importance in the sense that it will prevail over all other considerations. It is a factor, however, that must rank higher than any other. It is not merely one consideration that weighs in the balance alongside other competing factors. Where the best interests of the child clearly favour a certain course, that course should be followed unless countervailing reasons of considerable force displace them.<sup>12</sup>

This strong guidance from the UK's highest judicial authority in civil and human rights matters should underpin every action taken to promote the rights of children of offenders in criminal justice policy, and in the practice of the Scottish courts. Where a child is, or is likely to be, affected by a decision about a parent, the best interests of the child must take centre stage as a factor that 'rank[s] higher than any other', and may only be trumped by competing claims 'of considerable force'.

### 2.1.2 Other children's rights considerations

In 2008, *Not Seen. Not Heard. Not Guilty* emphasised that the imprisonment of a parent or other main carer affects the lives and rights of children and young people in a number of significant ways, some directly, some indirectly.

The imprisonment of a parent clearly affects the child's right to be cared for by his/her parents (article 7). Where separated from parents, the child has a right to contact and maintain relationships with their parents (article 9 (3)), which is central to the matters relating to family contact and visiting discussed at chapter 3.4. Article 18 supports the 'principle that both parents have common responsibilities for the upbringing and development of the child', where this is in the best interest of the child<sup>13</sup>. This reiterates that the rights of children have to be considered in relation to both female and male offenders.

Other UNCRC rights may be engaged where parental imprisonment results in the child becoming looked after and accommodated (article 20), and in relation to education (articles 28 and 29), health (article 24), and their standard of living (article 28). The stigma associated with imprisonment and media coverage of a parent's court case may affect the child's right to privacy and to freedom from attack on their honour or reputation (article 16).

Domestic legislation, policy and practice development must prevent any violations of children's rights, and address those that occur. This clearly includes the rights of children with a parent in prison or at risk of imprisonment. Children's needs must be met, and their

rights must feature in debates on crime and criminal justice, and in criminal justice processes involving their parent; not as an afterthought or a 'circumstance' of the offender, but as a primary consideration as required by the UNCRC, and emphasised by the highest courts in the UK and abroad.

## 2.2 The European Convention on Human Rights

Children hold the same rights under the international human rights framework as adults. The right to respect for private and family life, home and correspondence under article 8 of the European Convention on Human Rights (ECHR) is most relevant to the issue of parental imprisonment. However, a recent European study on the situation of children of prisoners in four EU member states, which included a review of European Court of Human Rights (ECtHR) case law, found that while the issue of prisoners' family contact has been the subject of ECtHR cases, the perspectives of children are 'remarkably absent' from the court's jurisprudence<sup>14</sup>.

11. UN Committee on the Rights of the Child, *Consideration of Reports by States Parties under Article 44 of the Convention, Concluding Observations: Thailand*, CRC/C/THA/CO/2, 17 March 2006; at para 48.

12. *ZH (Tanzania) (FC) (Appellant) v Secretary of State for the Home Department (Respondent)* [2011] UKSC 4, at para 46.

13. For a helpful discussion of article 3 and its interrelatedness with other UNCRC articles, see Rachel Hodgkin & Peter Newell (2007), *Implementation Handbook for the Convention on the Rights of the Child*, 3rd Edition, Geneva: UNICEF, pp. 37ff.

14. Peter Scharff-Smith & Lucy Gampell (2011), *Children of Imprisoned Parents*, Danish Institute for Human Rights, European Network for Children of Imprisoned Parents, University of Ulster and Bambinisenzasbarre, pp. 37-57.

## 3. Review of recommendations

For the purpose of this review, the 28 recommendations made in *Not Seen. Not Heard. Not Guilty* were grouped under four themes. These are:

Theme 1: The rights of children in criminal justice debates

Theme 2: The rights and status of children in decision-making about parents who offend

Theme 3: Support for children of prisoners

Theme 4: Contact and visiting during parental imprisonment

This chapter sets out the findings of the review team's consideration of submissions from stakeholders working with children and families of offenders, statutory and voluntary services, and others, as well as relevant policy and guidance documents and other materials. It contains 19 follow-up recommendations addressed to the Scottish Government, the Scottish Prison Service, Community Justice Authorities, Local Authorities, and the Association of Chief Police Officers in Scotland.

### 3.1 Theme One: The rights of children in criminal justice debates

Recommendations of the 2008 report grouped under this Theme concerned:

- The impact on the children of offenders of the debates on alternatives to custody and local 'community prisons', and of prison overcrowding;
- Amendments to law, policy and practice relating to criminal justice and the use of imprisonment, to respect the rights of children of offenders, including through the use of Children's Rights Impact Assessments.

#### 3.1.1 Political debates on criminal justice

Since the publication of *Not Seen. Not Heard. Not Guilty* in February 2008, there has been no shortage of political debate around criminal justice issues, including debates on the alternatives to imprisonment, such as effective community disposals<sup>15</sup>. The manner in which those debates were conducted illustrates that some progress

15. See, for example, the debates on the presumption against short-term custodial sentences and the introduction of Community Payback Orders during the passage through the Scottish Parliament of the Criminal Justice and Licensing (Scotland) Act 2010; Scottish Parliament, *Official Report*, Justice Committee 16 March 2010, Cols. 2740 – 2771, and 13 April 2010, Cols. 2849 – 2862.

has been made in raising the profile of the rights and wellbeing of children affected by the imprisonment of a parent. However, this has invariably depended on advocates of this group of children, both in organisations working with, or on behalf of children and in Parliament, to bring these issues to the fore.

When the issues affecting the children of prisoners are raised in Parliament and elsewhere, this is now by and large seen to be a valid and relevant contribution to the debate by representatives of all political parties<sup>16</sup>. However, the fact that new policy and practice initiatives do not usually reflect issues relating to children of prisoners is indicative of a lack of a systematic children's rights approach<sup>17</sup>. There is reason to believe that these are seen as soft arguments, which may be easily trumped by other considerations.<sup>18</sup>

#### **Follow-up Recommendation 1:**

*As part of **Scottish Government** action to fulfil the commitments it made in *Do the Right Thing*, Action Area 2 (Promoting Children's Rights in the Scottish Government), the Scottish Government should carry out Children's Rights Impact Assessments on all initiatives, policies and guidance publications that affect the rights of children of offenders.*

16. See the positive contributions from all main parties to the member's business debate in the name of Aileen Campbell MSP on the issue; Scottish Parliament, *Official Report* 30 June 2010, Cols. 28020 – 28038.

17. For a key tool in implementing a children's rights-based approach, see, for example, Laura Paton & Gillian Munro (2006), *Children's Rights Impact Assessment: The SCCYP Model*, Edinburgh: Scotland's Commissioner for Children and Young People.

