

**Written evidence from Dr Shona Minson, British Academy Post-Doctoral Fellow,
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Introduction

The impact of maternal imprisonment on children is lifelong. Adults who have experienced a mother's imprisonment as a child are more likely than their peers to die before the age of 65¹. Maternal imprisonment is devastating for children, with future economic, health and wellbeing costs, and it is therefore important to avoid the unnecessary imprisonment of women, many of whom are mothers.

According to the Criminal Justice Act 2003 s.15(2) prison should only be used as a punishment when the offence 'was so serious that neither a fine alone nor a community sentence can be justified for the offence' (CJA 2003 section 152(2)). The Sentencing Guidelines in 2020 state that a custodial sentence may be imposed when it is necessary to protect the public. Only 10% of women in prison have committed violent offences. 36% of women are in prison for theft, and 19% are in prison for summary offences².

Despite the Female Offender Strategy, many women are still sentenced to short periods of imprisonment. In answer to a parliamentary question as to sentence length for women in 2018, 50% of women were sentenced to less than three months: 18% were sentenced to between three and six months, and 7.5% were sentenced to between six and twelve months. 75% of women in prison were sentenced to less than 12 months in prison, and 83% of women had sentences of less than two years which means that the sentences could have been suspended³. 60% of women remanded by the magistrates courts and 40% of those remanded by the Crown Court did not get a prison sentence when their case was heard.

There should not be more prison places being created. Instead, in line with the Female Offender Strategy, there should be fewer women remanded, recalled and sentenced, in particular to short periods of imprisonment.

In the remainder of the submission I focus on the questions related to women in prison who are mothers of dependent children; these are questions 4, 7, 8 and 10

¹ van de Weijer, S.G.A., Smallbone, H.S. & Bouwman, V. J Dev (2018) Parental Imprisonment and premature mortality in adulthood Journal of Life Course Criminology pp 1-14

² ['Statistics on Women and the Criminal Justice System 2019 A Ministry of Justice publication under Section 95 of the Criminal Justice Act 1991'](#) Ministry of Justice, 2019

³ Ministry of Justice 2018. Court proceeding Database Ref: PQ 198931 response

4. What has been done to ensure that the welfare of dependent children is taken into account when sentencing decisions are made?

Upwards of 17,000 children each year in England and Wales are affected when their mother is imprisoned. These children are particularly vulnerable as they often experience the loss of their sole or primary carer. This contrasts with the situation when fathers are imprisoned when most children remain with their mothers in their home. 95% of children whose mother goes to prison have to leave their family home, and their education, family relationships, health, and well-being are impacted.

Although the impacts begin at the point of imprisonment, often beginning when women are held on remand awaiting trial, they do not end with the mother's release. The instability these children face in childhood affects their future life chances: they have an increased risk of suffering from mental illness and related health problems and an increased likelihood that they will be not in education, employment or training in later life⁴. They are more likely than their peers to die before the age of 65⁵.

The impacts are wide reaching and affect every area of children's lives⁶:

- Change of carer, change of home, change of school
- Potential separation from brothers or sisters
- Disrupted education – there may not be school places available where they move to. They might find it hard to study.
- Relational changes affecting future stability

⁴ Hirschi, T. (1969) *Causes of Delinquency*. New Brunswick, London: Transaction; Fox G.L., Benson, M.L (2000) *Families, Crime and Criminal Justice*. Amsterdam, Oxford: JAI; Green, M., Scholes, M. (2004) Education for what? Attachment, culture and society. In Green, M., Scholes, M. (Eds.) *Attachment and human survival* (pp. 37–51) London: Karnac; Murray, J., Farrington, D. (2008) Effects of Parental Imprisonment on Children. In Tonry, M. (Ed.), *Crime and Justice: A review of research* (vol 37.) (pp.133-206) Chicago, IL; University of Chicago Press

⁵ See footnote 1 above.

