



HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Oral evidence: [The right to family life: children whose mothers are in prison](#), HC 1610

Wednesday 20 February 2019

Written evidence from witnesses:

- Dr Jo Easton, Deputy Chief Executive and Director of Policy and Research, [Magistrates' Association](#)
- Dr Jenny Earle, Programme Director, [Prison Reform Trust](#)
- Dr Shona Minson, Academic Criminologist, [University of Oxford](#)
- Lord Justice Holroyde, Chair, [Sentencing Council](#)

[Watch the meeting](#)

Members present: Baroness Hamwee (Chair); Fiona Bruce; Ms Karen Buck; Joanna Cherry; Jeremy Lefroy; Baroness Lawrence of Clarendon; Lord Trimble

Questions 18–26

Witness[es]: **Dr Jo Easton**, Deputy Chief Executive and Director of Policy and Research, Magistrates' Association; **Dr Jenny Earle**, Programme Director, Prison Reform Trust; **Dr Shona Minson**, Academic Criminologist, University of Oxford; **Lord Justice Holroyde**, Chair, Sentencing Council gave evidence.

Q18 **Chair:** Thank you very much for coming to this Committee. We have apologies from Harriet Harman, who is unwell. I am taking the Chair just for this meeting in her place. As she always reminds witnesses, although you will be well aware of it, we focus on human rights and we are a committee comprised of Members of both Houses of Parliament. As is the way with parliamentarians, and you will be used to this as well, there may be some coming and going because of other business that goes on elsewhere in the building at the same time. We all have questions for you. I wonder, first, for the record, if I can ask you to introduce yourselves.

Lord Justice Holroyde: I am the chairman of the Sentencing Council and I am a Lord Justice of Appeal.

Dr Shona Minson: I am a post-doctoral research fellow at the Centre for Criminology at the University of Oxford.

Dr Jenny Earle: I lead the Prison Reform Trust programme to reduce women's imprisonment, which is called Transforming Lives.

Dr Jo Easton: I am director of policy and research at the Magistrates' Association.

Q19 **Ms Karen Buck:** Thank you very much for coming. I do not know whether you have had an opportunity to see any of the evidence that we took last week directly from the families, which was very powerful. I wonder if you could help us, particularly from your perspectives, Jenny and Shona, to set the scene, in terms of what we know about the number of children affected when their mother, usually, or sometimes primary carer, is in prison. What information is out there? Who is responsible, if anyone, for collating and tracking it?

Dr Jenny Earle: I will kick off and then you will probably pick it up, because Shona is the academic expert. From the briefings we have produced, many with Shona's support, I can say that we do not have nearly enough systematic monitoring or recording of information about the number of women in prison who are mothers, or the number of children affected by separation from their mother by imprisonment. The widely used number, which we all still use, is that 17,240 children across England and Wales are separated from their mother. That was from 2011 in a report published by the Howard League, and it was an estimate, but it is still the most reliably used figure.

Ms Karen Buck: Do you mind very much if I jump in? What was the estimate based on?

Dr Jenny Earle: It was based on academic research studies and demographic data on women in prison.

Ms Karen Buck: It was a snapshot.

Dr Jenny Earle: It was an estimate of the number of women going through prison.

Ms Karen Buck: This information is simply not collated.

Dr Jenny Earle: It is simply not collected. There is comprehensive academic research, which is quite aged now. The most authoritative report was by Caddle and Crisp, and that is now 20 years old. There are other smaller-scale surveys; for example Rona Epstein and Lucy Baldwin interviewed, in prison, 17 women who had between them 50 children. The data is not routinely collected by the prisons on women's entry into prison. It is not routinely collected by the Ministry of Justice or Her Majesty's Prison and Probation Service. We would like to see much more done on that front.

There have been some parliamentary Questions asked recently. Last November, in answer to a parliamentary Question about the number of women from north Wales who were in Styal women's prison, which is in

Manchester, the Minister said that it was 111, but the prison record system, NOMIS, does not record the ages of the children. Not only do we not have an accurate number affected, but we do not have the ages of the children or the circumstances in which they are left.

Lastly, before handing over to Shona, I would say that the Minister replied in answer to another parliamentary Question about the number of women in prison with dependent children that this information is not held centrally and can only be obtained at disproportionate cost. That is quite hard to believe, given that there are only 12 women's prisons in the country.

Ms Karen Buck: On that point, presumably somebody, possibly you, has over time asked the department to routinely collect information. What is the response to that?

Dr Jenny Earle: In response to the pressure that we were exerting for more accurate data and systematic monitoring, the Ministry of Justice did a data-matching exercise between child benefit data and police national computer data. It came up with an estimate of between 24% and 31% of women offenders having dependent children. We and many others think that is an underestimate. There are flawed assumptions in that data-matching exercise.

If you look at any prison inspectorate reports, when it surveys women in a prison about whether they have dependent children, that is the only question it asks: do you have dependent children? It does not ask how old the children are or what has happened to them while she is in prison. You always get something between 55% and 65% of women in those inspectorate reports saying that they have children, so the Ministry of Justice figure must be an underestimate. It is way past time that it develops a system of more accurately and routinely recording it, because unless this issue is counted it is impossible to develop appropriate policy solutions.

Dr Shona Minson: There is not much I would add to that. As Jenny said, the last census was 1997, and that found that 61% of women in prison at that time were mothers. The Revolving Doors Agency did a survey of 1,400 women in Holloway and, in that one 42 women did not know who was looking after their children, which is a very shocking statistic. The issue is that there is no information taken at point of sentence. The information is not routinely requested before someone is sentenced. It is not recorded when someone is then given a prison sentence. It is not recorded at prison.

There was for a short time a first-night scheme in Holloway prison run by Pact, I think, which took that information, if somebody needed to make a phone call to children or whatever, but due to lack of funds that stopped. That was a very short service.

Ms Karen Buck: Logically from what you are saying, there is then no cross-referencing between what little is definitively known about the

number of mothers with children and anything about the nature of their sentence, the length of their sentence and ethnicity, which is a question.

Dr Shona Minson: That is right.

Ms Karen Buck: That does not exist, as far as you are aware.

Dr Shona Minson: We just have no data. What is needed, I suggest, is a census of the women's prison population, so we get some numbers, because then you can start to work out what needs to go on.

Ms Karen Buck: We can ask the Minister, but presumably there are two ways of doing this. One is a census approach and one is changing the way information is gathered at the point of sentencing.

Dr Shona Minson: Both would be good.

Ms Karen Buck: As a final question, we do not have much official data from what you said, but what do we know about what happens to children after the mother has been sent to prison? What information, if any, do we know about who is looked after, how many are fostered, how many are in kinship care? Is there any information like that?

