



HOUSES OF PARLIAMENT

Joint Committee on Human Rights

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

Wednesday 13 March 2019

Written evidence from witnesses:

- [Ministry of Justice](#)

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Members present: Harriet Harman (Chair); Fiona Bruce; Ms Karen Buck; Baroness Hamwee; Baroness Lawrence of Clarendon; Jeremy Lefroy; Scott Mann; Lord Trimble; Lord Woolf

Questions 44–60

Examination of witnesses

Edward Argar MP and Nadhim Zahawi MP.

Q44 **Chair:** Thank you very much indeed, Ministers, for joining us. We are very fortunate that the Justice Minister, Edward Argar, and the Minister for Children and Families, Nadhim Zahawi, have come together to give evidence for our review on mothers who have young children and are sent to prison.

As you know, we are the Joint Committee on Human Rights, which means we are half Lords and half Commons, and we are concerned generally about human rights. Here, we are concerned about the human right to family life as it attaches to the mother but also to the child.

I start by asking you how many mothers of dependent children are sent to prison each year. How many children are separated from their mother each year by their mother being sent to prison?

Edward Argar MP: You highlight an important point in your question that the previous sessions of this Committee have highlighted. You ask, I suspect, knowing that the answer is that there is no accurately recorded and definitive data on that subject. There was the 2011 Howard League piece of research, which estimated 17,240.

Chair: We will give you a piece of paper each at this point so that you can look at the estimates.

Edward Argar MP: That is useful. So you have the number of children extrapolated by the Howard League research as 17,240 in 2011, some time ago. Prior to that, the Caddle and Crisp report tried to get at this about 20 years ago.

The 2011 figures show that at that point 4,188 women were in prison in 2011. That number has now come down, to 3,834 in February. Based on that, and looking at the data you have here, you could assume a reduction in the number of children who are impacted as the number of women sentenced to prison reduces overall. There are still, as we may come on to, too many women in prison. That is a broader point about the female offender strategy and our approach.

So we have your estimates here from the Committee, and the 2011 data from the Howard League suggested around 17,000 children were affected. So the answer is that there is no definitive official data on this subject, which I suspect you were getting at.

Nadhim Zahawi MP: Rather than just saying how many numbers are going in, from where I sit what is critical is data sharing, and information sharing at local level. Why do I say that? Children come to the attention of services as needed across prison and probation, local authorities and schools. The important thing is that we have that data and can share it.

We know there can be a stigma attached to disclosure, because some mothers will be worried that it will set off a series of events that could end up with the child being taken away, as well as the Ministry of Justice doing more through sentencing, prisons and probation. That is why in the Department for Education we are strengthening information sharing for all safeguarding purposes.

Let me try to illustrate that through an example. We have made clear through the Data Protection Act that safeguarding is a ground for sharing information under GDPR even without consent, if necessary. I have seen, when I have shadowed social workers, that sometimes this whole GDPR issue gets conflated and people say that they cannot share the data.

We have made it very clear that that can happen. Through the children in need census—these are children who have needed help and support from a child social worker—data is collected on the children known to social care. Our instructions for local authorities state that if a child is in need solely because a parent has been in prison, this should be recorded under the category of “absent parenting”.

Q45 **Chair:** We are going to ask you questions about children of school age and looking after children while their mother is in prison, but getting back to the data, there are two reasons, are there not, why it is important to know whether a child has a mother in prison or whether the mother in prison has children? First, you need to know in policy terms whether an increasing percentage of the women in prison have dependent children, or whether it is going in the right

direction, in order to know what is going on in the criminal justice system.

Secondly, you need to know in relation to that individual mother. The prison authorities would need to know that that mother is separated from her children. That is a very important issue for her, but you also then know that that child is separated from their mother. Having that data is important, is it not, for overall purposes and for individual purposes?

Nadhim Zahawi MP: You are quite right in theory, but we know that a stigma is attached. How do you reliably collect a dataset, whether in the MoJ or DfE, when you know that you may force adult females who are going to prison to withhold information because they are worried that this is going to end up on some database that will then impact on what happens next to their child? Would it not be better to focus on information sharing rather than being obsessed by a database?

Chair: This is not a discussion between us. I am supposed to be asking question rather than giving my views. However, can I put it you that it is important that we know the overall data and that we know it for each individual? Is not child benefit the best taken-up benefit? When a woman is inducted into prison, why is she not asked, as a mandatory question, whether she has any children, how many she has and how old they are? Do you not think she should be asked these questions? Also, do you not think it should be checked by looking at child benefit records, because those are within the Government's control and there are very few women who have not taken up child benefit?

Edward Argar MP: There are a number of points there. In answer to your previous point, you are right that there are two layers to this. One is the benefit it gives us as parliamentarians and policymakers when making policy based upon evidence and statistics if we can get that dataset and that understanding of whether the reforms that I am bringing forward in the female offender strategy are working or not and whether there are other factors at play.

The second point about the individual goes back, to a degree, to the point that Minister Zahawi was making and your point about child benefit data, which is what my colleague was alluding to when he talked about data matching across government. There is, exactly as you say, scope to look at whether data-matching exercises between benefits and individuals can yield the information in a way that, for various reasons, could get around the barriers to disclosure that some of your witnesses in previous oral evidence sessions highlighted. Jenny Earle, among others, highlighted this as one but by no means the only factor as to why this information is not collated.

On your other point about what questions can be asked and how that can be done, when someone is inducted into prison, conversations occur. One

of your witnesses—I think it was Lina—said that she had talked to a prison officer and had disclosed it. The moment someone enters prison—particularly if, as in her case, they start the day having been told by their lawyer that they are not going to go to prison but end up there—there is the challenge as to whether that is the right moment, or whether there are other mechanisms through which you could get the data on individual cases, potentially from the PSRs. Issues have been raised about how comprehensive they are, and about oral PSRs versus written ones, but it may be possible to extract the information from that and ensure it gets to the prison, as well as having a conversation.

Chair: Should they not always be asked when they come into prison?

