

EQUAL OPPORTUNITIES COMMITTEE

Tuesday 9 February 2010

Session 3

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EQUAL OPPORTUNITIES COMMITTEE

3rd Meeting 2010, Session 3

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Marlyn Glen (North East Scotland) (Lab)

COMMITTEE MEMBERS

*Malcolm Chisholm (Edinburgh North and Leith) (Lab)

*Willie Coffey (Kilmarnock and Loudoun) (SNP)

*Bill Kidd (Glasgow) (SNP)

*Christina McKelvie (Central Scotland) (SNP)

*Hugh O'Donnell (Central Scotland) (LD)

*Elaine Smith (Coatbridge and Chryston) (Lab)

COMMITTEE SUBSTITUTES

Rhoda Grant (Highlands and Islands) (Lab)

Mary Scanlon (Highlands and Islands) (Con)

Margaret Smith (Edinburgh West) (LD)

Shirley-Anne Somerville (Lothians) (SNP)

*attended

CLERK TO THE COMMITTEE

James Johnston

ASSISTANT CLERK

Rebecca Lamb

LOCATION

Committee Room 1

Scottish Parliament

Equal Opportunities Committee

Tuesday 9 February 2010

[THE CONVENER *opened the meeting at 10:02*]

Female Offenders in the Criminal Justice System

The Convener (Margaret Mitchell): Good morning everyone and welcome to the third meeting in 2010 of the Equal Opportunities Committee. I remind all those present—including members—that mobile phones and BlackBerrys should be switched off completely, as they interfere with the sound system even when they are switched to silent.

Our first agenda item is consideration of the Scottish Government's response to the committee's third report in 2009, "Female offenders in the criminal justice system". The clerk contacted all the witnesses who gave oral evidence to the committee to ask for their comments. One response was received from Families Outside and it was circulated to members in the meeting papers. Our discussion today will help to inform our plenary debate on the inquiry report, which is scheduled for Thursday afternoon.

Discussion on whether the committee wants to lodge an amendment to the Criminal Justice and Licensing (Scotland) Bill in line with recommendations in our inquiry report will be taken separately under agenda item 2.

Do members have any comments on the responses to our inquiry report?

Elaine Smith (Coatbridge and Chryston) (Lab): I have a question for the clerks. How much time were people given to respond to the Government response? The response from Families Outside is helpful, but I am a wee bit surprised that we did not receive a formal response from anyone else. Also, what procedure will we follow post the plenary debate? Could we recall witnesses such as Families Outside and then invite the Cabinet Secretary for Justice to come before the committee again?

We should consider responses not only from the minister with responsibility for justice. We should also seek a response from ministers with responsibility for equalities, housing and other Government directorates.

The Convener: That is a possibility.

Marlyn Glen (North East Scotland) (Lab): What is the answer to Elaine Smith's question on the timescale for witnesses to respond?

The Convener: The clerk will clarify that.

James Johnston (Clerk): As soon as we received the cabinet secretary's response, we sent it out to all the witnesses who gave oral evidence to the committee. The letter from the cabinet secretary has no date, but I think that we received it about the middle of January.

The Convener: The Families Outside response is very helpful. Perhaps we should contact the witnesses who have not yet responded to ask whether they intend to respond. Chamber debates often help to clarify minds; we tend to get responses by e-mail in advance of such debates. Responses may yet come in.

Willie Coffey (Kilmarnock and Loudoun) (SNP): I am grateful to Families Outside for its response—at least it responded. I see no need to drag the cabinet secretary or any other minister before the committee again until such time as we have had a chance to review and assess the responses that we have in front of us.

The Convener: I am sorry; I did not quite catch what you said.

Willie Coffey: I was responding to Elaine Smith's point on bringing the cabinet secretary and other ministers before the committee again. I see no need for that at this stage. We should assess the responses first.

The Convener: The minister will respond to the plenary debate. We will then reflect on the debate and see where we want to go from there.

Marlyn Glen: We have done very well in moving the issue up the agenda. For example, there is the report on Cornton Vale from HM chief inspector of prisons for Scotland. Things are moving forward. My question is on the two reports that the cabinet secretary highlighted in his evidence to committee. I have forgotten the titles, but one was on domestic abuse and the other was on female prisoners. Both reports were just under way at that time. We should find out when they will be published. Once that has happened, we should move on the debate.

It is important that we encourage other stakeholders to respond. We should let them know that there is time to do that. We have done a massive piece of work. We must not let go of the issue; our work could make a huge difference.