Dr Shona Minson: Once again, we do not have any definitive information. The best that anyone uses is the 1997 data. When I did my study, which looked at 27 families where mum was in prison at the time, that was the biggest number that had been surveyed in England and Wales. There is just nothing. Since then, there have been a couple of others. There has been the Lucy Baldwin and Rona Epstein study, where they gave questionnaires to 17 mums, but there are just these little pockets of information.

We know some things. We can extrapolate some others from other countries and other settings where they have looked at what happens to children. We know, broadly speaking, that maternal imprisonment tends to have a more detrimental effect than paternal imprisonment. We do not know why that might be. It may be because stigma arises at a greater level when a mother is sent to prison. It might be because mothers are missed more, in some ways.

Dr Jenny Earle: Children are much more disrupted, are they not, by maternal imprisonment? From the 1997 study, only 5% of children whose mother goes to prison stay in their own home, 9% are looked after by their fathers and most of them go into the care of family and friends. About 14% in that study went into local authority care. As Shona says, it is not routinely monitored, but the evidence we have is that children are much more disrupted, as well as all the psychological impacts.

Dr Shona Minson: One type of disruption that has been very much unnoticed, although all of it has been unnoticed, is disruption to children's education. Unlike other children who the local authority pick up and classify as children in need under Section 17 of the Children Act, these children are not categorised as children in need and they are not looked-after children. Therefore, they get no priority in school places. If a child moves area to be cared for by whoever and the local school is full, they have no obligation to give that child a place. In my research, I came

across one group of five boys who had been out of school for three months because of the move to their grandmother's. It disrupts everything.

Chair: I was throwing out some paper at home at the weekend and found a note from about 2009, which said that children with mothers in prison do not equal children categorised, as you say, except for Essex and one other authority. For completeness, or possibly incompleteness, presumably there is not data about the ages of the children affected either.

Dr Shona Minson: No, nothing.

Q20 **Fiona Bruce:** Good afternoon. I have quite a few questions about sentencing guidelines and practice, so you may want to keep your answers reasonably brief and we will get through them. First, do the current sentencing guidelines sufficiently protect the right to family life for children whose mother, or primary carer if not the mother, is likely to be imprisoned.

Lord Justice Holroyde: There are a number of ways in which the guidelines direct sentencers to have regard to the effect of imprisonment on others. We have an imposition guideline, which applies to all cases where a court is considering a community order or a custodial sentence. It sets out the statutory duty not to pass a custodial sentence unless the court is of the opinion that neither a fine nor a community order is sufficient to meet the seriousness of the case.

In that guideline, at a couple of points reference is made to the need to have regard to the consequences for others of the offender being imprisoned. First, the guideline makes the point that, even if imprisonment is the only apparently appropriate course, it does not invariably follow that there must be a custodial sentence. Specific reference is made to the fact that, for an offender on the cusp of custody, as it is put, the court should consider whether the impact of imprisonment on dependents will make the sentence of imprisonment disproportionate to the purposes of punishment in the particular case.

At a later stage of the guideline, when directing sentencers about the approach to suspending sentences of imprisonment, again, the point is made that the fact that the offender is the sole or primary carer for dependants is a factor capable of militating in favour of suspension. That is a general guideline. There are references, which I can come to if you wish, in offence-specific guidelines, but more generally, in almost all our guidelines, when we come to the stage of listing potential mitigating factors for the sentencer to consider, being a sole or primary carer of dependent children or, indeed, dependent adults is a factor capable of being a mitigating feature.

Fiona Bruce: Thank you. That is very helpful. Do the guidelines set out in so many words that the interests of the child, perhaps the best

interests of the child, should be a consideration or, indeed, a primary consideration?

Lord Justice Holroyde: No, not in those terms. I have indicated that the effect on others, including children, is a topic to which the sentencer is directed to have attention. It would be appreciated, I am sure, that the sentencer has a number of considerations to bear in mind, including perhaps most obviously the effect of the crime on victims. We do not spell out in terms in our guidelines, which we like to keep pretty short and focused so far as possible, any particular approach.

Fiona Bruce: That is very helpful. Perhaps other members of the panel can come in after Lord Justice Holroyde has given his comments. I am wondering whether, in light of the fact that children are not specifically mentioned as such, their rights are at the forefront of judges' minds when their mothers are being sentenced. Do you feel that is the case?

Lord Justice Holroyde: I do, because the sentencer is directed to consider the effect of imprisonment on others. If there is a mother of children or, indeed, a father who is the sole or primary carer for children before the court, the consequence for others is clearly a factor that has to be borne in mind. As I have said, in certain cases it may make the difference between immediate imprisonment and something other than immediate imprisonment. Inevitably, the more serious the offence, the less weight can be given to the interests of others affected by the sentence that would otherwise be appropriate for the offence.

Fiona Bruce: We are very grateful to you for being here today, Lord Justice Holroyde. Is there a way in which the Sentencing Council monitors whether the sentences passed follow the guidelines you have just outlined?

Lord Justice Holroyde: Part of our remit is to review the operation of guidelines, which we do as part of our annual programme of work. That particular guideline will be reviewed. At the moment, we have been reviewing the assault guideline and the drugs guideline. That is an opportunity to see how the guideline is being applied in practice. If the review indicates that there are issues of concern as to whether it is being applied as we would have wished, that may lead to some amendment or revision of the guideline.

It perhaps needs to be remembered that if a judge significantly departs from the guidelines, by giving either too high or, indeed, too low, a sentence, there is a system of appeal by those who say their sentence is too high, and for certain offences there is a system of review by the Attorney-General for sentences that are said to be unduly lenient. Errors in application can be identified in that way.

Fiona Bruce: In your opinion, at the moment the current sentencing guidelines are being adhered to, you would say.

Lord Justice Holroyde: They are clear. They are generally followed. Cases in which they are not followed are likely to result in the fact that they have not been followed coming to the attention of a higher court.

Fiona Bruce: I have one further question on which you may want to comment, along with the rest of the panel, and then, please, make any further comments that you want to. Is there a need for separate guidance to be produced on sentencing, focusing on mothers where they are primary carers? Should the guidelines be revised or should the existing guidelines be strengthened?

Lord Justice Holroyde: Just to keep talking for a moment, in our view at the Sentencing Council there is not a need for a separate guideline. We aim, as I say, to produce clear guidelines in a pretty succinct form that will be used by all sentencers in all cases. We believe the guidance we give is sufficient and there is no need to supplement it by extra provision for specific sections of the offender population.