Edward Argar MP: The anecdotal evidence from Lina and others was that they were asked and they had those conversations.

Chair: As I understand it, it is not a mandatory question to ask in the induction.

Edward Argar MP: The challenge with that is that you can ask but that does not necessarily mean you will get the answer. You may well do, because many of them will be deeply worried and want to have a conversation with their child, but you may not always get it.

Chair: If you do not ask, you certainly will not always get the answer.

Edward Argar MP: I would be inclined to think that effective PSR consistency and data sharing might yield more accurate information.

The other thing to touch on is something that Lord Justice Holroyde mentioned. I was not aware of this, but I am happy to look at it. He said that until 2015 a Crown Court survey had been done on this, and data collection had been collected on it, but that it was no longer done. I am certainly happy to look into what he referred to there and whether that would get us more data.

The other suggestion, which I have already asked officials to look at at the macro level, was whether it would be possible to do a census snapshot of the existing female in-prison population. That will not address the individual cases and get that information for individuals, but it might give us a little more of the macro data that would help us as parliamentarians in judging how it is working.

Chair: That could be done once a year, and then you would know what the trends are.

Edward Argar MP: I will be honest with you: I do not know what the practicalities of that would be, but I have already asked officials to work that up in the light of evidence given to you.

Chair: This will be happily received by prison governors. We have made a freedom of information request at the same time, so they will get your request and ours at the same time. I am sure they will reply to you first.

Edward Argar MP: I am not sure, Chair.

Chair: Surely you think it is right that you know how many there are each year so that you have a snapshot to judge your other policies by? You agree with that, do you not?

Edward Argar MP: That is why I am saying that I already asked them to look at the practicalities of this, I suspect even before you recommended it to me.

Chair: Good. Similarly, Nadhim, despite all the issues about data sharing and stigmatisation, you think it is important for people to know if a child is suffering from separation from their mother by imprisonment.

Nadhim Zahawi MP: Yes. The point I was trying to make is that the focus should be on data sharing, because if that is robust it should be the way we pick this up.

Chair: Hopefully the prison can ask and then tell social services, which is quite simple data sharing.

Q46 **Baroness Lawrence of Clarendon:** The Minister mentioned Lina. She told us in her evidence to us that her lawyer had told her that she would not have a custodial sentence. When she had a custodial sentence it took nearly three hours before she knew about her children. Something like that is quite concerning for us. As a mother, you drop your children off to school in the morning and you know you have to pick them up in the afternoon. By lunchtime you are going to prison and those children have no idea. The fact that you mentioned her made me think to put that in the mix.

Edward Argar MP: You are absolutely right. Not only did I read the transcript but I tried to watch online. I met Lina on her way to give evidence to you and she spoke to me about her experiences. Both she and Georgia gave very powerful, extremely articulate and well-informed evidence.

There are a number of factors in that particular case, without going into too much detail. First, I am not a lawyer, but, as the Lord Justice of Appeal said, there should be a caution in any lawyer saying, "Don't worry, it's never going to happen". It should always be, "It could happen. It shouldn't and it's unlikely to, but ..."

Then there is the second bit, which you are getting to, which is, where it does happen, the mother knowing or being updated on what is happening to her children. Far from worry about what is about to happen to her being at the top of her mind, she is more than likely to be worried about what is happening to her children who are at home or coming back from school. Despite the fact that she is about to go to prison, it is her children she will be worrying about.

There is one caveat, or note of caution, that I might add to that, and Nadhim may want to come in on this. It is difficult for a mother to want to engage with social services: "If I go to prison, what happens to my children? Are you already involved? Do you have contingency plans?" In some cases there will be a reticence about saying that if they do not have to. That came out in some of the evidence to you from Jenny Earle and Dr Minson when they talked about there being reluctance on the part of mothers to disclose to social services that they are in this position, unless

they absolutely have to, because of fear of the consequences. It is sometimes hard for social services to plan in advance and to do that. There is often, I suspect, a lot of on-the-day activity.

You are absolutely right that that should not be a bar to effective communication. I would argue that in those circumstances, however difficult, when that individual gets to prison at least telephone contact should be facilitated, as early as possible, in order to inform them about what is happening and potentially to speak to their children.

Q47 Jeremy Lefroy: Although our inquiry is specifically about children whose mothers are sent to prison, is there any evidence, anecdotal or otherwise, of fathers, perhaps because their partner has died or is no longer present, being responsible solely for the bringing up of their children. Are there any figures on that?

Edward Argar MP: Not that I am aware of. You are absolutely right to highlight this. Quite rightly, the Committee's inquiry is about mothers and children, but, again, as came out in some of the oral and written evidence, it is about who the primary carer is as much as anything. One of the witnesses said that although the focus is quite rightly on mothers, who tend to be the primary carer, that should not exclude fathers, where they are the primary carer, from having the same sort of consideration given to them.

If you are focusing, as the Committee is, on the rights of the child as much as anything else, it is more about the primary carer, who is probably the mother but could be the father. It is about the rights of the child rather than the mother or father. I am afraid I do not have anything in particular on that.

Q48 Baroness Hamwee: For the purposes of this question, we will assume that all the information is available to the court. I wanted to ask about sentencing. Should the child's interests be paramount in sentencing, as is the case in the family court?

Edward Argar MP: Again, it was Lord Justice Holroyde who addressed this, saying that they are a significant factor. The sentencing guidelines say that the judge must give due consideration to those who will be impacted by the sentence, which would include dependent children particularly prominently. He quite rightly highlighted the point that in coming to a sentencing decision a judge has to take a number of factors into consideration, including the seriousness and nature of the offence committed. He was clear in his evidence, referring to the 2017 imposition guidelines, that, while not an exclusive or overriding factor, it is very clear that the impact on children as those who would be most directly impacted is a consideration in sentencing.

Baroness Hamwee: That may be in the guidelines, and I am not challenging what you are saying.

Edward Argar MP: No, but you are welcome to.

Baroness Hamwee: Paramountcy is paramountcy, so in what circumstances would a child's interests not be paramount?