18. See the debate on amendment 32 to the Criminal Justice and Licensing (Scotland) Bill, Scottish Parliament, *Official Report*, Justice Committee, 2 March 2010, Cols. 2686 – 2699.

19. Prison population as published on the Scottish Prison Service's website, 20 May 2011.

20. Minutes of Scottish Prison Service Board Meeting, 28 March 2008, at para 4.4.

21. Minutes of Scottish Prison Service Board Meeting, 18 June 2008, at para 5.1.

#### 3.1.2 Prisoner numbers and children of prisoners

Stakeholder submissions and discussions with the Scottish Prison Service (SPS) indicate that it is important to set the issues affecting the children of prisoners within the wider context of debates and developments in criminal justice, which may help or hinder progress for children, such as prison overcrowding.

At time of writing, the prison population in Scotland was 8,054, made up of 435 women prisoners, and 7,619 male prisoners,<sup>19</sup> nearly 900 higher than the most recent, and highest, figures cited in *Not Seen. Not Heard. Not Guilty*. According to the SPS, the increase in the female prison population over the last decade by 87% has been disproportionate to the overall increase. In 2008, SPS found that '[t]he absolute population levels and rates of increase both broke new records and were causes for concern<sup>20</sup> and that the system was at serious risk of failure to meet its legal obligations, including human rights requirements.<sup>21</sup> It is not clear from the available information whether the rights of prisoners' children were considered in the course of those discussions at SPS board level as the minutes make no mention of them.

One of the major trends in terms of the prisoner population over the last decade or so has been the increase by over a third of the number of persons



remanded to custody in Scottish prisons,<sup>22</sup> which put pressures on prison places and activities, and poses particular challenges to prisoners' children, especially but not exclusively where a sole parent is remanded.

Overcrowding remains a problem, because prison numbers continue to increase. According to stakeholders working with children and families of offenders, overcrowding continues to undermine progress made for the children and families of prisoners in other areas. The 'nine evils of overcrowding' referred to by the former HM Chief Inspector of Prisons, which included specific reference to its impact on family contact and visiting<sup>23</sup>, persist in Scotland's prisons today.

There are clear messages— including those from the SPS— that these realities and their impacts on children and families of prisoners, and on the prospects of offender rehabilitation, need to feature more prominently in the debate about Scotland's approach to criminal justice and sentencing.

#### Follow-up Recommendation 2:

*The Scottish Government should address, as a matter of priority, the impact of the high prison population, including the increased use of remand, and prison overcrowding on the rights of children of prisoners.*

### 3.1.3 The number of children affected

The 2008 report stated that each year an estimated 13,500 children in Scotland are affected by the imprisonment of a parent<sup>24</sup>, a figure used by Families

Outside. That figure in fact originated from a 2002 report published by the SPS,<sup>25</sup> and has since been used as the basis for the 16,500 figure which is often used now, reflecting the substantial increase in the prisoner population since the original estimate.

However, there can be no certainty about how many children are affected, simply because no one is counting.

Nor is it clear who those children are and what support they receive. At the request of Families Outside, in the latest edition of its prisoner survey, SPS included questions about prisoners' children and families including any caring responsibilities and family contact. This should go some way to help establish the number of children affected and is to be commended, but more must be done.

#### Follow-up Recommendation 3:

*The Scottish Government, the Scottish Prison Service, and others should work together to improve the collection of data about the number of children in Scotland affected by the imprisonment of a parent.*

### 3.1.4 Developments in the Prison Estate

There have been a number of significant developments in the Scottish prison estate since the publication of the 2008 report. HMP Addiewell, a privately-run new-built prison opened in 2008, work has begun to rebuild HMP Low Moss, and planning permission has been obtained for the new HMP Grampian. The nature of developments in the Scottish prison estate are important to prisoners'

children and families, as the Scottish Government acknowledges:

[A] number of practical factors can either facilitate or hinder the regularity within which these visits take place. Chief amongst these are: the proximity of the prison (...) to the family home; the availability of transport to the prison; the cost associated with such travel arrangements; the family's ability to meet these costs, etc. These are very real considerations for families.<sup>26</sup>

A move to more local, 'community-facing prisons' has been called for,<sup>27</sup> including in *Not Seen. Not Heard. Not Guilty*. Articles 9 (3) and 18 (1) of the UNCRC would strongly suggest that prisons for both male and female offenders need to be planned and designed with child and family contact in mind. Stakeholders working with families have further pointed out that forthcoming estate developments are not as community-facing as they should be, with one respondent suggesting that a very significant share of the anticipated population of HMP Grampian will come from more than an hour away from the identified site, which also has limited transport links. Until a shift towards 'community-facing prisons' is in evidence in the SPS's future plans for the prison estate, an increased focus on support for child and family visits and transport is critical (see also 3.4).

#### Follow-up Recommendation 4:

*The Scottish Government and the Scottish Prison Service should lay out a longer-term strategy for the prison estate which marks a move to a model of 'community-facing prisons'.*

## 3.2 Theme Two: The rights and status of children in decision-making about parents who offend

Recommendations of the 2008 report grouped under this Theme concerned:

- Taking the best interests of children of offenders into account at point of sentencing, including by using Child Impact Assessments, and in decisions about temporary release and Home Detention Curfew; and ensuring that a new sentencing body acknowledges the rights of children of prisoners as a valid concern in sentencing.
- Reviewing the guidance for Social Enquiry Reports, and ensuring that childcare responsibilities are not a barrier to community disposals.

### 3.2.1 Children's rights in decisions to imprison or release

Criminal justice is not dispensed in isolation from the other spheres of society. It affects not only victims, offenders, and the protagonists of the criminal justice system, but – directly or indirectly – it also affects others who do not currently have a strong voice in the system, including the children of offenders. The relationship between a child and an offending parent can be conversely close or distant, positive or negative. The imprisonment of the parent, as well as, release to the

22. Scottish Government (2010) Statistical Bulletin, *Crime and Justice Series: Prison Statistics Scotland 2009-10*, pp.19ff.

23. HM Chief Inspector of Prisons for Scotland (2007), *Annual Report 2006-07*, Edinburgh: Scottish Executive, p. 5; cited in *Not Seen. Not Heard. Not Guilty*, p. 12.

24. *Not Seen. Not Heard. Not Guilty*, p. 11.

25. Scottish Prison Service (2002), *Making a Difference*; unavailable. Cited in Malcolm Higgenbotham (2007), *Do Not Pass Go.....Travel Links to Scottish Prisons*, Edinburgh: Families Outside, p. 8.

26. Scottish Government (2010), *Circular No. JD 3/2010: Integrated Practice Guidance for Staff Involved in the Home Leave Process*, para 13.