Dr Shona Minson: I am afraid I have a differing view from Lord Justice Holroyde on this. I undertook direct research with 20 members of the Crown Court judiciary on this particular issue, to try to find out whether they were observing the guidelines. There are also a number of sentencing authorities that make it very clear that it is the courts' responsibility to get information about the impact on dependent children and use it in sentencing.

Bear with me going through this number by number, but it is quite important. When I asked the judges the question, "Do you know of any sentencing guidelines or authorities that you would follow when determining the weight that should be given to a defendant's primary or sole caregiving status?", three said they did not believe the sentencing guidelines contained any guidance on it. Three said there were no authorities on the point. Two said there were authorities but they did not need to apply them. Three said they knew there were authorities and said these meant children should not be a factor that mitigated in sentence. Twelve knew of authorities and understood they needed to balance this, and only one judge said the welfare of the child should be at the forefront of the judge's mind.

No judge knew that the duty was on the court to get that information. Three judges regarded consideration of dependent children as being contrary to justice. Four said the consequences on dependent children are entirely the responsibility of the mother and, therefore, the court does not need, nor should it try, to reduce the harms that might be suffered by the children. One judge took the view that being a parent made the offender more culpable and they should receive a harsher sentence.

I accept that my research is from 2015-16. In 2017 we got these new guidelines, which make it clearer about sentences, but when I interviewed the judges all the authorities were in place and being a sole carer for dependent children was in every guideline, under mitigation, as something that could be taken into account.

The misconceptions the judges had that led them to think those things or to not think children were important were, very briefly, that only some children are negatively impacted by the imprisonment of their mother;

young children go to mother and baby units, so there is no need to consider them; mother's worth to her child is linked to her offending behaviour, so if she has offended she is not worth anything as a mother; a child's socioeconomic status determines their future potential, so those from lower income brackets are going to suffer less harm if their mother is removed; every woman before the court has somebody who would take care of their children if they needed to; if they are not putting someone forward they are blackmailing the court. The final one was that, so long as a child is not in local authority care, they are not going to suffer any harms at all.

In answer to the last question about whether you should have a separate guideline or add it, when I wrote my submission for this I said there should be a separate guideline, and I have been saying that for the last three or four years. There should be something very specifically directing every judge and magistrate to look at this issue. Since then, the child cruelty guideline was published in January 2019 and it has added, as a step that every judge must go through, consideration of parental responsibility.

Interestingly, in a situation where it says the child is quite possibly the victim, it tells the court to give particular attention to the effect a custodial sentence could have on the family life of the victim and whether this is proportionate to the seriousness of offence. They must think about this. It is quite surprising that, where a child may have been harmed by their parent, the courts are now given a very specific directive to consider that this could also still be harmful for the child to remove their parent, but it is not in any other guideline. Either there should be a whole guideline or at least this step 5 should be put into every guideline.

Dr Jenny Earle: Our report, *What About Me?*, which we have submitted in evidence to your inquiry, and hard copies are here today, has lots of testimony from children and mothers, who we spoke to about the fact that the issues were not put before the court in the sentencing process, or that if they were they seemed to be disregarded or not given due weight. I will bring that testimony to your attention and suggest that more measures are needed to ensure that that information comes before the court. If a woman is not represented, in particular, or not well represented, which we certainly heard some examples of, the sentencer should be more proactive in making inquiries.

It is more likely that a woman has primary care responsibility, which is why I am talking about women. As Lord Justice Holroyde said, where a father has primary caring responsibilities we would want the same to apply. We have proposed, and it would be helpful to have, a new overarching principle on the sentencing of sole or primary carers. It would have underneath it the steps that a sentencer should follow where children are or may be impacted by a sentence, and that should be underpinned by guidance, drawing attention to the evidence that exists

about parental imprisonment being an adverse childhood experience and issues of proportionality when sentencing a parent.

It would also be helpful to have better linkages from the guidelines to the *Equal Treatment Bench Book*, which is a very rich resource of information about the diverse needs of people who may be appearing in the courts. A number of improvements could be implemented to ensure more consistent application of what is existing case law.

Dr Jo Easton: I would agree with Jenny that the main problem is information coming to the court. It is very clearly set out in the sentencing guidelines, especially the imposition guideline, which is the most important if you are looking at ordering custody: you have to look at the impact on the children and ensure that the sentence is still proportionate, which is the correct language to use in terms of human rights. If the information is not before the court or it is not detailed enough, it may be very difficult for them to make that judgment.

It is all about what information comes to the court. Although I agree that it is the court's responsibility, it may be inappropriate or it may not encourage women if they have to talk about it in an open court. If they are not willing to talk to a probation officer in a private room, having an interview, they may not be more likely to want to talk about their childcare responsibilities in an open court. From a magistrates' court perspective, it is all about getting information from the PSR and making sure that the PSR and the NPS have access to all the information that they need.

Lord Justice Holroyde: May I come back on two points arising from what Shona said? First, could I just emphasise the point she made that her research was carried out before our imposition guideline? We would like to think that the disappointing responses she described have been affected favourably by the imposition guideline.

There is another point I would like to make. Shona mentioned the recently published child cruelty guideline and the particular factor that appears in that. That may be of interest to the Committee, because the reason it is in there is that, when the Sentencing Council was doing its research and analysis with a view to preparing the guideline for child cruelty offences, the specific situation was identified, which crops up very commonly in child cruelty, but much less commonly in other offences, that the victim of the offence is the child of the parent who is to be sentenced and, therefore, the interests of that child in the fate of the parent have a particular feature about them. Our research found that judges often were, in the absence, at that stage, of a guideline saying it, treating the interests of the child in maintaining the family unit as a reason to avoid immediate imprisonment.

The child cruelty guideline specifically addressed that situation and made the point that, having come to a view about what sort of sentence is appropriate, the sentencer needs to step back, think about the effects on the child who is the victim of the offence and upon any other children,

and bear in mind that the best interests may be served by allowing the family unit to continue.

Arising out of that, in one of our current review programmes, which tantalisingly goes out for consultation next week, which is unfortunate timing from the point of view of this Committee, we are developing an expanded explanations guideline. One of the areas in which we are contemplating an expanded explanation is the usual mitigating factor, sole or primary carer.

We are putting forward in our consultation document, which comes out next week, a possible expanded version of that, which, for example, draws attention to the point that, even if imprisonment really is unavoidable and it cannot be a suspended sentence, the welfare of child dependents may be a reason for making it a shorter sentence. We will be interested to see what the responses to that consultation are. Members of this Committee and others interested in the topic would be very welcome to respond to the consultation.

Chair: Thank you. Our work will continue beyond today.