The Convener: I agree. I am particularly encouraged by the Government response on mental health issues. The repositioning of the mental health officer role is a positive development.

We could press the Government on its timetable for action and ask for more detail. Much of the Government response to our recommendations is positive and will make a difference. One example of that is the Government's proposals for work in communities, including the involvement of community justice authorities and others.

Marlyn Glen: A grid or table that sets out our recommendations and the Government's response would be useful to members. Some of the Government's responses are of the tick-and-take-on variety, which is good, but others are along the lines of, "Here's the timetable" or "We're waiting for the timetable", or "We're not going to do that."

For example, Families Outside mentioned pet therapy for prisoners and suggested that the public are not ready for that. I am not sure that I agree. The suggestion was interesting. We saw the difference that it has made to the lives of the prisoners whom we met in Belfast. It would be a shame if the suggestion were to become lost. I liked Families Outside's suggestion regarding prisoners becoming involved in the training of guide dogs, almost as social payback.

Malcolm Chisholm (Edinburgh North and Leith) (Lab): I have done such a table. It shows that very few recommendations were ignored or refuted, which is very positive. The only one that has been ignored—perhaps it is an oversight—is recommendation 67, which recommended putting the child's rights first in terms of visiting a mother who has failed a drug test. There was no response to that.

I do not think that anything else we said was ignored, and nothing was directly refuted. The response to paragraph 68 made no mention of family addiction programmes, but that is a minor issue in the scale of things, given that the response to our report was positive. Everyone is swimming in the same direction; it is a matter of implementing the approach.

The fundamental problem is the rising number of women who are being sent to Cornton Vale prison, which is difficult for us to grapple with, because sentencing is not under our control. I do not know what the answer is; I presume that part of it is to ensure that there are good alternatives to prison, whether we are talking about the 218 centre or good, appropriate community sentencing. It is a bit depressing that although policy seems to be moving in the right direction, more and more women are ending up in Cornton Vale. Since we produced our report, the new HM chief inspector of prisons has said that the place is overcrowded and too many women are sent there. I am sure that the issue will come up in the debate on Thursday. The policy direction is right, but how do we make a big shift in what happens?

The Convener: There is a gap in provision for women who have mental health problems and are awaiting sentencing, for whom more or less the only options are prison or remand. A holding place for such people would help the numbers.

Hugh O'Donnell (Central Scotland) (LD): The rhetoric of the response is positive, but I am desperately keen that there should be a focus on evidence of progress. We all know that Governments, whatever their shade, can make nice mood music, and I would be extremely disappointed if we got a new symphony that did not translate into practical action.

The Cabinet Secretary for Justice said in his letter to the committee:

"Our objectives to reduce reoffending and improve public health are interwoven."

That is entirely appropriate, but what will the Government do to achieve its objectives? We risk our report disappearing under a pile of dust unless we continually revisit it and, at the appropriate stage, ask the cabinet secretary what has been done in practice.

The Convener: We took such an approach to our report on removing barriers and creating opportunities. We kept track of our recommendations and we brought back the minister to ask about progress. If we do not want committee reports to lie on a shelf after being completed, it is incumbent on us to revisit the issues and ascertain what progress has been made.

We should follow up the report not just with the cabinet secretary, but with the Scottish Prison Service. In parts of the response a little complacency on the part of the SPS was evident.

Elaine Smith: When I suggested that we invite the cabinet secretary back to give evidence, I did not mean that we should hear from him next week. I want to ensure that Thursday's debate is not the end of the process. As the convener said, the report should not be just shelved; we should review progress and, at an appropriate point in future, revisit the issues to ascertain what has been achieved.

I agree with the convener's point about SPS. A look through the response suggests that the parts of our report that have not been responded to in depth are the parts that SPS has responded to. For example, the response to paragraph 74 says:

"SPS does not currently have enough evidence of need to justify the introduction of a Speech and Language Therapy programme for women offenders at Cornton Vale."

We thought that there was evidence of such a need; some of our witnesses thought so, too. Such issues need to be explored.

Also, in the response to paragraph 68, we are told:

“HMPYOI Cornton Vale offers a parenting programme for women who have a substance misuse problem.”

However, Families Outside said that the programme is no longer running, because there is no funding for it. That is worrying. Time and again in the response, SPS talks about resource constraints and priorities. We must return to the issue.

We considered the issue from an equalities perspective, as the Equal Opportunities Committee should do—to have made justice the focus would have been to take the issue out of our remit. Do we therefore need input from other Government departments and perhaps from the Cabinet Secretary for Health and Wellbeing, who has responsibility for equalities and housing, or are we happy to accept a response that comes from just the justice perspective?