Edward Argar MP: How those guidelines are applied is a matter for our independent judiciary.

Chair: We are asking you a different question, not about what the guidelines are or how they are applied. We are asking whether there should be different criteria when a judge is sentencing. Should the criteria for a judge sentencing in a criminal court not be the same as for a judge in a family court, which is that, whatever else is going on, the interests of the child are paramount? There is a lot of jurisprudence about what "paramount" means. As Sally says, it means paramount. What is the justification for not making the interests of the child paramount?

Edward Argar MP: I have looked at the 2017 guidelines, and I believe they strike the right balance and give appropriate discretion to the judiciary. At this stage, I am not convinced of the case for changing them. It would not be for me as a Minister to change those guidelines; it would be for the sentencing authorities. At the moment, I am not convinced of the case to change that, to strengthen it and to say that it overrides all other considerations.

Chair: Give us an example, then, of where it would be right for the child's best interests to be superseded by some other interest. What other interest would that be?

Edward Argar MP: There will be considerations and the judge will look at all of them. A judge may consider the seriousness of the offence, or think that imprisonment is necessary as a reflection of the crime and for public protection or other factors. The judge is best placed to make that decision and to have a degree of discretion in that context.

Chair: Could the guidelines not be that the child's interests should be paramount except where there is a question of public safety? What about that?

Edward Argar MP: You could come up with a number of variations. It would not be for me as a Minister to do that. It would be for Lord Justice Holroyde and his colleagues to look at that in the context of sentencing guidelines.

Chair: I am not sure about that. We legislate for the framework. Harry is going to ask you about that.

Edward Argar MP: I am going to be challenged by a distinguished former judge.

Q49 **Lord Woolf:** Before this can work at all, knowledge of the existence of the children is critical. However good the judge is, he can only start taking into account the child if he knows about it. Today, unfortunately, we do not have as many reports as we used to have in my day and judges are in a more difficult position. Unless we start off by making it absolutely critical so that judges know they have to insist on being given information about children, the whole process will not start.

Nadhim Zahawi MP: It is worth reminding ourselves of the statutory guidance on this. *Working Together to Safeguard Children* is explicit that probation services should ask an offender at the earliest opportunity whether they live with, have care responsibilities for or are in regular contact with children. It is also very clear that the probation service should check with the local authority's children's services at the earliest opportunity. It is explicit about it asking at the earliest opportunity.

Lord Woolf: That should happen. We also want to be confident that it is happening.

Edward Argar MP: There are a number of factors there; Nadhim is absolutely right. You are right, and in the previous evidence it was suggested that there was also a qualitative difference between the written pre-sentence reports that were received, both among themselves but also when compared to the oral pre-sentence reports that might be received. It was also suggested that, by and large, notwithstanding fears about impact on adoption, fostering or whatever, many ladies were happy to talk to their probation officer quietly and in a place of trust about this. The challenge, which you put your finger on, is consistency in PSRs. Then there is the issue of the weight given to them by a sentencer. The 2017 guidelines have gone some way to helping that and to overcoming some of the anecdotal evidence cited in Dr Minson's report that some judges said that they did not even know about them and therefore did not take this into consideration.

Lord Justice Holroyde suggested that he hoped that those guidelines had improved awareness among the judiciary. You are absolutely right that however brilliant a judge is, they can only sentence on the basis of the information before them.

Nadhim Zahawi MP: You are also right that that is what the statutory guidance says and is explicit about, but the issue is whether it is working on the ground. One of the things that we are doing, and are in the middle of at the moment, is making sure that agencies on the ground doing multi-agency work—the police, local government and health—are working much better with both prison and probation services.

Lord Woolf: It is very important that that co-ordination happens.

Nadhim Zahawi MP: We have introduced stronger duties for them to comply in sharing information.

Q50 **Fiona Bruce:** Good afternoon, Ministers. Sorry, Mr Argar, but I am not going to give you a rest. The Ministry of Justice has done some excellent work in recent months—indeed, for a year or so now—implementing the Farmer review, and you now have the follow-up review, which is currently being finalised, on specific measures to ensure that the family ties of female prisoners are strengthened.

We heard this afternoon how PSRs, according to one of our witnesses, appear to be used inconsistently and ineffectively in many cases. What is the Ministry of Justice doing? I am interested

to know whether you are doing anything, through these very substantial reviews, to ensure that judges have the right information when they are considering a custodial sentence and a woman might have children. Is this something you are addressing from a policy level?

Edward Argar MP: There are a number of points there. You are right to highlight the Farmer review and the follow-on Farmer review, which I am hoping to receive officially very shortly. Lord Farmer did excellent work in his first review, and I suspect this one will be equally compelling. At a macro level, one of the key things we want to see is greater liaison. We also want to see fewer women going to prison, which in the long term will help to address this issue. What we are focusing on here is the here and now and the numbers in prison.

The Prison Reform Trust report, *What about me?*, was cited to your Committee. I have looked at that and I met Jenny Earle this morning. We talked about this, among other things. One of the points the report makes, which is interesting, is that it is the court's responsibility to make sure that it has that the information. It says that it is a duty upon the court to ensure that it has that information. There is an interesting angle there. Equally, a judge or a magistrate can ask for it and can want it but is not necessarily going to adjourn for weeks if it is still not produced or is not available. There is more work we can do there on improving the consistency of pre-sentence reports.

I met a number of YOTs, as well as some of the probation team recently, to ask what we can do to ensure better consistency but also better inputs from YOTs, local authority children's services and others. That is something I have asked the team again to look at. It is not easy, because each one is produced locally, so you get variations in quality, but certainly the responsibility for a dependent child should be a central consideration.

Fiona Bruce: Just to press you, are you likely to include this in this new report, because it is a critical element of strengthening female prisoners' family ties, is it not?

Edward Argar MP: I have looked at the Prison Reform Trust work. I am waiting to see what Lord Farmer writes for us. I suspect I can judge the direction his report might take, but I will not pre-judge what he may publish. I am very clear that when he does I will look very carefully at implementing the recommendations. You are absolutely right about the importance of maintaining strong family ties, ideally in the family home. You have raised this with me on previous occasions, and it is a priority.