Lord Justice Holroyde: Yes, probably even beyond next week I imagine.

Q21 **Lord Trimble:** I want to go back a bit, because I was quite astonished by what was said at the beginning about the absence of data or clear information about how many cases there are and what their circumstances are. It must be incredibly difficult to formulate policy when you do not have any data. That links up with something in the suggested questions here, because there is a suggested question: why do women not always disclose that they have children? If we know that there is no data and we have some reason to believe that women do not always disclose their circumstances, how on earth can you operate the system?

Dr Shona Minson: It is a good question. I myself am not convinced by this thing that women will not disclose. I know it is in the MoJ response to this submission of evidence, but in my experience from women I have met and research I have read most women will tell somebody. It may be that, as Jo Easton said, they do not want to say it in open court. They may not want to give personal details about their family life if they are asked in open court, but if taken by a probation officer for a discussion about what might happen very few women hold that information back, because usually they are fairly desperate about what is going to happen to their children.

Lord Trimble: Those discussions presumably would be where people are drawing up the pre-sentence report.

Dr Shona Minson: Yes.

Lord Trimble: If there are pre-sentence reports, does anybody collate them?

Dr Jenny Earle: I do not think anybody scrutinises them.

Dr Shona Minson: I do not think so.

Lord Trimble: It might be a simple way of getting some reliable data.

Dr Jenny Earle: May I add to what Shona said? In our report, *What About Me?*, one of the issues we identified was barriers to disclosure, and that is a lot to do with women's fear of punitive responses to the revelation that they have children. They are already in trouble. We are talking about women who are in trouble with the criminal law. They are fearful. They probably have histories themselves of domestic abuse, where they have not had a very positive response to the violence they have suffered. They may well have drug and alcohol problems.

Do you know what I mean? The drivers of women's offending are very different and touch on this issue of whether they are likely to be confident in the response, particularly of statutory children's services, to their unmet needs. They are fearful that perhaps their children will be taken into care in advance, in a sense, of them going to prison, if they disclose that in their troubled circumstances they also have dependent children.

The other factor, which came out in your evidence session last week, is that a lot of women do not expect to get a prison sentence. They have been assured by their lawyer, if they are lucky enough to have one, that it is a first offence, that it does not involve violence, that there are many mitigating factors, including the presence of dependent children, and that they are very unlikely to be sent to prison. In that context, sometimes women would rather not disclose that they have the children.

You may be aware that women are almost twice as likely as men to get a custodial sentence for a first offence. Unsurprisingly, many of them are shocked to be sent to prison and have often not made arrangements for that. There needs to be, as Jo alluded to, a context in which women have the confidence to disclose, confident that they will receive support and that that information will be brought to court in a helpful way, rather than used to further disrupt their family lives or punish them more harshly.

Chair: Before we go on with pre-sentence reports, sticking with the guidelines for a moment, I wonder if I can ask the Sentencing Council to give us a flavour of how often you review the guidelines in respect of particular offences and whether you commission research as part of that process.

Lord Justice Holroyde: Our work programme includes both the development of new guidelines and the review of existing guidelines. When the Sentencing Council was established nine years ago, one of the targets for the first 10 years was to ensure that, in that period, we had published guidelines for all the most commonly sentenced offences and replaced the guidelines issued by the predecessor body, the Sentencing Guidelines Council. We are well on with meeting that target. As a practical consequence of that, the more of the principal offences we have covered, the more time is going to be spent on reviewing the operation of existing guidelines rather than the creation of new guidelines.

When we are either contemplating a new guideline or reviewing an existing one, we conduct research and analysis. Inevitably, we have a

modest budget. We have a small team of researchers and analysts, so there is a limit to what can be done. We have made it clear that we are keen to develop connections with academic research, and we are drawing up a list of topics on which academic researchers may be able to liaise with us in some kind of joint work. That is the general process. I am sorry that that is rather a broad answer to your question.

Chair: It was a broad question.

Lord Justice Holroyde: I cannot, I am afraid, say it takes so long to review a guideline and, therefore, each guideline will come round—

Chair: I did not know whether you had a work programme.

Lord Justice Holroyde: No, not as such. I wonder if I could go back to Lord Trimble's inquiry about data collection. We cannot, I am afraid, offer very much in this respect, because it is not part of our function, but between 2010 and 2015 we conducted a very detailed Crown Court sentencing survey. As part of that, sentencers indicated on a form what factors from a list they had taken into account as aggravating a particular offence and what factors as mitigating the offence. There was, for nearly all the cases covered by that, a question as to whether the sentencer had taken into account the mitigating feature, sole or primary carer. We will be able to give you a statistic for what percentage of cases had that box ticked, but we do not know whether it is carer for a child or for an adult dependent. I suppose we would know if it was a female defendant, but we would not have any detailed analysis, I am afraid.

Dr Jenny Earle: That survey is not run any more, is it?

Lord Justice Holroyde: It is not, no.

Dr Jenny Earle: It is sad that that source of evidence or data has now been lost, because the Crown Court sentencing survey was stopped. When was it stopped?

Lord Justice Holroyde: It was at the end of 2015.

Dr Jenny Earle: It is a shame.

Q22 **Baroness Lawrence of Clarendon:** I have a couple of questions for you on pre-sentence reports. Do you think that the pre-sentence report provides judges with enough of the information they need to make a decision that respects the rights of the mother and the child and of family life?

Dr Jo Easton: We hear from our members that the PSRs do not have enough detailed information. Even where there is information that someone is a primary carer, it might not provide enough information about the likely impacts to make a balancing decision and look at whether a sentence is going to be proportionate.

Baroness Lawrence of Clarendon: That is in the written report.

Dr Jo Easton: It is in the written or oral report. There has been a push towards more oral reports, which in itself does not seem to have had the negative impact on quality that some people were worried about, but it is more the time taken for the report that we have concerns about. It is not

necessarily whether it is written or oral; it is the push towards on-the-day reports, which means you adjourn to sentence for maybe just a couple of hours, so NPS has a very short time to do an interview, possibly in a busy space. That is not necessarily the most conducive environment for women not just to say, "I have children", but to talk about what the impacts might be. If you have a rushed interview, you might use closed questions, such as, "Do you have children?", rather than, "What might the impact of a sentence be on children?", which would open up the answers, and you would get a lot more detail that way.

Dr Jenny Earle: Because of the shortcomings that have been experienced by everyone in relation to pre-sentence reports, particularly with the decline in the use of written reports and the move to speedier justice, which allows less time for those kinds of inquiries to be made, we are recommending now that there be a child impact assessment, to make up, in a sense, for that history of neglect and the routine failure to identify consequences for children.