⁶ Minson, S. (2019) [Maternal Sentencing and the Rights of the Child](#) Palgrave

⁷ Abbot, L. Scott, T. Thomas, H., Weston, K. (2020) Pregnancy and childbirth in English prisons: Institutional ignominy and the pains of imprisonment *Sociology of Health & Illness* Vol.42 Issue 3, pp 660-675; Davies, M., Rolewicz, L, Schlepper, L., Fagunwa, F. (2020) *Locked out? Prisoners' use of hospital care*. Nuffield Trust

- Increased poverty
- Social isolation: stigma and shame
- Behavioural problems – ‘confounding grief’

With regard to unborn children, imprisoning a pregnant woman puts her unborn child at risk for the following reasons⁷:

- i) Many women in prison have high risk pregnancies and if pregnant in the community, they would have extra midwife and obstetric appointments to monitor the baby’s wellbeing and growth. Recent research has found that pregnant women in prison miss as many as 1 in 4 outpatient appointments during their pregnancy, and it is unlikely that they receive the higher levels of care required.
- ii) Many pregnant women in prison suffer from toxic stress whilst in prison and this carries risks to their unborn child, as (particularly in the third trimester) the cortisol can cross the placenta, and babies who are exposed to these raised levels of cortisol may suffer from learning difficulties and ADHD which will affect them for the rest of their lives.
- iii) Recent research has found that 1 in 10 pregnant women in prison give birth to their baby either in their cell or in an ambulance on the way to prison. This contrasts with 0.4% of the general population who unexpectedly give birth before arriving at hospital. There are no midwives or doctors on duty in prisons overnight and so women going into labour risk inappropriate assessments.
- iv) Some sentencers remain under the misconception that every pregnant woman in prison will be on a Mother and Baby Unit (MBU), and her child will therefore not ‘suffer’ any harm from her imprisonment. This is incorrect as very few women keep their babies on MBUs and even if a woman is given a place on an MBU it is unlikely to be until after the baby is born with the consequence that the unborn baby does not necessarily get the care it needs for healthy development whilst the mother remains part of the main prison population.
- v) Although pregnant women are supposed to be given extra nutrition and other supports for pregnancy these are not consistently provided across the prison estate.

When children are separated from their parents in the family courts due to harm, abuse or neglect, their best interests are the paramount consideration of the court under section 1 of the Children Act 1989, and the state appoints lawyers and a Guardian ad litem to ensure that

those interests are considered. Within the criminal courts however, there is currently no statutory obligation to consider children. This amounts to procedural discrimination under Article 2 of the United Nations Convention on the Rights of the Child, 1989, against children whose parents are before the court for sentencing.

The following principles have been established in case law:

- The criminal sentencing of a parent engages the Article 8 right to respect for family life of both the parent and the child. Any interference by the state with this right must be in response to a pressing social need, in pursuit of a legitimate aim, and in proportion to that aim. The more serious the intervention the more compelling the justification must be - the act of separating a mother from a very young child is very serious.

R (on the application of P and Q) v Secretary of State for the Home Department [2001] EWCA Civ 1151 paragraphs 78 and 87

- The welfare of the child should be at the forefront of the judge's mind.
ZH (Tanzania) (FC) Appellant v Secretary of State for the Home Department [2011] UKSC4 paragraphs 25 and 26
- There is no standard or normative adjustment for dependent children, but their best interests are a 'distinct consideration to which full weight must be given'.
R v Petherick [2012] EWCA Crim 2214 paragraph 19
- In a case which is on the threshold between a custodial and non-custodial or suspended sentence a child can tip the scales and a proportionate sentence can become disproportionate.
R v Petherick [2012] EWCA Crim 2214 paragraph 22
- It may be appropriate to suspend a custodial sentence when the person being sentenced is the parent of dependent children
R v Modhwadia [2017] EWCA Crim 501
- It is the court's duty to make sure that it has all relevant information about dependent children before deciding on an appropriate sentence.
R v Bishop [2011] WL 84407 Court of Appeal

The rights of children whose mothers are being sentenced are set out in the Human Rights Act 1998 and the United Nations Convention on the Rights of the Child 1989.