Fiona Bruce: There have been some suggestions that perhaps there should be a child impact statement for judges when sentencing when children are involved, or even that some children could address the court in private, as happens in family courts. Would that be appropriate in a criminal sentence?

Edward Argar MP: It is challenging. Scope for children addressing the court should be covered, again in the PSR, where there is an opportunity for the child's voice to be heard. We have trialled, in that context, a new PSR checklist to try to draw out the views of the child. As lawyers and judges around the table will know, there are what are known as Newton hearings whereby a court can hear evidence to assist with sentencing. Lord Justice Holroyde made the point that he would be wary about oral evidence or physical evidence in open court. Given that we are talking about children, it may not be in the best interests of a child to have to give evidence or appear in front of a judge.

Chair: I do not think anybody was talking about open court. Fiona mentioned that it could be like what they do in family courts already.

Edward Argar MP: He was cautious, in his evidence, even about giving evidence to the court in person at all. He would be very wary of that.

Chair: What do you think? We have heard his evidence, with which we might or might not agree.

Edward Argar MP: I concur with him to a large degree. Judges have a very clear view of the child's voice and what they think. The PSR is a very useful way of ensuring that that happens, notwithstanding the limitations to that, which have been highlighted by the Committee. A child's impact assessment or statement is certainly something I am happy to look at and consider, but I am cautious in this space. The Committee may disagree, but I found the evidence given by the Lord Justice of Appeal to be powerful. The Committee may take a completely different view.

Fiona Bruce: I just have a final question. Virtually every mother will claim child benefit if they are entitled to it. Is that a route through which one could perhaps gently elicit the relevant information and so prevent some mothers not disclosing the fact that they have children, which they might think is the best course of action but perhaps is not?

Edward Argar MP: As alluded to by the Chair earlier, that is a fruitful avenue to explore. If it is possible, something that includes data matching across existing government data and that minimises the imposition on an individual to disclose would surely be something we would want to explore further. I take the Chair's suggestion, and yours, Mrs Bruce.

Fiona Bruce: Finally, surely it cannot be right, as we have heard, that a counsel would advise a woman deliberately to conceal from a judge the fact that she had children.

Edward Argar MP: I can speak from the point of view of the criminal justice process, and my colleague may want to come in. I would hope that any local authority or anyone advising a woman in that position would have the child's best interests at heart and would, in the interests of openness and justice, wish to bring to the judge's attention any relevant factor and any information that will enable the judge to consider that child's interests, given the guidelines and the fact that that will be taken into consideration by the judge. I would hope that the

encouragement would be to be open with the court and open with the judge.

Nadhim Zahawi MP: It certainly cannot be right for any local authority—

Fiona Bruce: Sorry, I meant legal counsel. The brief is actually saying to the client, “Do not reveal the fact that you have children. You might get a harsher penalty, because you might be seen to be a duty-less mother”.

Edward Argar MP: I would not wish to stray into advice given by counsel or others to their clients, but I would hope that, as I am sure is true of the legal profession, they would have their clients’ and their clients’ children’s best interests at heart throughout. I would argue that that should include giving the court the information it needs to exercise discretion, where it is able to do so.

Q51 **Chair:** In relation to the child impact statement, or taking that into account, there are two things, are there not? One is that the court has the right information and that that is absolutely there. Another is that the child needs to know that they have been taken into account. As a student of our evidence, you will have seen that one of the things the children said is, “They took no notice of us. We were invisible to them”.

Therefore, it has to do two things, has it not? It has to inform the court but also convince the child that they were not just disregarded but that there were other considerations that made it imperative for the mother to be put in prison. Clearly, what is being ceded here is a real sense of a loathing of authority: “Authority has done this to me and they did not even know I was there or take my view”. It is about the child as well as the court knowing what role their existence has played in the sentence.

Edward Argar MP: You are absolutely right, and that came out particularly in Georgia’s evidence when she said, “I just do not trust authority any more”, or she did not at the time. You are absolutely right on both points; the court also needs the information.

The challenge, which we should be aware of, is to make sure that is done in a way that does not lapse into, for want of a better way of putting it, legalese or official process explanations: “It was laid before the judge with the following considerations”. We need not only to make sure that they are aware of it but that it is communicated in a way that is understandable to that child, given their age, circumstances or similar. That is an entirely fair point.

Q52 **Lord Trimble:** When it is clear that a mother with dependent children is to be sent to prison, what support should or could be provided to protect children from adverse side effects?

Nadhim Zahawi MP: Individual circumstances and needs of children with a parent who is going to prison can vary from child to child. Many children

of offenders will be disadvantaged and need support. They could have experienced trauma, abuse or the toxic trio of mental, alcohol and drug abuse, but others less so.

Rather than a prescriptive approach, we have tried to base the model on local agencies being best placed to determine what support and what level of support is needed. It should always be based on the need of the child and not solely on the characteristics of having a parent in prison. The statutory guidance on the duties in the Children Act 1989 is set out in *Working Together to Safeguard Children*, and this applies wherever there is any concern about safeguarding or welfare needs following a parent being taken into custody. A child who has a parent in prison could receive early help from a range of agencies, such as support from children's social care as a child in need or, if there are concerns about significant harm, from social care under child protection procedures.

Lord Trimble: You mentioned the Children Act of 1989. We understand that a child whose mother is in prison is not usually classed as a child in need under that Act.

Nadhim Zahawi MP: You are right. The reason, as I have tried to describe, is because there are variations in need. Some children may have no need, because the mother might have a partner who can look after the children adequately while the other partner is in prison. We have looked at this, and, for example, young carers do have an automatic right to a social care assessment. We do not believe that an automatic assessment by children's social care for all children of prisoners is the right way forward.

Lord Trimble: I can understand that, but are you sure that all children are considered?

Nadhim Zahawi MP: Not all children whose parents go to prison are considered to be children in need.