27. See, for example, rule 17.1 of the European Prison Rules; Council of Europe, *Recommendation (2006)2 of the Committee of Ministers to Member States on the European Prison Rules*, adopted 11 January 2006.

child's home can be in the child's best interests or against those interests. What is clear is that all these events have a major impact on the child's life, and as such, the child's rights and wellbeing must be considered as a key part of decision-making on release of a prisoner.

Stakeholders in this review were strongly of the view that the rights and wellbeing of the children of offenders do not routinely feature in the laws, policy and practice of criminal justice. According to this view, children's best interests are not consistently given the place they are due in judicial decisions to imprison, nor decisions to release. The profile of children of offenders in judicial decision-making and the wider debate about penal law and policy must therefore be raised. This should ensure that their rights and wellbeing do not become the 'collateral damage' of their parent's offending and the response to it by our justice system and other services that support it.

There are various strands to ensuring that this occurs routinely and consistently. These include requiring the courts and other decision-makers to take the best interest of an offender's children into account in decisions about remand, in sentencing, and in decisions about home leave and Home Detention Curfew (HDC). Further, improvements to pre-sentencing Criminal Justice Social Work Reports are required, as well as better information sharing between Children and Families Social Work and Criminal Justice Social Work to ensure that relevant information held by agencies is brought before the courts.

### *Children's rights in remand decisions*

Where an offender who is a parent is remanded in custody, the impact on their children can be immediate and highly disruptive.<sup>28</sup> The children may lose their

principal carer, or indeed their sole carer. They may have to move at short notice, and may be placed with relatives or in short-term foster placements, where available. The support – financial and otherwise – particularly for kinship care placements remains variable across local authorities.<sup>29</sup> A lack of contact and confusion about the process that is to follow may ensue.

It is important to reiterate that the UNCRC's best interest principle applies to decisions about pre-trial detention, and Lord Kerr's words<sup>30</sup> should carry weight in this context.

### *Children's rights in sentencing*

Following a key recommendation in *Not Seen. Not Heard. Not Guilty*, the office of Scotland's Commissioner for Children and Young People along with Families Outside, Children in Scotland, Barnardo's and Action for Children worked with Aileen Campbell MSP to amend the sentencing provisions in what is now the Criminal Justice and Licensing (Scotland) Act 2010. Her strong and committed support for the cause of improving the lives of children of offenders was very welcome, as was the backing of the Scottish Government for the amendment that was brought forward. Unfortunately, in this instance the amendment was defeated in the Justice Committee.<sup>31</sup>

In the course of the parliamentary debate on the amendment and during this review, it was emphasised by politicians, lawyers, and others that determining the most appropriate sentence for an offender is a 'balancing act', which requires sheriffs and judges to take all relevant considerations into account and give due weight to each. However, there is currently no credible and consistently applied process to ensure that there is a meaningful

determination of the child's best interest prior to, or at the point of sentencing, which would enable the legitimate interests of children of offenders to be taken into account in sentencing in this way. This needs to change and become 'a standard preoccupation of all sentencing courts', as Justice Sachs put it.<sup>32</sup>

### *Children's rights in decisions about Home Leave and Home Detention Curfew*

Since the publication of the 2008 report, much attention has been paid to the consequences for children of the decision to imprison a parent. However, it also highlighted similar issues at the other end of a custodial sentence.

In 2010, the Scottish Government published *Integrated Practice Guidance for Staff Involved in the Home Leave Process*,<sup>33</sup> which included a new national template for home leave and Home Detention Curfew (HDC) reports, key to informing decisions about the feasibility and practicalities of home leave. The template asks for basic information (name and date of birth) on any children who live at the proposed leave/curfew address.<sup>34</sup> It further prompts checks on departmental records to establish any relevant background information, including on domestic abuse and sexual offending, as well as previous social work involvement with the family at the proposed leave/curfew address.<sup>35</sup>

Children feature only in relation to child protection concerns, particularly where the prisoner has a history of sexual offending. No place appears to be given to the views and wider interests of children living at the proposed leave/HDC address, and no guidance is given for any assessment of children's best interests that may be undertaken.<sup>36</sup> This does not reflect the significant anxiety

that is often associated with an imprisoned parent moving (back) into the family home, and this has been a matter of concern put forward by stakeholders in this review.

#### **Follow-up recommendation 5:**

**The Scottish Government** should amend the law to require the best interest of an offender's child(ren) to be routinely taken into account in (a) decisions about remand, (b) sentencing, and (c) decisions about home leave and home detention curfew.

#### **Follow-up recommendation 6:**

**(a) The Scottish Government and Community Justice Authorities** should work the Judiciary to pilot child impact assessments to inform sentencing, either as free-standing advice to the courts, or as an explicit component of Criminal Justice Social Work Reports.

**(b) Relevant practice guidance and training** should be amended to cover children's rights and acknowledge the sensitive issues which may be involved in conducting child impact assessments relating to a parent's offending.

### 3.2.2 Information before the courts

There are currently two principal mechanisms by which the needs and effects of different sentencing options on an offender's children and family may be brought to the attention of the courts.

Stakeholders, including members of the judiciary, reported that defence agents frequently cite childcare responsibilities in support of community disposals, but this will be from the offender's perspective with the aim of

28. Peter Scharff-Smith & Lucy Gampell (2011), *Children of Imprisoned Parents*, Danish Institute for Human Rights, European Network for Children of Imprisoned Parents, University of Ulster and Bambinisenzasbarre, p. 79.

29. Keith Dryburgh (2010), *Relative Value: The Experiences of Kinship Carers Using the Scottish CAB Service*, Edinburgh: Citizen's Advice Scotland, pp. 33ff.

30. Cited above, 2.1.1.

31. Scottish Parliament, *Official Report*, Justice Committee 2 March 2010, Cols. 2686 – 2699.

32. *S v M*, [2007] ZACC 18 cited above, at para 33.

33. Scottish Government (2010), *Circular No. JD 3/2010: Integrated Practice Guidance for Staff Involved in the Home Leave Process*.

34. *Ibid*, at para 44 and Appendix F.

35. *Ibid*, at paras 46-48.

36. *Ibid*, at paras 49-56.

achieving a more lenient sentence.<sup>37</sup> An analysis of the best interest of the children involved may well support that objective, but it may come to an opposite conclusion in some cases, where imprisonment of the parent has in fact been properly determined to be in the child's best interest.

Criminal Justice Social Work Reports must be requested by the sentencing court in some circumstances specified in law, and *may* be requested in other cases. Figures presented in the 2008 report suggest that Social Enquiry Reports (as CJSWRs were then known) were ordered in less than a third of cases and more recent figures suggest no significant change in this position.<sup>38</sup> The 2008 report recommended that the guidance for SER writers be revised to ensure that reports take fuller account of the best interests of the offender's children. It further recommended that requiring a child impact assessment<sup>39</sup> to be taken into account at the point of sentencing – either integrated into a Social Enquiry Report or separately – should be explored.