That would be helpful whether or not a custodial sentence is in prospect, because if it is a community sentence or some other kind of disposal it is still important that the best interests of children are factored into that. For example, community sentence requirements should not intrude upon childcare arrangements, pick-up times and other logistical challenges that are much more likely to apply to women if they are being enabled to continue caring for their children in the community, as well as impacts of separation if a custodial sentence is contemplated.

Dr Shona Minson: I have worked with the National Probation Service to develop some resources for probation officers. A film is now embedded in all probation officer training that talks through the legal parameters and then gives a checklist of questions to ask about the ways in which a child might be impacted. NPS has done quite a lot of work on that. I do not want to speak for them. You have someone from the Ministry coming to the next evidence session. They are currently piloting a new way of doing this in a couple of areas. What Jo and Jenny say is right: some reports have been great, but there is an inconsistency, and there has not been the space or a clear way to do it.

The biggest issue from probation officers who spoke to me was about getting a judge to adjourn, to give them time to get useful information and to have the conversations with the woman that would allow her, if she was going to face a custodial sentence, to come to terms with that and to make proper arrangements.

Baroness Lawrence of Clarendon: Lord Justice, there is written and oral. From my understanding, with the written you tend to get more information than with the oral. How would you assess both of those?

Lord Justice Holroyde: We are aware of the work that Shona has just been mentioning with the probation service, and we will await with interest the outcome of that. As Jo said, there is a move towards speeding up criminal proceedings, and one aspect of that is trying to proceed to sentence

straightaway wherever possible. I agree with what has already been said: whether the report is written or oral, what really matters is the information that is conveyed. I would simply like to make the point that, whether it is in writing or oral, the sentencer can always ask for some further information.

If I may make what I hope is an obvious point, sentencers are humans as well and they have children. If a sentencer has a mother in front of them, and they have even a very short report saying she has two young children, one would expect them to want to check what the position was and, if there was any concern about it, ask for some further detail.

Baroness Lawrence of Clarendon: Last week, when we were taking evidence from mothers and young people who had been affected, one mother was saying that she was one of those who had not expected to be given a custodial. She had dropped her children off in the morning and, by the time she ended up at court, that was it, so there was no way for her to communicate anything to her children. Listening to that just makes you think. It comes down to the age of children, so this is where the sentence report is really key for the judges.

Lord Justice Holroyde: It is an extremely unhappy situation. Anyone would be dismayed to hear about a case like that. One of the advantages, we would say, of the sentencing guidelines is that they enable people to know how the sentencing is going to be approached and, therefore, to have a better idea of what the likely outcome is going to be. One would hope there are not many cases where the legal representative gives a confident assurance that there is really no risk whatsoever of immediate custody, and later the same day the result is immediate custody.

It sounds, if I may say so, without knowing anything about the circumstances of the case, as if something unhappy has gone wrong in the course of that. I would emphasise that, if a sentencer feels the probation report does not have enough information, there is a simple remedy in asking for more and adjourning if necessary.

Dr Jo Easton: In terms of the timeliness of reports, as Jenny said, there has been a push towards speedy justice, especially in magistrates' courts, because they are the less serious cases, so it is generally encouraged that you should aim for speedy justice, while ensuring that you still make the right decisions. There have been very positive indications, as Shona said, in terms of the information NPS is going to give on when you should adjourn. They are looking at guidance, and that may well include if someone is a primary carer.

Similarly, the female offender strategy referenced the need to have more information in PSRs. There is a protocol on ordering treatment requirements, which talks about the need to adjourn. You also have the reform agenda, which talks about the first hearing being the sentence. The national guidance and documents that are coming up can be quite conflicting in terms of. Some are very positive in talking about the need to adjourn for a week, maybe, to get the right information, and then

other national documents are pushing speedy justice as the priority. It can be difficult for magistrates in particular to balance the different pushes that are being put on them.

Dr Jenny Earle: I would like to see more creative sentencing if possible, including more use of deferred sentencing for longer periods, to see if a woman is willing to engage, say, with a local support service and then be enabled to serve a sentence in the community. The evidence is that women are disproportionately punished for relatively minor non-violent offences. Most women who get sent to prison are sent for non-violent offences.

You wonder whether enough information about the circumstances and the consequences of possible sentencing outcomes is being drawn to the attention of the sentencer in the right way. Maybe slower sentencing and greater use of deferred sentencing will secure more of that information and provide more opportunities for women to remain with their children, rather than cause the damage that separation by imprisonment is known to cause.

Baroness Lawrence of Clarendon: Can I pick up on something Jo said within our briefing? It talks about how women are more likely to be given a custodial sentence in a magistrates' court than when they go to the Crown Court, so there is some disparity between how the magistrates and the High Court do their sentences. It seems as if magistrates are more likely to give women a custodial sentence.

Dr Jo Easton: All I know is that, from a magistrates' court perspective, alternatives to custody is a concern, and we welcome the female offender strategy with a focus on that. When you are looking at a high-level community order as an alternative to custody, there are issues with a lack of the services, such as women's centres, that mean you can have high-level community orders, which can be seen as avoiding the prison sentence. I do not have the information on the comparison across.

Dr Shona Minson: I was responsible for that making its way into your briefing. They are the Ministry of Justice's own statistics on women in the criminal justice system, which showed that women who could be tried in either the magistrates' court or the Crown Court tend to choose the magistrates' court. It does not explain why. I am guessing that they probably think it will be quicker, but they are more likely to get a sentence of imprisonment if they go to the magistrates' court than the Crown Court.

The other figure along with that, from the most recent women and criminal justice statistics from the MoJ, is that between 46% and 50% of all appeals from women in the magistrates' courts are successful. When Lord Justice Holroyde said, if we are not getting right, it is being appealed, there are two issues in that. They are often very short sentences and people do not have time to appeal, or they are not like Lina, who was here last week, who was articulate and had the determination and all those things to make her appeal. Most women in

prison are not like Lina. It is a really difficult thing to do, so a lot of people do not appeal.

Work has been done by Rona Epstein. She was doing research on women in prison, and discovered women who were in prison for not paying their television licences and non-payment of council tax, which you are not supposed to be imprisoned for. At the moment, there are women in prison for not paying council tax, which they should not be in for, but they have not appealed because they do not know they can.

Dr Jo Easton: Can I come back on two of those points? To the latter point about council tax, new legal guidance and training has been rolled out to all legal advisers on that particular issue, which followed on from the research on those cases.