Lord Trimble: Are all children considered as to whether they should be assessed?

Nadhim Zahawi MP: That is my point. The local children's social care provision would only put the support in if the child was considered to be a child in need. That is what I was trying to describe to you. There are several different circumstances. Many children will have reason to be assessed but not all children would have reason to be assessed.

Fiona Bruce: Pardon me, Minister. The point we are trying to make is that they should at least be looked at to see whether they should be assessed. Unfortunately, the current system means that several just fall through to the floor and are not even considered at all. That is our concern.

Nadhim Zahawi MP: To address your point, we need to make sure that there is consistency across the country in children's social care. That is a different point in many ways, if they are not getting the correct assessment and support. We have a whole programme of improvement of children's social care—from Partners in Practice, which you have heard me

talk about in the past—involving looking at the best models in places such as Leeds, Hertfordshire and North Yorkshire, and scaling them up so that other local authorities have that whole-system approach. We are assessing and accrediting the whole of the children’s social care workforce. That is a whole-system approach to make sure that the system delivers consistency wherever you are.

Where I would push back is to say that it would be wrong to assume that every child of an adult going to prison needs to be assessed, because their needs may vary. They may not have any needs at all.

Fiona Bruce: That is right, but we need to know.

Lord Trimble: That is the point: because their needs will vary, we want to be reassured that they are considered or assessed, whatever term you like. We do not want the agencies not to think about them.

Nadhim Zahawi MP: This goes back to the answer I gave earlier about the statutory guidance on being able to inform and being clear that probation officers should inform the local authority children’s services at the earliest opportunity. When they do inform them, that local authority will then take a view as to whether that child needs an assessment.

If you are saying to me that some of the evidence is that some children do not get the additional help they may need because there is inconsistency of service from children’s social care, I agree with you. I am trying to do something about that with an overall strategy to improve children’s social care in England.

Chair: The point is that, under the Children Act, groups are identified in which not every one is in need but the groups are identified as being potentially vulnerable and therefore as needing an assessment. The point is that children whose mothers are in prison are not a category who are identified as vulnerable and needing an assessment. For example, if there are mental health issues or disability issues, the child might not be in need but qualifies for an assessment.

What is being put to you is whether, bearing in mind what we know about the impact of a mother’s imprisonment on that group of children, they should be included with all these other groups, it being recognised that they are vulnerable and so you had better assess them. Some will not need to be regarded as children in need and will be absolutely fine, but you will make sure that you are not missing the ones who do need it.

Nadhim Zahawi MP: You are exactly right. The point I am trying to make is that we do not believe that an automatic assessment for children, just because their parents happen to go to prison, is the right approach. The right approach is that the probation service contacts local authority children’s services as early as possible. Children’s social care should make that judgment call and the support should then be in place for the child who does need that further support.

I know that some of the testimony before your Committee demonstrates that there is certainly a variation in that support around the country, but my point is I have to deal with that problem for all children who need

support, not just the children of prisoners. I am working on making sure that the whole system works much better in delivering children's social care. There are great examples, one not too far away from here in Bexley, where children's social care went from "failing" to "good" over a very short period of time—two years—because it took a whole-system approach, with early intervention as well as all the other interventions to hold families together and deliver a better service. If I can improve the whole service, I will have dealt with the issue here.

Q53 Ms Karen Buck MP: Flowing on from this, you will be aware, because you are familiar with the witnesses we have had, of the particular case of Georgia, whose mother went to prison when she was 15 and who was effectively left to fend for herself at 15 with a slightly older but vulnerable brother. Her evidence about the very high level of risk that she and her brother experienced in their lives and the impact of it was incredibly compelling.

In a way, the previous questions come back to this. Clearly, in that case, she fell through the net. There was not the kind of assessment that would have put protection in place for her. How did that happen? Is it acceptable that it happened? How do you know that it is not happening again? How do you know that there is not a similar case today?

Surely, with regard to the kind of assessment that you have been pressed on in the previous questions, the fact that this happened answers your question. It explains exactly why everybody needs to go through that gateway in order to prevent it happening.

Nadhim Zahawi MP: The evidence through testimony is powerful and compelling. As the Minister in the Department for Education, I cannot comment on specific cases. What I would say, though, is that the statutory guidance, *Working Together to Safeguard Children*, goes all the way up to 18 years of age. We update the guidance every three years, so I will look at the guidance again to see how we can tighten it and make it better when it comes to this specific area.

What I would say to you is that we all know social workers are doing a demanding job. I sometimes shadow social workers and see what they do. They are making really difficult decisions in really difficult circumstances. I accept that the majority of local authorities are not yet good enough and so do not always make the right decisions. However, addressing that inconsistency will mean that I deliver for all children who are in need, rather than taking a blunt instrument and saying that every child whose parent goes to prison has to have an automatic assessment. It is a much better way of delivering a system that works for the most vulnerable children.

Ms Karen Buck MP: You have not explained how.

Nadhim Zahawi MP: Let me try again. We are taking a whole-system approach. First of all, we are assessing and accrediting the workforce. We have already launched a regulator, Social Work England. We then have a

programme, Partners in Practice, in which the good local authorities are partnering with the ones that are failing.

Ms Karen Buck MP: With respect, you are answering a different question.

Nadhim Zahawi MP: No, I am not. What I am trying to say to you—maybe I am terrible at articulating this—is that a children’s social care system needs to operate for all children who are vulnerable, including some of the children whose parents may go to prison. The idea that we have to have an automatic assessment of children because their parents have just gone to prison is the wrong approach. It stigmatises those kids. It is disruptive. A much better way of doing it is looking at children in need.

Ms Karen Buck MP: How is carrying out a needs assessment disruptive?

Nadhim Zahawi MP: My point is that local social workers and children’s social care workers are the people who are best placed to know how to deal with that child. When they get the information from the probation service, they can take that call and ask, “Does that child need an assessment? Does that child need the additional support?” If so, that support is put in place.