### 3.2.3 New guidance for Criminal Justice Social Work Reports

In October 2010, the Scottish Government published new practice guidance for writers of CJSW Reports<sup>40</sup>. Children

now feature as a consideration for report writers in various places in the guidance, including in relation to the impact of a financial penalty on an offender's family, including any children, and 'inescapable financial commitments (for example child care costs)',<sup>41</sup> child protection issues,<sup>42</sup> and the review of sentencing options. In relation to custody, this reads:

What is the likely impact of a custodial sentence on both the individual and his or her family including any children? You should take account of whether he/she is the sole breadwinner, if the family home may be in jeopardy and if caring responsibilities could no longer be fulfilled etc. (For example, Mr Smith lives alone but has care of his children at weekends, which allows his ex-partner to maintain her employment. A custodial sentence would have a detrimental effect on both Mr Smith and his family.....).<sup>43</sup>

Further, in the section on assessing the suitability of an offender for a Community Payback Order (CPO) with an Unpaid Work or Other Activity Requirement, the guidance refers to caring responsibilities as a factor in the assessment; it further suggests that CJSW Reports should be clear about such matters, so that sentencers – if they

so wish – can apply their discretion in relation to the terms of such an order.<sup>44</sup>

The Scottish Government is to be commended for the progress made with regards to the guidance on court reports, and the increased profile of the impact of sentencing decisions, and custody in particular, on the children of offenders.

Despite that, more work needs to be done to ensure that CJSW Reports consistently include meaningful information on the potential positive and negative impacts of different sentencing options on an offender's children. Challenges reported by stakeholders in terms of information sharing between Children and Families Social Work and Criminal Justice Social Work appear to be a barrier to a report writers' ability to build up an accurate picture of the potential impacts of a custodial sentence. This is particularly pertinent where direct interaction with an offender and their family (e.g. in the course of a home visit) is judged to be inappropriate. This needs to be addressed.

### 3.2.4 Community disposals and childcare

The 2008 report recommended that it should be clearly stated that childcare responsibilities should not be a barrier to community disposals being imposed as an alternative to imprisonment. This was based on reports that offenders with childcare responsibilities, and women offenders in particular, may be more likely to face

imprisonment as community alternatives may be deemed unsuitable for them. It was further based on a passage in the relevant practice guidance for Social Enquiry Reports (2004),<sup>45</sup> which was taken to imply just that.

In the 2010 practice guidance for CJSW Reports the original wording 'current responsibilities and other commitments should not rule out Community Service'<sup>46</sup> was amended to now read '(...) should not *automatically* rule out community disposals'.<sup>47</sup> This implies even more strongly than the 2004 version that an offender may be deemed unsuitable for a community disposal because of their childcare responsibilities, with the resulting risks highlighted above.

Section 14 of the Criminal Justice and Licensing (Scotland) Act 2010 introduced the new Community Payback Orders (CPO), which are expected to replace around 90% of previous community disposals.<sup>48</sup> The Act further places responsibility for 'making any arrangements necessary to enable the offender to comply with each of the requirements imposed by the order' on the Local Authority.<sup>49</sup> Presumably, 'any arrangement' includes provision for the care of an offender's child(ren), where the lack of such provision would prevent them from fulfilling the requirement of the CPO. This has been the view of various stakeholders in this review, including CJSW managers. However, other reports suggested that the opposite view has been reflected in court disposals.

The Scottish Government's practice guidance for Community Payback Orders suggests that 'caring responsibilities should be accommodated [a]lthough not

37. See, for example, Clare Connelly, 'Court Processes', in: Peter Duff & Neil Hutton (eds), (1999), *Criminal Justice in Scotland*, Aldershot: Ashgate, pp. 145-165; at p. 164.

38. Based on 40,800 Social Enquiry Reports (including supplementary reports) submitted to the courts in 2009-10 (Scottish Government (2010), *Statistical Bulletin, Crime & Justice Series: Criminal Justice Social Work Statistics 2009-10*, p. 5), when 120,772 persons had a charge proved against them in the Scottish courts (Scottish Government (2011), *Statistical Bulletin, Crime & Justice Series: Criminal Proceedings in Scotland 2009-10*, p. 30).

39. A detailed assessment of the likely impact of the parent's imprisonment on the child, considering all relevant matters including the quality of a child's attachment to and relationship with the parent, and the likely emotional, practical, financial, and other effects of the disruption of the child's care; not to be confused with an impact *statement*. This is also discussed in *Not Seen. Not Heard. Not Guilty*, p. 27.

40. Scottish Government (2010e), *National Outcomes and Standards for Social Work Services in the Criminal Justice System: Criminal Justice Social Work Reports and Court-Based Services Practice Guidance*.

41. *Ibid.*, p. 31.

42. *Ibid.*, p. 32.

43. *Ibid.*, p. 39.

44. *Ibid.*, p. 44.

45. Scottish Executive (2004), *National Objectives for Social Work Services in the Criminal Justice System: Standards Social Enquiry Reports and Associated Court Services*, at para 4.11.

46. *Ibid.*

47. Scottish Government (2010), *National Outcomes and Standards for Social Work Services in the Criminal Justice System: Criminal Justice Social Work Reports and Court-Based Services Practice Guidance*.

48. Criminal Justice and Licensing (Scotland) Bill: Policy Memorandum, 5 March 2009, at para 49.

49. Section 227C (3)(a) of the Criminal Procedure (Scotland) Act 1995, as amended by section 14 of the 2010 Act.

a statutory requirement<sup>50</sup>. However, the section on equality and diversity suggests that unpaid work schemes etc. ‘require’ to consider care arrangements<sup>51</sup> and are ‘responsible for ensuring that women are supported in accessing support which will enable them to complete their CPO, (...) includ[ing] help in securing nursery placements or the provision of registered child care lists’.<sup>52</sup>

It is difficult to come to any firm conclusion about what exactly local CJSW or Unpaid Work teams are required to provide or do, and whether this is a legal obligation or merely an expectation formulated in guidance. Scottish Ministers have a power under s. 227F of the Criminal Procedure (Scotland) Act 1995 to make regulations providing for the payment of travel and other expenses to offenders in connection with their compliance with requirements attached to a CPO.

#### **Follow-up Recommendation 7:**

**(a) (Scottish Government)** *The forthcoming regulations under s. 227F of the 1995 Act should put beyond doubt that Local Authorities must provide for expenses covering adequate childcare to enable an offender who has childcare responsibilities to carry out the requirements attached to a Community Payback Order.*

**(b)** *The relevant sections of the practice guidance for Community Payback Orders should be amended so as to be clear about what Local Authorities must provide to ensure that childcare responsibilities are not a barrier to a community sentence being imposed.*

50. Scottish Government (2011), *National Outcomes and Standards for Social Work Services in the Criminal Justice System: Community Payback Orders Practice Guidance*, p. 15.