These are:

- The right to private and family life (Article 8: Human Rights Act, 1998)
- The right not to be discriminated against or punished because of anything their parent has done (Article 2: United Nations Convention on the Rights of the Child, 1989)
- The right for their best interests to be a primary consideration of any court taking an action concerning them (Article 3: United Nations Convention on the Rights of the Child, 1989)
- The rights for their views to be considered (Article 12: United Nations Convention on the Rights of the Child, 1989)
- The right to be provided special protection and assistance by the state if temporarily deprived of his or her family environment (Article 20: United Nations Convention on the Rights of the Child, 1989)

In addition, the UK is a signatory to the United Nations rules on the treatment of women prisoners which state that:

- Non-custodial sentences are preferable for women with dependent children, (unless the offence is serious or violent or the woman represents a continuing danger). Even then, a custodial sentence should only be given after considering the best interests of the child, and ensuring that appropriate provision has been made for the child (*United Nations, 'the Bangkok Rules', 2010*)

In terms of Sentencing Guidelines, in every Guidelines since 2011 'sole or primary carer for dependent relatives' has been listed as a factor which can be considered in mitigation.

However, research undertaken with Crown Court judiciary in 2015/2016⁸ found both a lack of awareness of the courts' obligations to consider dependent children, and a lack of knowledge about the impact of maternal imprisonment on children⁹. Despite a body of case

⁸ See footnote 5 above

⁹ There is national and global evidence which sets out the extensive harms which are suffered by children whose mother is imprisoned. There is not space to recite it here but it is summarised in 'Direct Harms and Social Consequences: An analysis of the impact of maternal imprisonment on dependent children in England and Wales' (Minson, S. 2018, [Criminology and Criminal Justice](#)). More detail is contained in '[Maternal Sentencing and the Rights of the Child](#)', Minson, S. 2019

law on the issue dating back to 2001, and the factor ‘sole or primary carer for dependent relatives’ being listed in every Sentencing Guideline since 2011, judges did not always know, understand or comply with their obligations to consider dependent children.

The ‘Safeguarding Children when Sentencing Mothers’ film series¹⁰ was made by me, and funded by the ESRC, in response to that finding. The films and briefing papers are included as part of an optional course on sentencing in the Judicial College training and have been used by NPS/ MOJ but they influence rather than mandate the necessary considerations. They were mentioned in the Female Offender Strategy at p.20 with the commitment being to ‘Roll out Dr Minson’s DVD safeguarding children when sentencing mothers’. This was a surprise to me as the MOJ had not had discussed this with me. Since the FOS they have not had any contact with me about their use or dissemination. In the Prison Reform Trust matrix of implementation ¹¹ it is marked as ‘Commitment met’. That is misleading. The MOJ have taken my work in trying to disseminate the films as an indicator that their commitment has been met, but to the best of my knowledge the films are not mandatory training nor have all PSR writers watched them. I would be very happy to work closely with the MOJ/ NPS to provide the resource to all relevant persons.

The ‘General Guideline: Overarching Principles’ published by the Sentencing Council and in force since the 1st October 2019 provides an expanded explanation for the mitigating factor ‘*sole or primary carer for dependent relatives*’ which gives further clarity to sentencers as to how they should consider dependent children when sentencing mothers. This is a significant step forward, and one that was recommended by the [Human Rights’ Committee](#) in their report published on 9th September 2019, when they found that children’s rights were not being upheld when their mothers were sentenced.

The key elements of the expanded explanation are as follows:

1. the court should not impose a sentence of imprisonment where the impact on dependants would make a custodial sentence disproportionate to achieving the aims of sentencing
2. the court should consider the impact of the sentence length on dependants and whether the sentence can be suspended

¹⁰ The film for mothers facing sentencing is available online. The films for professional audiences are not available publicly as they include interviews with members of the professions they were made for, as well as a child talking about the experience of maternal imprisonment <https://shonaminson.com/safeguarding-children-when-sentencing-mothers/>

¹¹<http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women/Female%20Offender%20Strategy%20RT%20Matrix%20140421.pdf>

3. the court should consider the effects on dependants when deciding on the requirements of community sentences
4. when the defendant is a pregnant woman the relevant considerations should include the effect of a sentence of imprisonment on the woman's health and any effect of the sentence on the unborn child.
5. the court must ensure that it has all relevant information about dependent children before deciding on sentence (*in accordance with the case of R v Bishop [2011]*)
6. the court should consider whether proper arrangements have been made for dependent children when imposing a custodial sentence, and consider adjourning sentence in such cases in order for proper plans to be in place for children
7. the court should ask the National Probation Service to address the defendant's caring responsibilities and the impact of any sentence on the care of their dependants in a Pre Sentence Report

However, although children should now be given proper consideration in all sentencing hearings when the defendant is a mother, it is unlikely that this is happening in every case. Without either a separate Sentencing Guideline on the point, or a statutory obligation (similar to that contained in the Children Act 1989), which mandates consideration of dependents in sentencing hearings, research suggests that children will not be given the appropriate consideration in sentencing hearings.