I am saying that not all local authorities at the moment are doing a great job, which is why I have a really big investment in an improvement programme. In the last Budget, I got £84 million from the Chancellor to replicate the model in Leeds, North Yorkshire and Hertfordshire and scale it to 20 more local authorities, as well as the workforce improvements that we are carrying out, which I just explained. That is how you get to a place where it really works and it picks up all children, including children whose parents go to prison. I hope that explains what I am trying to do.

Ms Karen Buck MP: It answers a different question.

Nadhim Zahawi MP: It will not fix the problem. I think you are wrong and I think the approach is wrong, but let us assume you are right. An automatic assessment is made for every child whose parents have gone to prison. Even if that child does not need an assessment because the other parent can well take care of that child, if the local children’s social care service is failing it will still fail that child. My point is that I have to make sure that the whole system works well, because by doing that you then deliver for those children as well.

Q54 **Chair:** Do you find it reassuring that, when we asked the Local Government Association and the Association of Directors of Children’s Services for evidence, they declined to give written or oral evidence because it was not an area that they knew about?

Nadhim Zahawi MP: No, I do not.

Chair: Because these kids are just fine, so long as we do not stigmatise them.

Nadhim Zahawi MP: No, I do not find it reassuring, which is why I say to you again that we have a really robust improvement programme to make sure that children's social care is delivering. I am agreeing with the Committee that children's social care is not good yet and so does not always make the right decisions. That is why I have the improvement programme in place and why I want to accredit and assess the whole of the children's social work workforce.

Baroness Lawrence of Clarendon: Thinking of Georgia and kids like her who are falling through the net, it would be much simpler if all the kids were assessed; you would then know which children need the support and which do not. If you only pick certain parameters for children who you think might need the support, you are missing a whole group of young people. That is what our question is about. When you say that only a certain number of kids can be assessed because you cannot assess everybody, those children ask, "What about me?"

Nadhim Zahawi MP: Your point is really well made. My point is not that we assess only those children because the system cannot cope but that local practitioners are best placed to make that decision first of all.

Secondly, even if I agree with you that we automatically assess every child, which I do not agree is the right approach, if the children's social care system is not working properly the outcome is going to be the same. Those children will be failed. What I am trying to say is that I have to improve the whole system.

Baroness Lawrence of Clarendon: It is not the children's fault.

Nadhim Zahawi MP: Of course it is not. What I am saying to you is that, for every child whose parent goes to prison, the probation service has a duty to inform the local authority as soon as possible. That local authority is best placed to decide whether that child is in need of an assessment, rather than just assessing every child automatically. That local authority, if it is working properly in children's social care, will be delivering for all children. I am not saying that we exclude children. You have to agree with me that some children will not need that additional help or will not need that assessment.

Baroness Lawrence of Clarendon: You will not know until the assessment has been done. Once the assessment has been done, you will know which children need the help and which do not. Until then, you have no idea where those children fit into those categories.

Fiona Bruce: Baroness Lawrence is making the point very well. What we are trying to say is that there is no system here. What troubles me is that we are looking at an issue that was considered 100 or 200 years ago by people like Elizabeth Fry. Even John Bunyan, who wrote the *Pilgrim's Progress*, went into prison and was worried about his blind daughter and what would happen to her. We are still now, in this day and age, concerned about these children. Something has to be done. The system has to be in place and it has to be improved, and it needs to be done urgently.

Nadhim Zahawi MP: Let me just have one more go, with your permission, Chair. Currently, a child could be assessed and still slip through the system if the support is not there. My point is that to just focus on automatic assessment is the wrong place for us to focus. It is like saying, "My problem is over here but I have this elephant in the middle of the room", which is making sure that children's social care is working properly so that it can deliver for those children who are in need and need the help, as well as all the other children who are also in need, whose parents may not be going to prison. I am not disagreeing with you. I am saying the way to fix it is different to what you are suggesting. An automatic assessment will not fix the problem. That is all I am saying.

Q55 **Scott Mann MP:** We have heard that some children whose mothers are in prison have been bullied and stigmatised at school, and that intervention in that has been sporadic across the board. A head teacher in Cornwall who implemented a policy in their school assured me that they had one but that other schools in Cornwall did not. The question is whether you think that there should be specific guidance for schools on how to deal with children better so that they do not get stigmatised.

Nadhim Zahawi MP: Thank you for that question. The revised *Keeping Children Safe in Education* guidance, which came into force in September 2018, is clear that school staff should consider the additional needs of children with parents in prison. The guidance now also highlights the fact that these children are at risk of poor outcomes, including: poverty; stigma, which we have talked a lot about; isolation; and poor mental health. It also signposts staff to the National Information Centre on Children of Offenders website, which provides specialist advice and resources to support professionals in the education system working with offenders and their children to help mitigate those negative consequences for those children.

Scott Mann MP: Does the department have any experience of schools having implemented the guidance that you have recommended? Have they followed through with that? Does the department keep a record of how many schools have the guidance and whether they are using it?

Nadhim Zahawi MP: We make sure, absolutely, that every school gets this statutory guidance. Schools tend to be responsible when the department issues statutory guidance.

Q56 **Lord Woolf:** Just following up on what you have been saying, we are very fortunate, if I may say so, to have this opportunity of questioning Mr Argar and yourself together, because the danger in this area is that the courts have tremendous pressures upon them and you have tremendous pressures upon you. Are you satisfied that your two departments and the other agencies also working in this area have a clear picture of the risk that can be caused, which could result in the next generation of young offenders because of

the fact that they have been ignored? Are you working satisfactorily? Do you and Mr Argar meet?

Nadhim Zahawi MP: We do.

Lord Woolf: Can you give me some evidence on that? What are you doing to take the situation forward?

Edward Argar MP: We do meet regularly. The most recent meeting was probably about two or three weeks ago, with the two of us as well as a number of officials. The focus there was on children's social services and social care, and how joined up they are in scooping up, for want of a better way of putting it, young children at risk of offending, either in their own right or—an issue that has been highlighted by a number of parliamentarians—because of the impact of parental criminality and their going into a custodial institution. We meet regularly to discuss that, to highlight and drive best practice but also to try to join up the opportunities there, not just at a ministerial level but at a local level, between probation services, YOTs and other children's services departments.