51. Ibid, p. 74.

52. Ibid, p. 75.

### 3.2.5 Sentencing Policy and the Scottish Sentencing Council

The Criminal Justice and Licensing (Scotland) Act 2010 made provision for the establishment of the Scottish Sentencing Council (SSC), with powers to prepare sentencing guidelines for approval by the High Court of Judiciary. Scottish Ministers may request that the SSC consider making or reviewing sentencing guidelines, and the SSC has to ‘have regard to’ any such request.

This section of the report discusses a multi-faceted set of issues relating to sentencing of offenders with childcare responsibilities. The issues— according to many stakeholders involved in this review— require to be debated further with the active involvement of the Scottish Judiciary. Indeed, it is difficult to see how significant progress can be secured in the areas highlighted in the 2008 report and this review, which relate to sentencing and the use of remand without the Judiciary’s involvement and engagement. The review team was grateful to hear from the Lord President’s office that it is his view that ‘[t]here is no reason why the position of the children of offenders should not be the subject of debate involving, among others, the judiciary’. He further pointed out that sheriffs and judges are involved in such forums as the Scottish Association for the Study of Offending on national and branch levels.

#### **Follow-up Recommendation 8:**

The **Scottish Government** should raise the profile of the rights and wellbeing of the children of offenders in sentencing by making a request to the Scottish Sentencing Council, once operational, to consider the status of the rights of children in sentencing decisions in respect of a parent, and the arrangements in place to consider children’s best interests in sentencing.

#### **Follow-up recommendation 9:**

It is respectfully recommended that the **Scottish Judiciary** engage in the debate about the rights and wellbeing of the children of offenders and their place in sentencing policy and use all appropriate forums, including the Scottish Sentencing Council, once set up, and the Judicial Studies Committee to raise the profile of this issue among sheriffs and judges.

## 3.3 Theme Three: Support for children of prisoners

Recommendations of the 2008 report grouped under this Theme concerned:

- Ensuring that the children of prisoners are supported in an adequate and timely manner.
- Guidance and training for police officers on dealing with children sensitively where a parent is arrested.

### 3.3.1 Early, appropriate, and non-stigmatising support for children

The task of offering appropriate, timely and proportionate support to those children who need it presents certain practice challenges. Notable among these is the fear and potential impact of stigma, which the literature on the impact of parental imprisonment on children highlights as a major issue.<sup>53</sup> The challenge is to identify those children who need support, and to provide it in a manner that does not expose the child to the adverse effects of the stigma of criminality by association.

A strong perception that there is a ‘divide’ between Children and Families Social Work and Criminal Justice Social Work was highlighted by practitioners as an obstacle to the provision of appropriate and timely support to children of prisoners. The review team was further told that community-based children and families services feel that they have ‘no business’ in prison-related environments, such as visitor centres (where they exist).<sup>54</sup>

Criminal Justice Social Work services, it was reported, do not consistently highlight issues affecting the children of an offender to children and families colleagues unless there are child protection concerns.<sup>55</sup> The review team further heard from stakeholders in education that children of prisoners are a largely ‘invisible population’ in Scotland’s schools, which may hinder the provision of appropriate support for learning.

Subsequent Scottish Governments have developed and promoted the *Getting It Right for Every Child* (GIRFEC) approach to children’s services, which is characterised as ‘a new, national approach to supporting and working with *all* children and young people in Scotland. It affects

53. Oliver Robertson (2007), *The Impact of Parental Imprisonment on Children*, Geneva: Quaker United Nations Office, pp. 11-14; Scharff-Smith & Gampell (2011), *Children of Imprisoned Parents*, Danish Institute for Human Rights, European Network for Children of Imprisoned Parents, University of Ulster and Bambinisenzasbarre, p. 27.

54. See Theme 4 below.

55. Note, for example, that the only section in the CPO practice guidance that details the need to share information with children and families social work is the section on child protection. Scottish Government (2011), *National Outcomes and Standards for Social Work Services in the Criminal Justice System: Community Payback Orders Practice Guidance*, pp. 19f.

all services for children *and adult services where children are involved*. The Scottish Government further highlights that its purpose is 'to ensure all parents, carers and professionals work effectively together to give children and young people the best start we can and improve their life opportunities'.<sup>56</sup>

In a debate in the Scottish Parliament in 2010, the then Minister for Children and Early Years, Adam Ingram MSP said:

The *GIRFEC* approach is aimed at meeting the needs of every child, regardless of the needs and circumstances of that child. The needs of children of prisoners are certainly part and parcel of that approach, and we must also ensure that there are stronger links between adult and children's services, so that no child falls between services and the full range of circumstances that affect the child's wellbeing are known of by all relevant service providers.<sup>57</sup>

While *GIRFEC* is widely supported by organisations working for, and on behalf of, children and young people and beyond, review participants expressed doubts as to whether support for the children of prisoners- underpinned by effective and timely partnership working between different services- is in place across the board. This reflects a wider concern that is expressed throughout the evaluation of the *GIRFEC* Highland Pathfinder in relation to interaction with 'adult services', which includes criminal justice services.<sup>58</sup>

In terms of support for children in education, the Additional Support for Learning framework emphasises the application of its provisions to children who 'for whatever reason' require additional support in order to benefit from school education.<sup>59</sup> Identification is key for any assessment to be undertaken and for such support to be provided, and a Ministry of Justice/Department for Children, Schools and Families report's conclusion that '[t]here is no systematic mechanism for informing a school of parental imprisonment' is likely to be equally true in respect of Scottish schools.<sup>60</sup>

### 3.3.2 Supporting children of prisoners - the need to connect the dots

The effectiveness and early intervention ethos of both *GIRFEC* and the Additional Support for Learning framework may be hampered if information about children's support needs or circumstances likely to give rise to such needs is not shared in an appropriate and timely fashion, and early action taken where required. A range of stakeholders expressed concern about current practice in this regard.

If the ample guidance is followed by practitioners, a wealth of information about the offender's family, including on childcare and the child's attachments and relationships, should be available by the time an offender is given a custodial sentence; this may feature in Criminal Justice Social Work Reports (where

requested) or in submissions made by defence agents in pleas for mitigation.

There is a view that information about an offender's children is relevant only in marginal cases in sentencing courts, where the potential impact of a custodial sentence on the child may persuade the court to impose a community sentence instead. But even if it had no impact on the decision of the court to imprison an offender with childcare responsibilities, this is potentially important information, which would aid the identification of children of prisoners and help ensure appropriate support, if required. This may open up opportunities to reach vulnerable children who may need support but have not previously been identified.