In terms of the magistrates' court versus Crown Court issue, we have not looked at sentencing in particular relating to women, but we did some research a few years ago looking at the disparities between sentences given in Crown Court for the "either way" cases that could have been dealt with in a magistrates' court. One of the most common factors that came up on the case files was additional information being available at Crown Court that would not have been available in magistrates' court, because of the speedy justice and the time taken. If it goes to Crown Court, much more information is provided, both from the defence and through probation. That can make the difference in a case not being given custody in Crown Court, even though the magistrates' court might have thought it was at custodial level to start with.

Q23 **Lord Trimble:** Do sentencers ever have before them information about the child or children's views? Would it be a good idea for them to do so, perhaps in the form of a child impact statement, or should there be an opportunity for children to address the court in private during mitigation?

Lord Justice Holroyde: Sentencers are likely to have information about the views of children, which will often be readily predictable and are likely to be mentioned at least briefly in a pre-sentence report. Sentencers receive from time to time letters from children, just as they receive letters from offenders, spouses and partners or parents of offenders. There is not a lack of information as to the view of the child.

The Sentencing Council does not think it either necessary or, indeed, appropriate to suggest there should be some kind of separate child-specific process. One can well see how it might throw up problems of its own. One can well see how, if a child was asked to give evidence—I do not mean that in a formal sense—feeling as if his or her view was going to be a decisive consideration, and the end result was, none the less, that the court felt constrained to send the parent to prison, it might have a terrible effect on the child, who in some way thought that it was his or her fault. My own feeling is that the information as to the feelings

of the child will be known or can be ascertained, and it does not need a separate procedure.

Dr Jo Easton: I disagree slightly, in terms of what magistrates see. As I mentioned before, if you are ordering a PSR that is adjourned for a couple of hours, the probation officer is not going to have an opportunity to gather the views of a child, especially from a child rights perspective, within that timeframe. Magistrates do not see anything that represents children's views. If you had a decent adjournment, other agencies or individuals might be able to provide that information to probation, whether because they speak to children directly or because they already have a representative role. If there are family court proceedings, someone who has a child representative role might already be in place, so they might be able to speak to probation.

I am not sure, in magistrates' courts, in terms of the speed of the process and the environment, whether it would be practical to have children, certainly in court, giving their views on sentence. Within the timeframe, magistrates are unlikely to get letters or any other representation of children's views. I am not saying it is not possible, but it would need quite an overhaul of the way that those proceedings are dealt with, to make sure that they are appropriate for children.

Dr Jenny Earle: I have already said the Prison Reform Trust is recommending child impact assessments. We are doing a bit more work on that. Sarah Beresford, who was leading our work on the *What About Me?* project, is doing some more work in the context of Merseyside and a whole-system approach being pulled together there, to see how child impact assessments might work, who should be involved in preparing them and what the process is of consulting with children.

Our report found, echoing lots of other research, that children do not feel their voices are heard in criminal courts in a way that they are supposed to be in family courts. This is a point that Shona often makes very eloquently, so maybe I should hand over to Shona. These children's lives can be turned upside down and inside out, and they will bear the scars forever, even if they have the support that enables them to triumph over adversity and all the rest of it. They will bear the scars of their mother's imprisonment in particular. It seems to me entirely appropriate that opportunity should at least be given for their voices to be heard, in some sensitive and appropriate way. Much more information should be provided about the consequences of even a short custodial sentence. A short custodial sentence is not a merciful outcome.

Chair: We have got that.

Dr Shona Minson: Yes, absolutely, they should be heard in some form or another. Getting information about them must be the first step, and hearing directly from them in some form is the next. It is a rights issue under UNCRC Article 2, which says that children should not be discriminated against because of the status or activities of their parents. As Jenny said, if we compare it to children losing a parent in family court

proceedings because of abuse, neglect or whatever, where they are separated, that child will be represented by lawyers or by a guardian. Their welfare is the paramount consideration of the court and they are supported afterwards. Their views are central, whereas these children are often not asked at all.

I do not want to be too anecdotal, but some of the children I met would say, "I wrote a letter, but the judge would not read it", and they felt very let down. The other people who are never consulted are the people who care for the children, and that is a huge issue, because there is an assumption that this unnamed person or named person will take care of children. I interviewed 27 carers, and none of them had been consulted by the court before they found themselves looking after children.

Dr Jenny Earle: It is often grandmothers.

Q24 **Joanna Cherry:** Good afternoon. I was very struck, Dr Earle, by your evidence that women are twice as likely as men to get a custodial sentence for a first offence. Has research identified the factors at play in that statistic?

Dr Jenny Earle: Not comprehensively to my knowledge, no. It is a very alarming fact that I do not know has been thoroughly investigated. It is hard to compare sentencing outcomes, is it not? I am sure Lord Justice Holroyde will bear me out. Unless it is a reported Court of Appeal decision or whatever, it is not obvious what has gone into it, so it is quite hard to do research that can compare sentencing outcomes.

When you sit that alongside the fact that women are overwhelmingly imprisoned for non-violent offences, predominantly theft offences, you wonder what goes on. There is some academic research to suggest that women can be more harshly judged because, for some of the offending that they are getting into trouble with, they are considered to have offended against gender norms, as well as against the actual law. There is some evidence from women themselves and from academic sources to suggest that mothers in particular can be judged, as Shona alluded to, to be bad mothers, as well as having offended. I cannot scientifically back it up, but there is some suggestion that that is what goes on: a prejudicial response to women in the dock.

Joanna Cherry: We heard there that a short sentence is not a merciful outcome. Looking at the statistics in Scotland, 91% of women who are sentenced to prison get a sentence of less than a year. You may be aware that the Scottish Government are planning to introduce later this year a presumption against sentences of 12 months or less across the board for men and women. Might such a presumption against sentences of 12 months or less be of assistance in addressing the problem we are talking about today?

Dr Jenny Earle: It is certainly worth a try. You would have to scrutinise the form of the presumption in terms of what is going to displace or rebut it, but it is helpful in reminding courts that it will probably be more

proportionate and effective to consider other options. The reoffending rates from short prison sentences are so high. The data for England and Wales is that three-quarters of women are sentenced to less than 12 months. We see it as possibly a very effective lever for reducing the very extensive use of what are judged by many to be futile short custodial sentences, because women come out to the same problems or worse than the ones that prompted their offending in the first place.

We have now been seeing very high rates of women being recalled to prison post the Offender Rehabilitation Act 2014, which imposed for the first time post-custodial supervision for anyone sentenced to more than a day in prison, and that has impacted particularly harshly on women. We do not know when a woman is recalled to prison whether she has children. That data is not collected. There is no pre-sentence report available if a woman is recalled to prison. There is some testimony, both in our *What About Me?* report and in our recent report called *Broken Trust* on the recall of women to prison, which is the subject of a Westminster Hall debate today I believe, that they are just not being given the support they were promised when that legislation was introduced.

