



**Scottish Government Consultation:  
Bail and Release from Custody arrangements**

**Response from Barnardo's Scotland – January/February 2022**

**About Barnardo's Scotland**

Barnardo's is the UK's largest national children's charity operating in Scotland since 1892. Barnardo's Scotland works with more than 16,300 children, young people and families in over 150 services. We deliver a wide range of services which includes providing family support and early intervention, supporting children, young people and families through fostering and adoption services, helping children affected by sexual abuse and exploitation, helping young people entering employment, education and training, and supporting young people and families affected by drug and alcohol use. We use information and experience from our services across Scotland, and from the children and young people we work with, to seek positive change in policy and practice based on what matters to the people who use our services and what we see working in communities.

Barnardo's Scotland offers a range of services throughout the country to children, young people and families who are currently in contact with youth justice services or with previous experience of the justice system and imprisonment. Our services include prison-based support such as those within HMP Polmont Young Offenders Institution and the HMP Edinburgh prison visitor's centre; community-based youth justice services including those based in Stirling and Clackmannanshire; women's justice services like our Shine Women's mentoring and Ayrshire Court screening; and family support for children affected by parental imprisonment.

After consultation with service managers in Barnardo's Scotland, we have focused our comments specific questions regarding age, the impact on children and pre-planned release from custody to ensure adequate support is available in the community.

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**Question 11 To what extent do you agree or disagree that legislation should explicitly require courts to take someone's age into account when deciding whether to grant them bail?**

**Strongly agree X**

**Somewhat agree**

**Somewhat disagree**

**Strongly disagree**

**Please give reasons for your answer. If you agreed, how do you think age should be taken into account when deciding whether to grant someone bail?**

Yes, we strongly agree that the courts should take someone's age into account when deciding whether to grant bail. We also believe that the courts should also give consideration to an expert assessment of individual's overall cognitive and social development, rather than just chronological age – particularly for those under the age of 25 and care experienced young people.

We wish to highlight the point in the consultation paper<sup>1</sup> that *"many people in contact with the criminal justice system have already experienced severe and multiple disadvantage, including homelessness, substance misuse, mental ill health and domestic violence or abuse. Individuals from the 10% most deprived areas are over-represented in prison arrivals by a factor of three – a finding consistent across the last decade. Care experienced people are disproportionately represented within the prison population. Around a quarter of the prison population in Scotland report being in care as a child, rising to just under half when looking specifically at young people in custody."*

In some cases, it was also felt that some young people in Barnardo's Scotland services are not able to fully understand their bail conditions and need continued support to prevent re-offending. In addition, the delays in the court system due to the Covid-19 pandemic restrictions means that some young people are facing court for alleged offences that were carried out some time ago. The progress in young people's lives in the intervening period and their current circumstances should also be taken into account by the court – and the age at the time of the alleged offence should be taken into account above their age at the time of the hearing.

Barnardo's Scotland service managers also spoke of young adults in the court system being on the 'cusp' of decisions about whether they can be placed in secure care or managed in the community, and that a lack of

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<sup>1</sup> Hard Edges Scotland, Lankelly Chase (2019) (<https://lankellychase.org.uk/publication/hard-edgesscotland/>)

flexibility and capacity in the system at any given time can mean individuals being placed into situations which are unsuitable and lack proper support, leading to an increasing risk of re-offending.

**Question 12 In principle, to what extent do you agree or disagree that courts should be required to take any potential impact on children into account when deciding whether to grant bail to an accused person?**

**Strongly agree X**

**Somewhat agree**

**Somewhat disagree**

**Strongly disagree**

**Please give reasons for your answer. Do you have any comments on how such a requirement could best be brought in?**

In principle we strongly agree that courts should be required to take any potential impact on children into account when deciding to grant bail to an accused person, particularly if the accused person has caring responsibilities or ongoing contact with children.

Through our delivery of the Shine Women's Mentoring programme in South Ayrshire, we provide intensive support to women involved in the criminal justice system. There is a higher proportion of women in custody for non-violent offences and whilst many of the woman we support no longer have direct care of their children, some of them still maintain contact. The impact of imprisonment and loss of contact with their parent on children and young people should be therefore taken into consideration by the court, particularly when the offence is non-violent.

Barnardo's Scotland ambition is for every child to thrive and have a positive future – the effect of parental imprisonment is an adverse childhood experience, and we want to see the number of children affected by parental imprisonment reduced. There are an estimated 20,000-27,000 children<sup>2</sup> in Scotland affected by parental imprisonment.

We would also like to highlight the point made in the consultation paper that<sup>3</sup> *"research published earlier this year found that around 78% of women prisoners in Scotland have a history of significant head injury – most of*

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<sup>2</sup> McGillivray, C. (2016) Rendering Them Visible: A Review of Progress towards Increasing Awareness and Support of Prisoners' Families (<https://www.familiesoutside.org.uk/content/uploads/2016/04/Rendering-Them-Visible-FINAL.pdf>)

<sup>3</sup> MacMillan Tom (2021) Associations between significant head injury and persisting disability and violent crime in women in prison in Scotland ([https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366\(21\)00082-1/fulltext](https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366(21)00082-1/fulltext))

*which occurred in the context of domestic abuse which lasted over several years."*

**Question 19 Do you agree that the Scottish Government should ban all prison releases on a Friday (or the day before a public holiday), so people leaving prison have greater opportunity to access support? Yes / No / Unsure Please give reasons for your answer. If you agree, what wider changes would be needed to ensure people leaving prison have access to the support they need?**

We agree that the Scottish Government should ban all prison releases on a Friday or the day before a public holiday so that people leaving prison have greater opportunity to access support.

Barnardo's service managers reported that lack of notice on release from court is a significant problem. Through our delivery of the Shine Women's Mentoring programme in South Ayrshire, we provide intensive support to women involved in the criminal justice system. When women are released unexpectedly from court, this can cause serious challenges with supporting transition and providing the appropriate support.

For example, if someone is released unexpectedly from court she may be many miles from her belongings with no access to a mobile phone and the ability to access support or transport. This makes it unnecessarily difficult for Barnardo's Scotland support workers to plan to support women in the community and make the necessary arrangements – whereas if there was proper pre-planning and communication, this process would be much simpler.

**Question 23 Which of the following best reflects your view on public service's engagement with pre-release planning for prisoners?**

- Existing duties on public services to give all people access to essential services are sufficient to meet prison leavers' needs**
- Existing duties are not sufficient; public services should have a specific duty to engage with pre-release planning X**

**Please give reasons for your answer.**

Our experience in Barnardo's Scotland, particularly during the lockdown restrictions during the Covid-19 pandemic, leads us to the view that the existing duties on public services engagement with pre-release planning for prisoners is not sufficient.

Previous experience has been that Barnardo's Scotland support services are not always notified when young people are in custody or are being released from custody.

Due to changes in personnel in both the local authority and Barnardo's Scotland, we experienced a lack of notification of young people being remanded, which causes difficulties in arranging appropriate support and leads us to the view that there needs to be a new and improved duty on public services to engage with the entire support network around an individual – especially when it comes to 16-and 17-year-olds and other young adults.