The Scottish Government's commitments to review the Children (Scotland) Act 1995 and ensure that the *GIRFEC* approach is developed nationwide through that legislation<sup>61</sup> should provide opportunities to raise the profile of issues affecting the children of prisoners in Scotland and to improve the support that is available to them across Scotland.

#### Follow-up Recommendation 10:

**Local Authorities** should assess the adequacy of joint working and the 'flow' of information relating to the children of prisoners between children's and criminal justice services with a view to improving cooperation between agencies and appropriate information-sharing that underpins better support for the children of prisoners.

#### Follow-up recommendation 11:

The **Scottish Government** should ensure that forthcoming legislation supports tangible improvements for the children of prisoners and raises the profile of the issues affecting them among all relevant groups of practitioners.

### 3.3.3 Arrest and police practice

The review team was told that Lothian and Borders Police has been working with Families Outside to provide information to suspects who are parents in police stations, including by way of a stencil which enables the force to put the contact number for Families Outside's Helpline on the walls of police cells. They further invited the organisation to provide training inputs to its officers. This is welcome.

However, it is notable that there is no national approach to dealing with children as third parties who witness the arrest of a parent and may be distressed by the experience, or indeed situations where no child is present at the time of arrest but there is evidence of a child in the home (e.g. toys, children's clothes, etc). This would seem to be essential in aiding the development of a consistent response to children of suspects, who may be affected directly or indirectly by their parent's arrest.

**Follow-up Recommendation 12: The Association of Chief Police Officers in Scotland (ACPOS)** should audit policies, practice guidance and training that are relevant to the arrest of suspects who are parents and assess their adequacy, including by carrying out *Children's Rights Impact Assessments*, and make improvements as appropriate.

56. <http://www.scotland.gov.uk/Topics/People/Young-People/childrenservices/girfec/programme-overview>, accessed 31 May 2011 (emphases added).

57. Adam Ingram MSP, *Official Report* 30 June 2010, at Col. 28036.

58. Scottish Government 2009, *Changing Professional Practice and Culture to Get it Right for Every Child: An Evaluation of the Development and Early Implementation Phases of Getting it right for every child in Highland: 2006-2009*; for example, pp. 9, 18, 35, 78, 140.

59. Section 1 (1) of the Additional Support for Learning (Scotland) Act 2004.

60. Ministry of Justice & Department for Children, Schools and Families (2007), *Children of Offenders Review: A joint Department for Children, Schools and Families/Ministry of Justice review to consider how to support children of prisoners to achieve better outcomes*, p. 11f.

61. Scottish National Party (2011), *Scottish National Party Manifesto 2011: Re-Elect a Scottish Government Working for Scotland*, p. 22.

### 3.4 Theme Four: Contact and visiting during parental imprisonment

Recommendations of the 2008 report grouped under this Theme concerned:

- Providing adequate visiting opportunities for children and families, including child-focused visits, and removing practical barriers to family visits such as transport issues and visiting times during school hours; supporting family contact.
- Ensuring that prison visiting entitlements are seen as a right of the child and their allocation and conduct are not used as part of disciplinary regimes or to punish the prisoner.

#### 3.4.1 SPS Good Practice Guidelines

In 2009, the Scottish Prison Service produced its *Good Practice Guidelines for Working with Children and Families of Prisoners*,<sup>62</sup> a set of 13 principles developed by its National Children and Families Group. This is a positive development, and current work at SPS to assess the implementation of the *Guidelines* locally is a positive development and to be encouraged.

The *Guidelines* recommend that every publicly-run<sup>63</sup> prison should have a Children and Families Group, chaired by a senior manager, tasked to drive implementation of the *Guidelines* locally. However, the review team learned that stakeholders, including some who work in prisons, feel that the children and families

agenda lost momentum recently, and that there is great variation in the work of local groups. Others expressed doubts as to the extent and impact of implementation of the commitments made by the SPS to date. It is clear that while there has been very welcome progress in some areas, there are still significant challenges and areas where improvement is urgently required.

At time of writing, SPS was gathering information about the progress of the work of local Children and Families Groups, and progress made against the standards set out in the *Guidelines*. It is hoped that the findings of this review will be used by the SPS to further drive implementation of the *Guidelines*. SPS should be encouraged to ensure that this is a rigorous process and publish its findings to drive continuous improvement.

#### **Follow-up Recommendation 13:**

*The Scottish Prison Service should periodically evaluate progress in the implementation of the Good Practice Guidelines for Working with the Children and Families of Prisoners across the prison estate and publish its findings to allow for external scrutiny.*

#### 3.4.2 Information about family contact and support

The *Guidelines* contain a commitment to offer prisoners at their induction a leaflet with information about family contact and visiting. It is understood that prisoner induction is delivered as a modular process that normally starts within 72 hours of reception into prison. Given the well-known issues around literacy in the prison population,<sup>64</sup> and the fact that there may be prisoners with

limited English language skills, SPS should look at additional ways to inform prisoners about visiting rights and some of the practical matters involved.

The review team was told that the three full-time Family Contact Officers at HMP/YOI Cornton Vale speak to every new prisoner about family contact and the support available to prisoners and their families, normally within a day of reception. This is a welcome development and a good practice example for other establishments.

Family inductions take place in a small number of establishments, and the review team learned that there is a lack of consistency in this area. Some prisons routinely deliver family inductions; some only offer this to families of first-time prisoners. Others do not offer family inductions at all. The lack of information for families about the ‘mechanics’ of visiting and contact generally is a significant issue identified by a number of stakeholders, including SPS. Bringing some consistency to family inductions and taking steps to promote increased uptake across the estate is something that the SPS should explore further.

#### **Follow-up Recommendation 14:**

*The Scottish Prison Service should ensure consistency in the timely provision of all relevant information (including on the types of child-parent visits available at the prison) to children and families, including through family inductions at every establishment.*

#### 3.4.3 Child-focused visits

The SPS *Guidelines* make clear that prisons should offer a range of visiting opportunities focusing on the needs of

the child and family (principle 13). In practice, SPS advises, a variety of family visiting options and events are offered throughout the year, including: ‘bonding visits’, during which prisoners are allowed to move around the visiting room freely to play with the child; homework clubs (HMP Edinburgh); and seasonal family events (around Easter, Halloween, Christmas, etc.). The *Guidelines* further state that prisons should give parents an early opportunity to have a ‘child-focused visit’ (Principle 8), and this is welcome.

These opportunities to experience some ‘normality’ in the child-parent relationship are limited by the prison environment, which does not aid the ‘normalisation’ of those relationships. But these are important steps towards enabling children to build, maintain or rebuild a meaningful relationship with an imprisoned parent, where this is in their best interests (as stipulated by article 9 (3) of the UNCRC). There is a compelling view that this is also in the ‘operational interest of prisons’<sup>65</sup> and a positive factor in promoting desistance from offending.<sup>66</sup> It is important that rather than falling victim to budget cuts, these opportunities are extended throughout the prison estate, and good practice in terms of provision, allocation and conduct of such visits in some establishments should be shared with others.

