



CBA Response to the Joint Committee on Human Rights

How Human Rights of children whose mothers are in prison are promoted and protected

Monday 15th October 2018

Introduction

1. The CBA represents the views and interests of practising members of the criminal Bar in England and Wales.
2. The CBA's role is to promote and maintain the highest professional standards in the practice of law; to provide professional education and training and assist with continuing professional development; to assist with consultation undertaken in connection with the criminal law or the legal profession; and to promote and represent the professional interests of its members.
3. The CBA is the largest specialist Bar association, with over 3,500 subscribing members; and represents all practitioners in the field of criminal law at the Bar. Most practitioners are in self-employed, private practice, working from sets of Chambers based in major towns and cities throughout the country. The international reputation enjoyed by our Criminal Justice System owes a great deal to the professionalism, commitment and ethical standards of our practitioners. The technical knowledge, skill and quality of advocacy all guarantee the delivery of justice in our courts, ensuring that all persons

receive a fair trial and that the adversarial system, which is at the heart of criminal justice in this jurisdiction, is maintained.

Written submissions

Question 1:

Whether human rights considerations are adequately articulated in current sentencing guidelines and practice?

The CBA acknowledges a real problem faced in relation to the safeguarding of children when sentencing mothers.

Statistics published by the Prison Reform Trust that more than 16,000 children per year are uprooted from their family homes as a result of mothers being sentenced to prison.

Sentencing mothers to custody is an even greater difficulty as a result of the distances often between female prisons and families homes. One example is London, where there are currently no female prisons, post the closure of HMP Holloway. For any children who are able to remain in the family home, or for example who may live with extended family members the lack of contact with their mothers whilst in a custodial setting is also of concern¹.

¹ An example of a mother being placed in Bronzefield, from residence in East London. Travel of more than 4.5 hours and costs mean huge difficulties in family units even being able to maintain contact whilst the mother is detained in prison.

Within criminal sentencing hearings, the specific language of human rights, in terms of the terminology and reliance upon Article 8 ECHR and articles 2(non-discrimination), 3(best interests of the child), 12 (respect for the views of the child) and 20 (children deprive of family environment) of the UN Convention of the Rights of the Child are rarely used if ever specifically.

Criminal case authorities do set out reference to these difficulties for example:

- R v Petherick [2012] EWCA Crim 2214 – 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 Joanne Mills [2002] EWCA Crim 26 set out that when sentencing a mother of previous good character for a dishonesty offence, then the sentencer should consider issues such as the effect on the children and that it was difficult to place mothers near homes.
- R v Naomi Reynolds [2017] 1 Cr App R 42 – first sentencing authority providing specific reference to Bangkok Rules.

Should there be a stronger presumption against custodial sentences for mothers (or other primary carers) with dependent children?

- Yes.
- There needs to be a published specific sentencing guideline on the issue of the sentencing of mothers (or other primary carers) in order to have the most impact upon sentencers. There also should be

considered a specific sentencing guideline in relation to women, given the particular pathways into offending that include matters of domestic violence and abuse as highlighted².

- Currently within sentencing practices, there is a real lack of reference to the UN Rules for the Treatment of Women Prisoners and Non custodial measures for women in the community (Bangkok Rules) and for example rule 52 in relation to ‘decisions as to when a child is to be separated from its mother shall be based on individual assessments and the best interests of the child within the scope of relevant national laws. One case in which the court of appeal has affirmed the usage of the Bangkok Rules, namely as ‘soft law’ is the case of R v Naomi Reynolds [2017] 1 Cr App R 42.

Whether children whose mothers (or other primary carers) are in prison are protected by the current legislative and guidance framework for safeguarding and promoting the welfare of children?

- At sentencing stage, the reference to the international safeguards in relation to the welfare of children is not considered with reference to the specific language, but rather through the means of a pre-sentence report.
- The response of most sentencing Judges is to focus on the individual having made a ‘choice to offend, and thus the consequence of being separated from their child is their fault.’
- Of particular concern is that the majority of low level sentences are imposed within the magistrates courts. And for low level offences particularly

² Corston report

acquisitive and matters of dishonesty non custodial sentences can provide very real alternatives³.

- There is a complete lack of detail given at point of Sentencing from sources that are best placed to know about the welfare of the children if a mother were sentenced to custody- for example from schools, extended family members, direct reports from social services and psychological reports into the impact of custody upon children. Some sentencing hearings take place extremely quickly, and to have a fairer and more complete sentencing process there needs to be thorough investigation of these matters prior to either sentencing or indeed remanding a mother into custody.
- The information that is often provided to courts is simply via a pre-sentence report. There needs to be investment in the provision of detailed pre-sentence reports and within the legal aid system when it comes to the sentencing of mothers in court.

- **What are the most appropriate non-custodial sentencing options for mothers?**

How should data about this group should be collected and shared.

- Diversion from prosecution in the first place is something that needs to be carefully considered.
- Holistic consideration of all factors leading to offending patterns needs to be considered- an example being that 60% of women in custody have faced domestic violence and abuse. Yet whilst in custody, there is no access to courses for individuals who have suffered from domestic violence and

³ Please see article on 'When should a sentence of imprisonment be suspended -Criminal Law and Justice Weekly 2017 181(18) -Epstein and Ahluwalia.

abuse. Yet often the fear of having their children removed is a reason why mothers would not report coercion by their partners, or domestic violence. And yet these are large factors that account for a pathway into offending itself⁴. The funding and support of women's centres is critical and has been shown to have more positive impact and better rehabilitation rates.

- There is a lack of statistical information currently available on the reoffending rates of mothers who have had their children taken away from them as opposed to mothers who have not.
- As day to day criminal defence practitioners, it is often a devastating turning point in an individual's life if their children are taken into care- there has not been much research into how such events effect the increase of drug addiction issues and increase re-offending rates. Recidivism is a large issue within the offending patterns of minor offences, and a lot of these are drug related offending patterns that often stem from the point of when children are taken into care.
- There needs to be a more joined up analysis when sentencing of mothers who have in fact already had their children taken into care (because of past offences) and consideration of long term solutions and increasing contact with their children. The custodial terms themselves are often short term, but the impact even from one custodial sentence has far greater long term devastation- the prevalence of homelessness much more acute upon women prisoners on release from custody⁵.

⁴ Please see Prison Reform Trust report of 2017 'There's a reason we're in trouble'-Domestic abuse as a driver to women's offending.

⁵ Examples can be seen in the research paper of September 2016- 'Home Truths: housing for women in the criminal justice system' Women in Prison and Prison Reform Trust.

Should the reader require further information on this topic then please do not hesitate to contact the Criminal Bar Association and copies of case authorities and academic research in relation to the above can be provided⁶.

⁶ Please contact Paramjit Ahluwalia at p.ahluwalia@lambbuilding.co.uk