10:15

Christina McKelvie (Central Scotland) (SNP):

I was not a member of the committee when it gathered its evidence, but I am trying to pick things up as I go along. The Education, Lifelong Learning and Culture Committee is considering whether to undertake an inquiry into prisoner education. The Scottish Government has been doing work on that, too. Issues such as dyslexia, the need for speech therapy and mental ill health create learning challenges that can affect a person's behaviour. Such matters can be addressed from an education rather than a justice point of view. Offenders can be supported through portfolios other than justice. Some 70 per cent of young men in prison have some form of dyslexia, which is a scary statistic—the proportion of women in prison who have dyslexia must be about the same. Elaine Smith is right to say that this is not just a justice issue; it is a social issue, and a health and wellbeing issue, too.

That ties into issues to do with parenting. When parents who have dyslexia or a mild learning disability or health issue are supported as they learn, they are usually much more able to be constructive and effective parents. The knock-on effect of support is huge. If we get the focus right, we can make progress on all the issues.

Willie Coffey: The Government's response was encouraging, but I agree with Marlyn Glen and Hugh O'Donnell that we want to track and monitor progress on some of the issues. Two issues stand out. First, there is sufficient evidence that speech and language therapy is needed, as Elaine Smith said. The issue has been highlighted in responses to parliamentary questions that I lodged, and

Families Outside makes the point, too. We should return to that.

The second issue is the administration of medication. We learned that when a woman enters prison her medication is sometimes delivered very late. The response on that was not particularly clear or encouraging. We need to pick up such issues.

The Convener: There is an issue to do with how prisoners' national health service care is taken over. The issues are complex and the timetable seems lengthy, although we can understand why that is. Perhaps we can press a little and ascertain whether medication can be considered before other services.

We will bring up many issues on Thursday. Perhaps the best approach is for committee members to make the points that they want to make in the debate, listen to the minister's response and then regroup. We are all about mainstreaming, and it is clear that a number of issues are relevant to other committees. We look forward to the debate.

Marlyn Glen: Perhaps when we consider our work programme we can allocate time to the matter. I am keen to make it an on-going agenda item, given the forthcoming publications that I mentioned. I understand that research into female offending has been commissioned, too.

The Convener: We can discuss that under agenda item 3, which is consideration of our work programme.

Criminal Justice and Licensing (Scotland) Bill

10:19

The Convener: Under agenda item 2, the committee will consider whether it wishes to lodge a committee amendment to the Criminal Justice and Licensing (Scotland) Bill. As detailed in the paper from the clerk, it is proposed that the committee lodge an amendment that will give effect to the recommendations in paragraphs 162 to 164 of our report on female offenders in the criminal justice system. Do members wish to comment on the proposal?

Marlyn Glen: I am happy to go to the Justice Committee to propose our amendment, although we need to do a wee bit of background work to ensure that we present it in the right way. It is really important that we put the amendment formally to the Justice Committee when it considers the bill at stage 2.

Willie Coffey: Before we agree to it, what is the exact amendment that is proposed?

The Convener: In essence, the amendment would seek to ask why prostitution never disappears from someone's criminal record with regard to level-of-trust positions. Having had just a brief discussion about the matter with the Scottish Parliament information centre, it is clear to me that we will have to look into a lot of background information before we lodge the amendment.

Willie Coffey: Thanks for that. However, if you do not mind, it would only be fair for the committee to see the wording of the amendment before we decide whether to support it.

Marlyn Glen: May I be helpful? The amendment will be a little complicated, so I will look to the clerks of our committee and the Justice Committee to come up with the wording. I think that I am right in saying that the amendment must be lodged by 25 February. We will have a meeting before then, so I could bring the proposed amendment to that meeting before lodging it. If the committee had a problem with the amendment, I would be prepared to lodge it in my name, but it would be much better if it came from the committee.

The Convener: I invite the clerk to explain the procedure.

James Johnston: If the committee agrees to the proposal on the amendment, it would be for the clerks to the lead committee—the Justice Committee—to advise on the wording and they would work on it with Marlyn Glen. Once the wording had been agreed, we could circulate it by e-mail for the committee to consider. The key

question today is whether the committee agrees to delegate authority to work on the amendment to Marlyn Glen.

Elaine Smith: It might be helpful to go over briefly the reasons for proposing an amendment in the first place. Perhaps Willie Coffey would then be more comfortable with why the task is being delegated.