There is a lot of evidence and mounting support for turning things on their head. I know there is a presumption against imprisonment, implicit and explicit, to some extent, but it could be clearer and underpinned by more guidance as to impacts on children and differential impacts on women. Yes, I would certainly welcome that.

Joanna Cherry: The evidence in Scotland showed that the presumption against short-term sentences of three months or less has led to less reoffending. I am interested in what the rest of the panellists think about introducing a presumption against a sentence of 12 months or less, and whether this would be of assistance in addressing the issue we have identified.

Lord Justice Holroyde: Could I raise three points? First, Jenny said a moment ago that a short sentence is not a merciful sentence. I understand entirely what she means, but can I just make the point about the other side of the coin? It may be a short sentence precisely because it would have been a much longer sentence for a male offender without childcare responsibilities, for example. In other words, it may be short because it reflects mitigating features.

Coming to the presumption, there is a statutory duty in Section 152 of the Criminal Justice Act 2003 that a sentencer may not pass a custodial sentence unless the court is of the opinion that the seriousness of the offence, or the combination of the offence and one or more offences associated with it, is such that neither a fine alone or a community sentence is sufficient. When we talk about presumptions, I have to say, with respect to those who propose it, personally I am a little puzzled as to what presumption is necessary to add to that explicit duty. I have not seen a draft presumption, as it were, that I could reflect upon.

I can perfectly well see how there might be a presumption or, indeed, a requirement that no custodial sentence should be passed without certain procedural steps having been taken, for example a requirement to have the sort of child impact statement that others have mentioned, or a requirement to explicitly address in the sentencing remarks all considerations relevant to care issues and why a prison sentence was, none the less, necessary.

When the statutory duty is already very explicitly stated, I have to say I slightly wonder what the presumption adds, and I wonder what the existence of a presumption about a subgroup of those being sentenced may say about the rest of the people who are being sentenced, to whom what one might call the ordinary statutory duty applies.

Dr Jenny Earle: It is important for context to note that England and Wales have one of the highest rates of imprisonment in the world, particularly the western world, so, in a word, something must be done.

Joanna Cherry: That was the position in Scotland before the presumptions were introduced.

Dr Jenny Earle: Exactly, so we have to relook at our criminal justice system and think what we can do differently to be more effective, because, with the high rates of reoffending for people who have been in prison, we are not protecting the public by sending more and more people to prison. We have the whole race disproportionality issue, which affects women as well as men in the prison system.

Chair: Jenny, we are straying slightly. You probably have the Committee with you.

Dr Jenny Earle: There are lots of human rights issues there.

Joanna Cherry: I suppose I was setting that up as a background to asking a question, which Lord Justice Holroyde has, in a sense, addressed in his answer, about whether you think we could have a stronger statutory presumption against sentencing women or primary carers with dependent children. Could we have that as a standalone presumption, stronger than the principle that comes from the English case Petherick? Is that viable as something you think might work?

Dr Shona Minson: Something needs to change, whether that is a sentencing guideline or a statutory presumption. It is problematic that the figures given in the Houses of Parliament in December 2018 showed that, out of 7,236 women sent to prison, 4,923 have been for less than six months, and nearly 1,800 have been for less than one month. I have to say, from my research, I found that judges did not necessarily know these additional bits of information. For example, if you get a sentence longer than 13 weeks housing benefit is not paid. You then lose your accommodation if it is longer than that. These short sentences can be terribly destructive, more than disruptive. A statutory presumption is difficult, as Lord Justice Holroyde has said, but we need something that makes people get more creative with punishment, rather than just sending women to prison.

Dr Jo Easton: I agree with Lord Justice Holroyde that, in terms of the language of the presumption, currently you can only order custody if it is deemed unavoidable. I am not sure whether changing the language would change sentencing practice.

However, if you want to be serious about reducing the use of short-term custody, you need to look at why they are being ordered. At the moment, as we have already touched on, there really is not enough data on exactly what is happening in those sentence decisions. Why is it being ordered, especially if you are looking at sentencing women? Is it a lack of alternatives? Is it a lack of services? Is it the cohort? There is an opportunity to do some detailed research, and it would not take long, to find out why those sentences are being ordered and why it is not being deemed possible for those women to stay out of custody. Without knowing that, you do not know what you need to put in place to change the outcomes.

Dr Jenny Earle: I would support both a presumption against short sentences and an overarching principle to sit as part of the sentencing guidance framework, to improve the accountability for impacts on children and ensuring their best interests are at the heart of all decision-making that involves state agencies. We can do a lot of other things, such as improving data collection, and improving awareness and training on pre-sentence reports.

Chair: We discussed this earlier, yes.

Joanna Cherry: I have one quick question. Clearly, there will be offences that are so serious that there is no alternative to a custodial sentence, even where someone is a mother or a primary carer. My question is in relation to that. Should there be a presumption that, where the offender is the sole carer, the sentence should be deferred in some way to allow arrangements to be made for the children? Clearly, there would be concerns about public safety in that situation, so I am just wondering how feasible that would be.

Lord Justice Holroyde: In my previous answer, when I was suggesting that a strengthened presumption perhaps was not the answer, I said I could well see that there might be procedural requirements imposed. The practicalities of the procedural requirements, as you say, may give rise to all kinds of questions. I do not know that I can say more than that.

The discussion inevitably has widened out somewhat, over the last few minutes, and there are all kinds of questions about why we have short sentences. Are there some cases where, although there does not have to be a long sentence, there none the less has to be a sentence of imprisonment? There are questions about whether, in the end, there is no escape from having a short custodial sentence to deal with the repeat offender, who simply is not deterred by anything else. There will be issues as to whether you start by thinking about the short sentences or whether you start by thinking about the long sentences, and the implications further down of all that.

On the specific question that has been raised of a presumption in relation to those offenders who are also carers, I repeat that I do not at the moment see how that would add to the statutory duty, other than by imposing some procedural steps to be taken.

Dr Jenny Earle: It is important for this inquiry's purposes that we are talking about primary carers of children, not the wider group of carers, which would probably include more women.

Joanna Cherry: When you are watching American movies or reading about the position in America, sometimes people in America who are given hefty sentences are given some time to sort out their affairs before they go to serve their sentence. It seems to be in relation to white collar crime and sometimes drug crime. Clearly, in offences of violence or sexual violence, there would be a real question mark over whether that would be appropriate, in terms of public safety. I am interested in whether there should be a presumption, standing issues of public safety to one side, of a deferral to make suitable arrangements for childcare.