The Joint Committee on Human Rights have tabled five amendments to the Police, Crime, Sentencing and Courts Bill. These amendments would address the lack of consistent consideration for children at the point of sentence.

They are as follows:

Amendment 1: This amendment makes clear the requirement for a sentencing judge to have a copy of a pre-sentence report considering the impact of a custodial sentence on the dependent child, when sentencing a primary carer of a child.

Amendment 2: This amendment requires a sentencing judge to state how the best interests of a child were considered when sentencing a primary carer of a dependent child.

Amendment 3: This amendment reflects the requirement for a sentencing judge to consider the impact of a custodial sentence on a child when sentencing a primary carer of a dependent child.

Amendment 4: This amendment reflects the requirement for a judge to consider the impact of not granting bail on a child, when determining, in criminal proceedings, whether to grant bail to a primary carer of a dependent child.

Amendment 5: This amendment imposes a requirement on the Secretary of State to collect and publish data on the number of prisoners who are the primary carers of a child and the number of children who have a primary carer in custody.

Going forward I propose to the Committee the following:

- The amendments to the Police, Crime, Sentencing and Courts Bill that mandate consideration for dependent children at sentencing should be supported, to ensure that the welfare of dependent children is considered when sentencing women.
- There should be an evaluation of sentencing practice when sentencing mothers of dependent children, in both the Crown and Magistrates courts.
- There should be a presumption in favour of community sentencing or suspended sentences when the defendant is a primary carer for dependent children.

7. How are women supported to maintain family ties in prison? What progress has been made on improving family ties since the Farmer Review?

What effect has Covid-19 had on maintaining ties for women in custody?

My expertise and knowledge relates to the experiences of parents and children's contact during the COVID-19 prison lockdowns. The pandemic has had a devastating effect on women's ability to maintain family ties whilst in custody. Please see the research report which was sent to all members of the Justice Committee at publication in March 2021¹².

Very few children have had face to face visits with their parent since March 2020. Although visits were available in some prisons, some families have taken the decision not to bring children to visits where they will still be separated from their parent by a screen.

Video calls have been available in some prisons with differing levels of success, but one 30 minute call per month has been grossly insufficient.

¹² [The impact of COVID-19 prison lockdowns on children with a parent in prison'](#), Minson, S. (2021)

Research on the impacts of prison lockdowns on child/ parent relationships has found that many relationships have suffered what is likely to be irreparable damage. Children’s anxiety and distress, caused by the uncertainty of the pandemic, the indefinite period without contact, and their fears about their parents’ wellbeing, have been difficult for parents in prison to cope with. Some parents have stopped telephone contact with their children because it has been too distressing. The recent HMIP reports have drawn attention to this¹³.

Not only did COVID-19 lockdowns prevent face to face contact, but they also caused a decrease in children’s telephone contact with their parent. This was due to a number of factors including parents’ concerns about using shared telephones in the prison, a lack of money, and a lack of time out of their cells during which they could make calls.

<p>RECOGNITION</p> <p>Young people will forget their parents</p> 	<p>'By the time we get back into the prison the 7 month old is not going to have a clue who her Dad is'</p>	<p>ATTACHMENT</p> <p>Children have formed attachments to grandparent carers instead of their parent after such prolonged period without contact</p> 
<p>'There is more distance than before. They're not communicating on the phone with their Dad like before. They need to see him.'</p>	<p>IMPACTS ON CHILDREN'S RELATIONSHIP WITH THEIR IMPRISONED PARENT</p>	<p>'He no longer wants to speak to Dad on the phone. He speaks about Dad less, he used to look forward to visits more than anything. Now he says he has nothing to look forward to.'</p>
<p>CONFUSION</p> <p>Children believe that their parent doesn't want to see them, or doesn't love them anymore</p> 	<p>'My son has never seen his daddy as he was asleep both times he visited and that was at 2 weeks old. He's now 3 months.'</p>	<p>NO CONTACT</p> <p>Imprisoned parents are unable to continue with telephone contact as they cannot bear the sadness of their children. In response to this, children are distraught and the relationships are irreparably damaged.</p> 
<p>Minson, S. 2021 'The Impact of Covid-19 prison lockdowns on children with a parent in prison'</p>		

What support is available for mothers to maintain contact with dependent children?