However, it goes wider than just the two of us, because I also work with my opposite number in the Home Office, Victoria Atkins, particularly on youth violence, and with Jackie Doyle-Price in the Department of Health and Social Care, because all these departments have touch-points with these families.

Lord Woolf: I realise that, but you are the two principals, and it is happening.

Edward Argar MP: It is happening. When it comes to key drivers, when we start to get children going beyond being at risk and starting to get themselves into bother, the YOTs are one of the most effective at dealing with that because they are local authority-based but are also tied in very closely with the Ministry of Justice and the Youth Justice Board and their activities. Before that stage, I know that Nadhim's team is doing a lot, for example, on exclusions and their impact—there is Ed Timpson's review—and on sharing data on that and those young people, with YOTs and others, to try to scoop them up.

The bluntest point I could make is about the most effective way of reducing the risk of that cycle of offending being perpetuated from one generation to the next, and it was summarised very clearly in the long-term female offender strategy, which says that the most effective way of dealing with that is to keep a family unit together and not send mothers and others to prison for a short prison sentence that disrupts the children. That is our long-term policy objective.

Lord Woolf: I am pleased to hear that. I do not want to take up too much time on this, but I was going to ask you two specific questions arising from the evidence that we have had. We heard, in private, evidence from a grandmother who looked after the grandchildren when the mother was sent to prison. She told us that she received no help or

support whatsoever. I wonder whether that is the sort of thing that our inquiry can throw up to draw attention to this, which is useful.

The second thing we heard about is about the geographical spread.

Chair: We can show you the map.

Edward Argar MP: That is kind. Thank you, Chair.

Chair: Cornwall does not appear on this map at all, Scott.

Edward Argar MP: I suspect Mr Mann will be very upset by that omission.

Scott Mann MP: My offenders have to travel a very long way.

Lord Woolf: You have just stressed the practicalities for the family and the importance of keeping the family together. I just wonder to what extent this is appreciated and you want to tackle it. I know that because there is a small, limited, number of female prisoners by comparison to the male population it is very tempting to try to bring prisoners from a large number of places and put them all together. Looking at it as imprisonment, that has efficiencies, but those efficiencies have to be weighed up against the disadvantages that come from the fact that it breaks down family connections.

One specific matter I was going to ask you is whether paying families so as to keep them able to visit is under consideration.

Chair: This relates particularly to the cost of travel from the child's home to visit the mother in prison.

Lord Woolf: It would mitigate what this map shows.

Edward Argar MP: I will touch on that, if I may, and Mr Zahawi may want to come in.

You are absolutely right to highlight the challenge. In a sense, it has been borne out of a positive, which is a reducing number of women in prison, but what that has led to—and you see it again with the youth estate as well—is fewer institutions, which means greater distances from family. I know that it is particularly acute for female Welsh prisoners who end up in English prisons.

Lord Woolf: And possibly Cornish prisoners.

Edward Argar MP: I was going to come on to that, too. In the south-west, the nearest is Eastwood Park in Gloucestershire, a considerable distance away. As a first point, in an ideal world I want to see those numbers going down anyway so that you obviate the need for those visits because the women will not be in prison; sentencers will have confidence either in a women's residential centre or in saying that there are community alternatives that enable someone to stay with their family and go to a women's centre, but that is a longer-term strategy.

In that context, I am mindful of the risk, which I think you allude to, which is that if you significantly reduce the population I am then put under pressure to close another bunch of prisons, which will mean even bigger distances for those who do end up in prison.

On the question of what we are doing to try to keep those family relationships where women do end up in prison, first, visits are the best

way of maintaining family relationships where somebody is sentenced to prison. I think it was Lina who talked about that and about the value of the family fun day that they organised. She said that it was still not pleasant, because it was prison, but it did work.

The challenge with that, of course, is the long distances, the ability to take a day off work, the ability to travel and the cost of travel, as the Chair alluded to. We operate the assisted prison visits scheme, which provides help with travel expenses for prisoners' close relatives and partners, and sole visitors who qualify on defined-income grounds. The total spend in 2017-18, the last financial year for which we have data, was almost £1.3 million, with 42,000 claims processed. That is not just children and grandparents bringing children to visit; that is across the whole system. That scheme is available to assist with those costs.

On your point about grandparents becoming primary carers, one department I should have mentioned when I talked about the cross-departmental work that we do is the DWP. I have not discussed this with them, but I am happy to discuss it with my opposite number in the DWP as an interesting point that you raised.

Finally, while visits are the best way, when someone is in prison, to try to maintain those relationships, we are also looking to do what we can, within the constraints of security considerations, to improve access to telephones and other modern technology in order to help find a safe way to build and maintain relationships.

Chair: At that point, and before there is a Lords vote, could I just bring in Fiona on the question of phone calls and visits?

Q57 **Fiona Bruce:** It is a single question. We have heard that visits from and phone calls to children can be used in prisons as part of the process of regulating behaviour under the incentives and earned privileges scheme—the IEP scheme—which you might be aware of.

Edward Argar MP: I am.

Fiona Bruce: Do you think that is acceptable, bearing in mind the impact on the child? Is there not perhaps another way in which behaviour could be regulated?

Edward Argar MP: You are absolutely right to mention this. We are currently reviewing the IEP scheme. It exists to drive positive and responsible behaviours, but you are absolutely right that the Committee should consider how it is used in relation to the human rights of children and the positive benefits of maintaining family contact, both for the mother—Lina highlighted that it was very important to her—but also, going back to the point previously made to the Committee, in making sure that we reduce the risk of that offending behaviour trickling down to another generation by virtue of the loss of family contact. We know the links that are there.

Chair: That is a very encouraging response. We want to crack on with the issues of giving birth, pregnancy and maternity. A Lords vote is imminent.