#### **Follow-up recommendation 15:**

*The Scottish Prison Service should ensure that all prisons offer a range of ‘bonding’ and other child-focused visits and that these are open to the full range of prisoners who are parents; there should be clear criteria underpinned by the rights of children for these that are applied consistently throughout the estate.*

62. Currently unpublished.

63. HMP Kilmarnock is run by Serco, and HMP Addiewell is run by Sodexo Justice Services; all other Scottish prisons are publicly run by the Scottish Prison Service.

64. See, for example, an answer to a recent Written Parliamentary Question on prisoner literacy. S3W-38828 (Richard Baker MSP), answered by Kenny MacAskill MSP, Cabinet Secretary for Justice on 27 January 2011.

65. Andrew Coyle (2009), *A Human Rights Approach to Prison Management: A Handbook for Prison Staff*, 2nd Edition, London: Centre for International Prison Studies & Foreign & Commonwealth Office, p. 103.

66. Tânia Loureiro (2009), *Child and Family Impact Assessments in Court: Implications for Policy and Practice*, Edinburgh: Families Outside, p. 6.

### 3.4.4 Contact and visiting: a child's right, not a prisoner's privilege

A key recommendation in *Not Seen. Not Heard. Not Guilty* was that visits involving a child and their parent should not be subject to Incentives and Earned Privileges (IEP) schemes operating in prisons. Principle 8 of the *Guidelines* indicates that the child's right to contact with an imprisoned parent will influence decisions about allocation and timing of visits. In particular, this principle makes explicit that prisons should '[e]nsure that parent-child visits are not tied into any system of Incentive or Earned Privileges Scheme (IEP) or punishments'. This is commensurate with the relevant HM Inspectorate of Prisons inspection standard<sup>67</sup>. The SPS should be applauded for the adoption of this very important principle in the *Guidelines*.

In relation to closed visits, the *Guidelines* require that the rights of any children affected, be taken into account in decisions to impose closed visits status on a prisoner, as will any child protection matters. The Principle states that 'all possible alternative arrangements' to closed visits have to be routinely considered where a child would be directly affected. This is helpful progress on the 2008 report's recommendation.

However, making these highly commended pledges a reality in the day-to-day running of Scotland's prisons requires a significant culture change, which significantly raises the profile of the rights of children. Stakeholders, including the SPS, made clear that there is still a considerable way to go to embed this culture change across the Service. At present, decisions about 'bonding visits' and other important child-parent provision are still frequently influenced by other considerations, primarily but not exclusively relating to prison discipline. The review

team has been told of various conditions being applied before child-focused visits are granted, including – most prominently – good behaviour, and even the completion of a parenting course. This clearly indicates that the children's rights perspective on family contact is not yet fully embedded in the SPS's practice.

#### Follow-up Recommendation 16:

*The Scottish Prison Service should continually reinforce the very important principle that visits, including child-focused or 'bonding' visits need to be seen as the child's right, and must not be used as a disciplinary measure or punishment against the prisoner. The SPS should consider including this principle in the revised Prison Rules. This should be an area of particular attention in SPS's ongoing work to measure and drive implementation of the Guidelines across the estate, and be a regular feature of staff induction, training and appraisal.*

### 3.4.5 Family Contact Officers

It is clear from the literature and reports from stakeholders that Family Contact Officers (FCOs) fulfil a crucial function and are highly valued by prisoners and their families. In some establishments they report strong links with community-based services, including children and families social work, and this is seen as essential to support children of prisoners. Initiatives to build these links, such as an open day at HMP/YOI Cornton Vale for Children and Families Social Workers a few years ago, for example, are positive steps that should be encouraged.

The SPS reports that the number of FCOs in post continues to increase across the estate, and a recent answer to a parliamentary question confirmed that there

are currently 69 FCOs in post<sup>68</sup>. The SPS has reiterated the importance of FCOs as recognisable providers of information, advice and support to prisoners and their families alike. The *Guidelines* include a commitment to providing 'an identifiable Family Contact Service to support prisoners and their families'.<sup>69</sup>

The role of FCO is currently delivered in different ways across the estate; some prisons have a smaller number of dedicated, full-time FCOs, while others operate on a model whereby the FCO role is additional to other duties. HMIP inspectors have endorsed the FCO arrangements in a prison without full-time FCOs<sup>70</sup>, but they have also reported that in another prison with the same model there were doubts about the amount of time the officers were actually able to devote to the FCO role<sup>71</sup>; inspectors have also specifically recommended that full-time FCOs be appointed at another establishment.<sup>72</sup>

There is not currently a consistent model on which FCO services are delivered and practice varies across the estate. Nor is there a standard description of the role of FCO. It is understood that the operation of family contact services is being looked at within the present review of the implementation of the *Guidelines*, and this is welcome.

#### Follow-up Recommendation 17:

*The Scottish Prison Service should take steps to raise the status of Family Contact Officers and ensure that there is a clear and consistent definition of the role, as well as adequate support, supervision and training; FCOs should be sufficiently resourced to ensure high standards of service to children and families and imprisoned parents at every prison.*

### 3.4.6 Visitor centres

Three Scottish prisons currently have visitor centres, and there have been initiatives at other prisons to establish visitor centres in recent years, notably at HMP Glenochil and HMP/YOI Cornton Vale.<sup>73</sup>

The new HM Chief Inspector of Prisons for Scotland, Brigadier Hugh Monro CBE highlighted in his annual report a focus on families as a priority and stated that it is his view 'that at certain prisons, either those prisons which are national facilities or those with poor transport links, visitor centres should be an essential requirement'.<sup>74</sup> It is important to see visitor centres not as mere waiting rooms for visitors, but as facilities for families which are often vulnerable and may not access community-based support services.<sup>75</sup> They can act as a 'bridge' between prisons and the community, as a tool in

67. HM Inspectorate of Prisons for Scotland (2006), *Standards Used in the Inspection of Prisons in Scotland*, Edinburgh: HMIP; p. 29. This reads: 'Family visits are given a high priority in terms of frequency, length and quality and are not restricted as part of any disciplinary or control process.'

68. Written answer by Kenny MacAskill MSP, Cabinet Secretary for Justice to question S3W-39776 in the name of Dr Richard Simpson MSP (answered 3 March 2011).

69. Principle 2.

70. HM Inspectorate of Prisons, *Report on HMP Perth, Full Inspection 14-18 December 2009*, paras 5.1f.

71. HM Inspectorate of Prisons, *Report on HMP Aberdeen, Full Inspection 6-10 October 2008*, para 5.5.

72. HM Inspectorate of Prisons, *Report on HMP Glenochil, Full Inspection 26 April – 2 May 2010*, para 5.7.

73. HM Inspectorate of Prisons, *Report on HMP & YOI Cornton Vale, Full Inspection 21-29 September 2009*, para 5.9; HM Inspectorate of Prisons, *Report on HMP Glenochil, Full Inspection 26 April – 2 May 2010*, para 5.2.