The support available varies from prison to prison. I would draw the Committee’s attention to the Visiting Mum scheme¹⁴, a project which ran in HMP Eastwood Park in 2016/2017. It supported contact between mothers and their children. The evaluation found that support for mothers and children, before and after visits, improved the quality of the contact and the

¹³ [What happens to prisoners in a pandemic? A thematic review by HM Inspectorate of Prisons](#) (February 2021)

¹⁴ ['Final Report: Evaluation of Visiting Mum Scheme'](#) Rees, A, Staples, E, Maxell, N. (2017)

relationships. Unfortunately despite a very positive evaluation, the funding was not renewed. I would suggest that such levels of support would be beneficial to mothers and children.

8. What factors contribute to the high levels of self-harm in the female estate?

The evaluation of Visiting Mum (above) found that there was a decrease in incidences of self-harm among mothers who were having regular, supported contact with their children. For many women the absence of their children and their inability to parent from prison is one of the most difficult ‘pains of imprisonment’. During the COVID-19 lockdowns, carers for children whose mothers are imprisoned reported that the mothers’ mood has become very low due to the lack of contact with their children¹⁵. Improved contact with children may reduce women’s rates of self-harm.

10. What support is available to ensure that women are successfully resettled into the community upon release and reduce reoffending ?

Are there any barriers to effective resettlement and reduced reoffending ?

At present there is very little support for mothers to resettle with their children. There are practical difficulties of housing and finance, and many women lose their homes, and therefore the possibility of housing their children, when they are imprisoned. These are structural barriers to effective resettlement and reduced reoffending. If it is the aim that mothers should be able to successfully resettle with their children, then more resource needs to be put into both the practical concerns outlined above, but also into the relational aspects of this resettlement and I address one such resource in this submission.

Children who have experienced separation from their mothers have suffered, in many cases, a traumatic, ambiguous loss. They have had to form new attachments and are likely to be holding many unresolved and unexpressed emotions¹⁶. The caregiver who has looked after the children is also likely to have complex emotions, as is the mother who is being released. At present families are given little support to navigate these difficulties.

¹⁵ [The Impact of COVID-19 prison lockdowns on children with a parent in prison](#) Minson, S. (2021)

¹⁶ Arditti, J.A. (2012) *Parental Incarceration and the Family*. New York: New York University Press: Boss, P. (2004) Ambiguous Loss n: Walsh, F. McGoldrick, M.(eds) *Living beyond Loss*. New York: WW Norton and Company, 237-246; Minson, S.(2018) [Direct Harms and Social Consequences, Criminology and Criminal Justice](#) 1-18

I suggest that **Family Group Conferencing** should be introduced for mothers who are imprisoned, at both the pre-sentence and release stages. In June 2018 in discussion with Dr Phillip Lee (then Minister with responsibility for women in the criminal justice system), I proposed that a pilot scheme should run in two courts. Disappointingly such a pilot did not take place.

Family Group Conferencing is used by Local Authorities to facilitate meetings for families to work out where children will live and how they will be looked after. It is a model which would work very effectively to allow families to plan for children's care during a mother's imprisonment, and would also allow for the very difficult and complex decision making which families are often left to make alone at release.

The issue of resettlement is likely to be even more complex after the COVID-19 lockdowns, as mothers and children have had so little contact with each other during the period of imprisonment, and therefore properly resourced resettlement support should be a priority.

In conclusion

The impact of maternal imprisonment on children is lifelong. The system we have does not mitigate the harms children suffer from maternal imprisonment. Building 500 more prison places will lead to more children being impacted. In line with the Female Offender Strategy there should instead be steps taken to reduce the remand, recall and sentencing of women to imprisonment.

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