Nadhim Zahawi MP: First, I was just going to address Lord Woolf's question about voluntarily caring for children whose parents have gone to prison, which is incredibly challenging but is an invaluable role. Mr Argar touched on this in relation to the DWP.

We treat them equally as birth parents within the benefits system in relation to child benefit, child tax credit and other means-tested benefits. Of course, family and friend carers are also exempt from the two-child limit for child tax credits. Guidance for local authorities is very clear that children and young people should receive the support that they and their carers need to safeguard and promote their welfare, and that, for children who are looked after by a local authority or placed with a family or friend, the carer will be an approved foster parent and will, of course, then receive the same support as all foster parents do.

Q58 Baroness Lawrence of Clarendon: We have heard quite distressing evidence about women who are pregnant, go into prison and give birth. How many women give birth while serving custodial sentences? Of these, how many give birth in prison rather than being transported to hospital?

Edward Argar MP: This goes back to evidence given by Dr Laura Abbott, who wrote a report last year or possibly earlier this year, which was covered in the *Guardian*. I will try to come back to the statistics, where we have them, in a minute, but the overwhelming bulk of those who are pregnant and who give birth do so in hospital. The data is localised, not centralised, but my understanding is, first, that the numbers of those who do not give birth in hospital are in very low single figures in any year, and, secondly, that that happens only in circumstances where, in the complex nature of some pregnancies, when birth takes place can be unexpected. Women who are pregnant routinely go to hospital and will give birth in hospital.

Chair: Do you know how many women give birth as prisoners every year?

Edward Argar MP: No, I do not have that statistic in front of me, Chair.

Chair: I am making an FOI request, so we can tell you.

Edward Argar MP: If I am able to access it, I will write to you. We will see who manages to get the information more quickly, Chair.

Chair: There are prisoners who are giving birth, so it is important to know how many there are.

Edward Argar MP: My understanding is that a lot of that data, as with so much data, is kept at a local level by institutions and not agglomerated at a national PPS or MoJ level.

Q59 Baroness Lawrence of Clarendon: Of those who give birth while serving sentences, what percentage are separated from newborns

after birth? On average, how many are separated before they are able to go into the mother and baby unit?

Edward Argar MP: They are detailed statistics, Lady Lawrence, and I do not have those in front of me. What I do have, which, if it is helpful, I can write to the Committee with, is the management information from mother and baby units for the past few years, detailing, which may be helpful in getting some of what you are after, the number of applications received for admission in each calendar year, the number of applications approved, the number of applications refused—therefore, where the baby would not stay—the number of babies admitted in a particular year to a mother and baby unit, the number of mothers at the end of the year and the number of babies at the end of the year.

This does not necessarily give you the percentages that you are after, but it will give you a greater degree of granularity in the numbers in mother and baby units, how long they stay and how many at year-start and year-end. I could read them out to the Committee, but the table is quite complex, so it may be easier, Chair, if I submit that as evidence to you.

Chair: Thank you. On Doreen's point about how long the separation goes on for, if they know the women are pregnant and in prison, why do they not sort out the mother going to the mother and baby unit, rather than waiting until the mother has the baby and then doing the application, which inevitably means separation from a newborn?

Edward Argar MP: You are absolutely right. The numbers are small, but you raise a very good point which, with your permission, I will address when I write to the Committee with the statistical information about the process that is followed in those circumstances.

One of the issues here, which goes back to Dr Abbott's report, is that some pregnancies come to term unexpectedly and prematurely. In those cases, it is not always possible to pre-plan to that degree. If I may, Chair, I will address that with the statistics that I will send to you.

Baroness Lawrence of Clarendon: Do you think that you have enough mother and baby units? We have quite a few mothers who have a child under the age of 18 months. What percentage are separated from their child and what percentage can go with their child to the mother and baby unit? It sounds to me as if there are not enough units, so women find it very difficult to access them.

Edward Argar MP: There are two points there. One is the process and the criteria. In terms of capacity, which I think is what you were getting at, there are six mother and baby units across the female estate. I do not think there is any shortage of capacity at all, based on the latest stats. There are places for 64 mothers across those six units, and 70 babies, which at any one time accounts for the possibility of twins or similar, so there are more places for babies than there are mothers. At any one time, the average for the past few years has been only 40 babies in those units, so there is an excess capacity of around 30 places at any one time,

which is almost an additional 100% over what the number is. There is no capacity issue.

I will, in the context of what the Committee may write in its report, look at process and criteria issues. I suspect you may have some reflections on that in your report, which of course I will consider carefully. As things stand, capacity is not an issue.

Q60 Baroness Hamwee: We heard evidence that suggested that there was an underuse of the mother and baby units, while at the same time there was a separation of mothers and babies, which would trouble us.

Can I just go back to women giving birth in hospital? Is there a policy as to the conditions in which they should be transported and then looked after in hospital? We heard from one witness about being taken in handcuffs. When you are in labour, and if it is a pretty difficult labour, you are not likely to be a flight risk.

Edward Argar MP: The theory and the policy is that a mother about to give birth should be transported in appropriate conditions and with due care to their medical condition. If there are particular cases that have been highlighted to the Committee, within the constraints you may have of anonymity or similar in the nature of the evidence given to you, I would be interested to hear them.

Chair: You would expect them not to be in handcuffs giving birth.

Edward Argar MP: No, unless there was a particular reason. In some cases, there may be a reason. I cannot foresee what that might be, but if they were a flight risk or an assisted-abscond risk there may be some individual cases. I am wary about drawing a 100%, black-and-white, "No, it should not in any circumstances", because you always find that there is suddenly a logical reason for an exception. It is not something I would wish to say. I cannot imagine what those exceptions would be. I am happy to look at any comments the Committee makes on that.

Chair: Thanks very much indeed. We have a Lords vote bearing down on us, so can I just thank you very much indeed for your evidence and your engagement with the Committee on this very important issue? I am sure we will have further exchange of letters.

Edward Argar MP: I suspect we will, Chair.

Chair: I hope you will find our report compelling and useful. Thank you very much indeed.