74. HM Chief Inspector of Prisons for Scotland, *Annual Report 2009-10*, p. 6.

75. Ministry of Justice & Department for Children, Schools and Families (2007), *Children of Offenders Review: A joint Department for Children, Schools and Families/Ministry of Justice review to consider how to support children of prisoners to achieve better outcomes*, p. 6.

building public relations, as a useful neutral venue for engagement with families, and as a 'gateway' for links with community-based supports'.<sup>76</sup>

In March 2011, Cabinet Secretary for Justice Kenny MacAskill MSP confirmed that

[t]he current focus of the Scottish Prison Service is on improving the facilities within prisons to support contact between prisoners and their families (...). The Scottish Government is actively considering how we can build on the success of visitor centres at HMP Perth and HMP Edinburgh, with a particular focus on how they can offer opportunities for a number of statutory and voluntary agencies to reach people who would benefit from support.<sup>77</sup>

SPS advise that they wish to break down barriers to families engaging with supports within the perimeter of the prison. Proponents of visitor centres point out that this may have the effect of the engagement with support services being on the prisoners terms, which is particularly concerning where relationships have been difficult or even abusive. Facilities within prisons may inhibit families to raise certain issues, including where they do not want to cause distress to their imprisoned family member.<sup>78</sup>

#### **Follow-up Recommendation 18:**

*The **Scottish Prison Service** should review its position on visitor centres in light of the positive experiences from existing centres and the strong views expressed by HMIP and stakeholders in this review, and work with external partners to explore mechanisms by which visitor centres could be delivered at more establishments.*

#### **3.4.7 Practical barriers to family contact**

The 2008 report highlighted a number of practical barriers to children's contact with their imprisoned parent, including prisoners being accommodated long distances away from their family home (see also 3.1), visiting times that clash with school hours and a lack of public transport provision and the costs associated with travel.

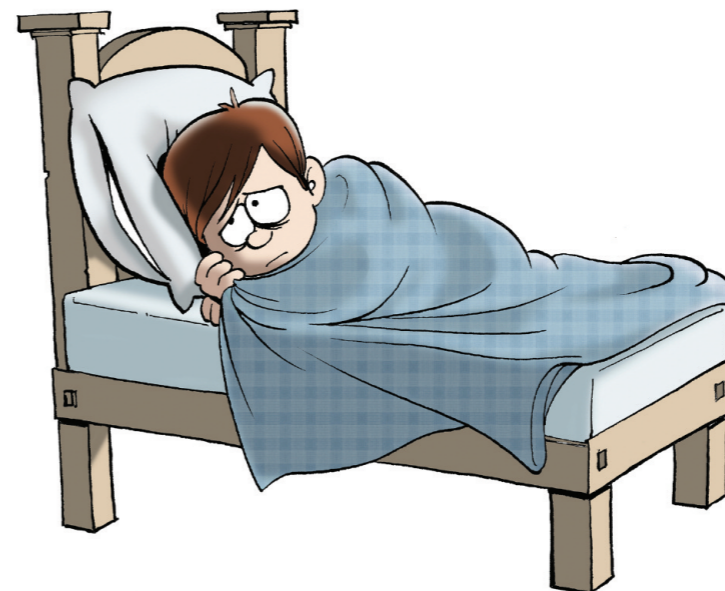
The *Guidelines* emphasises the need for prisons to be flexible in scheduling visiting sessions, taking account of visitors' requirements, including school hours and travel times. Visiting times have reportedly been amended across the prison estate, including for bonding visits and other dedicated child-parent visits and events, outwith school hours. This is very welcome.

The *Guidelines* further state that prisons should work with local transport providers and other partners to ensure that transport links to prisons are accessible to visitors and link in with visiting times. While variable progress has been reported by review stakeholders in terms of specific travel arrangements to prisons, SPS advises that partnership efforts locally have resulted in visiting times and public transport provision being more 'in sync' at a number of establishments, cutting travel and waiting times for families.

The effectiveness and progress made in respect of prison transport provision should be continually monitored through the visitors' survey, and SPS and its partners should address any issues identified in this area. All those working with children and families of prisoners who are held in prisons with inadequate transport links should raise families' awareness of the Assisted Prison Visits Scheme, which offers financial help for prisoners' families, and offer support with applications.

#### **Follow-up Recommendation 19:**

*The **Scottish Prison Service** should consider good practice examples in the prison estate in respect of transport for families visiting prisons, and work with community partners to ensure that such good practice is replicated at other prisons.*



76. Families Outside (2010), *Prison Visitors' Centres: An Ongoing Debate*, ...in brief 05.

77. Answer to written parliamentary question S3W-39774 in the name of Dr Richard Simpson MSP, answered 3 March 2011.

78. Families Outside (2010), *Prison Visitors' Centres: An Ongoing Debate*, ...in brief 05.



## 4. Conclusion

It is clear from the findings of this review that *Not Seen. Not Heard. Not Guilty* sparked considerable activity to:

- raise awareness of the issues facing the children of prisoners in Scotland;
- change policy and practice to raise the profile of children in decisions made about their parents and;
- mitigate the impacts of parental imprisonment on the children of prisoners.

Notably, the Scottish Government and the Scottish Prison Service have generally been supportive of initiatives to make progress for children.

While this has been very welcome, this review also found that there remain considerable challenges in changing practice and organisational cultures. Moreover, while every organisation and institution addressed in this review can, and must make progress for the children of offenders, it is clear that no one agency can tackle the multi-faceted issues facing this sizeable and often vulnerable group.

It is hoped that this review will help give renewed momentum to this important agenda and drive progress across the key areas addressed in *Not Seen. Not Heard. Not Guilty* and in this review. There will be opportunities to drive this agenda forward over the next few years, including

in the context of political commitments made with regard to the *Getting It Right for Every Child* approach, the Scottish Sentencing Council, and female offenders in the criminal justice system. In addition, there may be a new international steer from the UN Committee on the Rights of the Child's discussion day on the children of incarcerated parents in September 2011, to which the office of Scotland's Commissioner for Children and Young People will contribute.

However, all addressees of the follow-up recommendations and others in positions of influence, such as Members of the Scottish Parliament, Local Authorities and Community Justice Authorities, should act in concert to ensure that the children of offenders in Scotland do not remain the unseen and unheard victims of their parents offending and the criminal justice system's response.

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Scotland's Commissioner  
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**REVIEW 2011**

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THE RIGHTS AND STATUS OF  
THE CHILDREN OF PRISONERS  
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