Dr Shona Minson: Research has found that it is, from a child rights point of view, much less traumatising for children if they have been prepared for their parents' absence, if the arrangements have been made with planning and all those things. From a child's perspective, absolutely, that is happening. Here we do not sentence and then let people go, but there are cases where a judge will say, "All options are open, but sentencing will happen in a week or two weeks", so people get a strong message and know. It is very helpful if that can happen.

Dr Jenny Earle: I would support the deferral of sentence in most cases.

Dr Jo Easton: There is a distinction to be made between deferral of sentencing and deferral of a sentence being engaged, which is what you are talking about that happens in America and does not happen procedurally here. Currently, if you are ordering a PSR and adjourning, and custody is an option or likely, you should be saying that it is an all-options report and custody is being considered.

I am not sure whether deferring a sentence, if you are leaving it as custody being likely, is necessarily going to lead to someone taking the steps to put everything in order and get childcare arrangements in place. You could not be any stronger, because you could not defer sentencing and say, "This is the sentence you will get", as then you are tying the hands of the sentencing bench. I am not sure whether deferring the sentencing would work. Currently, procedurally, you would not be able to defer the engagement of the sentence, but it happens in America.

Lord Justice Holroyde: Plainly, it is better for everyone if everyone is prepared for the eventuality of immediate imprisonment. As Jo was mentioning earlier on, there may be a tension between wanting to delay proceedings for that reason and the general aim of getting on with proceedings more briskly, which from a whole host of points of view is thought to be a good thing.

Q25 **Jeremy Lefroy:** Apologies that I was not here at the beginning.

Very briefly, all other things being equal, which they never are, one imagines that the same offence attracts the same penalty, whether it is a mother or father, male or female, whatever. I heard the answer before about lack of data in this area, but I would like to get this clear. Is there any data to show how sentencers will mitigate and to what extent they will mitigate for each of certain characteristics or conditions of the person they are sentencing? If that data exists, does it show great disparity or is it fairly consistent?

Lord Justice Holroyde: There is not data, to my knowledge, that would enable one to say, "This feature is likely to result in a reduction of X and that feature is likely to result in a reduction of Y", precisely because cases are all different from one another. There are always specific features of them that differ from others.

The broad point, in answer to your question, is that it is perfectly possible for two people jointly involved in a crime, which on the face of it would result in the same punishment for the two of them, to receive different sentences in the end because one has powerful personal mitigation that is not available to the other, in just the same way as one may have entered an early guilty plea that the other has not entered, so the sentences will end up being different. It is not practicable to quantify what effect any particular factor has.

The Crown Court sentencing survey, which I mentioned earlier, would enable one to say which factors have been taken into account in particular types of offence, but that would be a very broad picture. It would not enable you to say that the sentence had come down by three months, six months or anything of that sort.

Jeremy Lefroy: To follow up on that, if a mother was the primary carer, as in the vast majority of cases she will be, or if the father, the grandmother or the grandfather was the primary carer and they were the person being sentenced, would exactly the same kind of mitigation be given to all those people being sentenced in those circumstances? I appreciate that it is likely to be the mother, but it may well not be.

Lord Justice Holroyde: In the situation you mention, in principle, the reduction in sentence would have to be the same, because the concern is looking after the child, whether the person looking after is the mother, the father or the grandparent. If the issue is whether this sentence should be shortened in the interests of the child, the answer should be the same whoever the carer is.

There is a separate issue: should the sentence be shortened for this mother, because for this mother to be separated from her child makes prison much harder for her than the father of the child, who has not taken a great deal of interest in the child in recent years and has pursued his own life?

Jeremy Lefroy: We are saying, if I may interrupt, there are two completely separate things here.

Lord Justice Holroyde: There are two separate issues.

Jeremy Lefroy: One is the nature of somebody as a carer, and the second is the extent of that caring and the relationship.

Lord Justice Holroyde: Perhaps I could put it more generally. It is the impact on that particular offender of imprisonment, similar to the situation that arises with somebody who has serious health problems. It is not a reason not to go to prison, but it may be a reason for saying, "Prison for this person is going to be much harder than the fully fit, able-bodied prisoner and, therefore, the sentence can and should be shorter", in the same way that, for a devoted mother who had committed a serious crime and had to be separated from her child, the anguish of the separation will be a personal mitigating factor to which some weight could be given. It may not be a lot of weight, but some weight could be given to it.

Dr Shona Minson: I have done research addressing the very particular point that you raised initially. It was based on an earlier study by Jacobson and Hough, who looked at the way judges regarded mitigation. It was an artificial exercise, but it took the list of factors that can be recognised as mitigation, including being a sole or primary carer for dependents, and asked judges to give a weighting to each of those factors for how significant they felt it was.

When I compared my research with the Jacobson and Hough, it very much sat with it. It was interesting that being a sole or primary carer was the only mitigating factor that was given both a 1 and a 10 by the judges. For everything else the numbers were quite bunched, but being a carer had the whole range of options. Judges were then given different sentencing scenarios, to talk through what they would do and whether things mitigated. I found that they were not consistent in what they had already given as their weightings on sole or primary carer with what they gave when it was put into a different scenario.

In answer to your question: is there variability? Yes, there is huge variability, because people are bringing their personal whatever to it, no matter how much they try to put bias aside. It is striking that, of all the factors of mitigation, this one had the biggest differential, and that is why we need something consistent, such as a guideline.

Q26 **Chair:** Is there anything that members of the panel would like to add that we have failed to cover? I say "add", not "repeat".

Dr Shona Minson: I have one thing, which is in the submissions. As discussed, there have been new guidelines in 2017 and the research done was prior to that, but the case of Myers is really important for the Committee to note. It is a 2018 case that was recently appealed. We only know about it because it went to the Court of Appeal. The mother had been on bail for a period. Her 14 year-old was present in court, so was as

visible as could be. Part way through the trial, the judge decided that the woman could not have bail any more and remanded her in custody.

Chair: This is the one you blogged about, is it?

Dr Shona Minson: This is the one I wrote about, yes. That left a 14 year-old and a three year-old without their mother. In fact, the 14 year-old made an emotional reaction to this, and she was told the next morning by the judge that she would find herself in the cells as well if she made any reaction to anything else that was said. When it went to the Court of Appeal, they said the judge's actions were inappropriate, but the Court of Appeal judges did not say the judge should clearly have considered the welfare of these children. For all the good intentions that may exist, practice is not consistent on this.

Chair: It is practice as well as formal procedure that we will be looking at. Thank you so much for your time, as well as your expertise.