During the inquiry, we had some discussion about the fact that prostitution is seen as being on the spectrum of violence against women—it has been seen that way by the current Government and the previous Scottish Executive. When writing our report, we received evidence that a lot of women in Cornton Vale are vulnerable and victims. Therefore, if we want to put resources and funding into finding routes out of prostitution for women—although it is not only women, it is mainly women that we are talking about—and to divert them into other occupations, it seems strange that when they apply for jobs in the future, they might have to declare a conviction for prostitution that would then prevent them from moving into those other occupations. That was the problem that the committee heard about in evidence.

Therefore, we are trying to explore through the proposed amendment whether there is a possibility that the need to declare such convictions could be exempted from the Criminal Justice and Licensing (Scotland) Bill. That would have to be explored in the committee at stage 2 and perhaps in the chamber at stage 3. I hope that that puts into context what we are trying to achieve and how we are trying to achieve it. Ultimately, it might not be possible to achieve our end, but if the committee lodges the amendment, at least we can explore the issues in some depth.

Willie Coffey: Thanks very much. I have no problem with an amendment if the committee considers and agrees to its wording but, at the minute, I do not know what that wording will be. I would prefer to see the wording of any proposed amendment before agreeing to it.

The Convener: That is perfectly fair. Are you happy in principle that we bring up the issue? You will recall that the matter was raised when one of the people from the 218 centre said that she had a conviction for prostitution that she felt was detrimental to her finding employment, because the conviction would never be lifted from her record. As far as we understand, it might still be on her record in 30 years' time. It seemed to us that that raised a potential fairness issue.

So, depending on agreement on the wording of the amendment, which can be done through e-mail, are you happy to delegate the matter so that the issue can be probed further by the Justice

Committee when it considers amendments at stage 2?

Willie Coffey: It depends on the wording.

The Convener: If we are happy with the amendment in principle, I am sure that we can agree a form of wording that will satisfy everyone. If we fail to reach agreement by e-mail, we will have to convene a meeting to discuss the amendment. However, if we are happy in principle to put the issue to the Justice Committee, are you happy to delegate the powers, following agreement of the wording?

Willie Coffey: Yes.

Christina McKelvie: I am still trying to get to grips with all this, so I ask for a wee point of clarification. I understand and support the spirit of the amendment, because it should not be the case that somebody has a prostitution conviction on their record for such a long time.

Some changes are also being made under the Protection of Vulnerable Groups Act 2007 to change the focus of the legislation slightly. I will take off my politician's hat and put back on my social work hat to say that we must be absolutely sure that any changes that are made to the criminal justice legislation do not create a wee loophole in relation to people who might have a prostitution conviction, but who also have convictions for other offences that would knock them out of the category. A law of unintended consequences sometimes comes into play, and we must be careful not to create a loophole. We must be very careful about the wording of the amendment, because of any unintended knock-on effect that it might have. I wanted to relay that concern to the committee.

The Convener: That is a fair point, because other convictions will be taken into account in the new protection of vulnerable groups scheme. At the moment, however, we are looking at why a prostitution conviction alone should stand, but as we probe the matter more, other issues might arise. We are trying to get to the heart of why the prostitution conviction remains on someone's record and the rationale behind it.

If members are happy with all that, the clerks will issue a form of words that we will all consider and agree on so that we can lodge our amendment. Is everyone happy with that?

Members *indicated agreement.*

The Convener: To be quite clear, I ask members to agree that the deputy convener will attend the relevant Justice Committee meeting to speak to and move the amendment. We do not yet know the date of that meeting. As Justice Committee and Equal Opportunities Committee meetings often coincide, that would allow me to

convene this committee without having to worry about when we move our amendment.

As agreed at our previous meeting, we will move into private session to consider our final agenda item.

Hugh O'Donnell: Before we do that, I would like to make a comment on the record. We have before us a press release from the Equality and Human Rights Commission about an inquiry that it has launched into human trafficking. Given that a commission representative sat with us at a round-table discussion on human trafficking, I am a little surprised that no mention was made, in private or in public, that such an inquiry was the commission's intention. I recognise the desire of organisations to have their own publicity agenda, but I am a little disappointed that we got no warning about it.

The Convener: We will consider that matter in private when we consider our work programme. However, an approach has come from the commission and if we decide to go ahead with our inquiry, its work will be welcomed as a complement to, as opposed to a duplicate of, ours. That is for our private session, into which we now move.

10:29

Meeting continued in private until 11:48.

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