

Carers Legislation – Consultation on Proposals

Families Outside
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Families Outside is a national independent charity that works on behalf of children and families affected by imprisonment in Scotland. We do this through provision of a national freephone helpline for families and for the professionals who work with them, as well as through development of policy and practice, delivery of training, and face-to-face support.

Families Outside is grateful for the opportunity to comment on the Consultation on Proposals for Carers Legislation. We do not feel we are in a position to comment on the consultation questions as a whole but will highlight the issues most relevant to our work and expertise. We are happy to elaborate on any of these should the Scottish Government require additional information or specific references.

Introduction

Families Outside welcomes the consultation's introductory remarks regarding the basic needs of carers "to access timely information and advice and other forms of early intervention to enable them to care" (5: para. 24), recognising that "carers can sometimes lack awareness of what is available to support them" (6: para. 26). The families we support – families affected by imprisonment - are not always recognised as formal carers, nor will they necessarily classify themselves as such. These include families of people with learning difficulties or learning disabilities (often undiagnosed and unsupported); families of people with mental health problems; and families of people with addictions.

These families undertake enormous responsibilities and face significant strains in their lives when their family member is in or out of custody, but they may not be aware of the support available to them. Rather, families of prisoners are most likely not to access any support at all,¹ not least due to the stigma attached to having a family member in prison. A very high proportion of people in prison have significant needs in terms of mental health,² learning difficulties and disabilities,³ and substance misuse,⁴ so the (unrecognised) carers left behind will equally have considerable support needs. Their family member's imprisonment may temporarily remove their

¹ Pugh, G. and Lanskey, C. (2011) "Dads Inside and Out": study of risk and protective factors in the resettlement of imprisoned fathers with their families". Conference paper for *What's new in Research and Evaluation? Informing our work with prisoners and offenders and their families*. Institute of Criminology, University of Cambridge, 19 May 2011.

² HM Chief Inspector of Prisons for Scotland (2008) *Out of Sight: Severe and Enduring Mental Health Problems in Scotland's Prisons*. Edinburgh: Scottish Government.

³ Loucks, N (2007) *No One Knows: Offenders with Learning Difficulties and Learning Disabilities*. London: Prison Reform Trust.

⁴ See for example HMIP (2004) *HMP & YOI Cornton Vale Inspection 4 - 6 February 2004*. Edinburgh: Scottish Government.

active caring role; however it also removes their voice in the care of their family member. Separation through imprisonment can increase the worry and concern they have for their family member, as direct access and communication will be limited, both with the person and prison and with the people now responsible for their care.

The Carer's Assessment: Carer's Support Plan

Question 1: Should we change the name of the carer's assessment to the Carer's Support Plan?

Yes

No

Comments: 'Support' is much less threatening than 'assessment' and states more clearly what the assessment is about – support rather than judgment.

Question 2: Should we remove the substantial and regular test so that all carers will be eligible for the Carer's Support Plan?

Yes

No

Comments: It is important to recognise that carers are a diverse (and sometimes unrecognised) group, therefore their needs will also be diverse. Support plans need to be flexible enough to accommodate this. We are pleased to see that para. 17 on p. 18 of the consultation states the aim to "[take] account of different caring roles".

Question 4: Should we introduce two routes through to the Carer's Support Plan – at the carer's request and by the local authority making an offer?

Yes

No

Comments: As noted above, the families we support – families affected by imprisonment - are not always recognised as formal carers, nor will they necessarily classify themselves as such. These include families of people with learning difficulties or learning disabilities (often undiagnosed and unsupported); families of people with mental health problems; and families of people with addictions. These families undertake enormous responsibilities and face significant strains in their lives both when their family member is in or out of custody. Someone's imprisonment could potentially act as a 'trigger' for a Carer's Support Plan, possibly as the first opportunity to identify the carer's (and indeed the prisoner's) support needs.

Question 6: Should we introduce a duty for local authorities to inform the carer of the length of time it is likely to take to receive the Carer's Support Plan and if it exceeds this time, to be advised of the reasons?

Yes

No

Comments: Carers can be very isolated and therefore need to be kept informed and connected as much as possible. We are also conscious of the variation in practice between local authorities and, without access to other information, carers may base their expectations on the experiences of others in a different area or with different needs.

Although the consultation did not include questions on this, we would like to highlight the important distinction between support for the carer and support for the person cared for (page 11: para. 17). In such situations, the needs of the person being cared for often dominate, and the needs of the carer can be lost. This situation is amplified when a person enters the criminal justice process: the focus is entirely on the defendant/offender, and the needs of others affected by the offence and criminal justice process and decisions can disappear from view.

A family-based assessment might be helpful, but Families Outside agrees wholeheartedly with the assertion that “it would be difficult to legislate for a type of assessment which covers both individual and common needs, actions, outcomes and so on” (11: para. 18). We also agree that cross-reference between support plans may be a more useful way of approaching this to ensure the needs of the carer do not get lost. As stated in paragraph 19 (page 12), “It is important that a Carer’s Support Plan is offered so that the carer’s needs are identified in their own right and the carer is supported to identify and achieve their own personal outcomes. Rather than the carer’s needs being assessed with those of the cared-for person as part of one community care assessment, we would suggest that the Carer’s Support Plan can be considered at the same time as a section 12A community care assessment or Child’s Plan if the carer and cared-for person agree to this.”

Question 7: How significant an issue is portability of assessment for service users and carers?

Comments: Portability in support plans is extremely important for service users and carers. The particular situation of carers with the person cared for in prison is a classic example of where this can go wrong; the carer may live in one local authority while their family member is in a prison located in another local authority. Care plans can be difficult to arrange across local authorities, especially if the carer is not involved in the planning discussions or case conferences. The nature of the offence may lead to restrictions on where the prisoner can live after release; if someone was caring for the prisoner (formally or informally – more often than not the latter), such restrictions will therefore have implications for them as well.

Where someone is not recognised as a formal carer, they may have little voice in the decisions made about their family member. A high proportion of calls to our Helpline involve families who have concerns about the health or mental health of someone in prison; if these people have not been recognised as carers, they will have very limited access to information about the wellbeing of the person in prison. If they share their concerns, they may not be told what the prison will do

with that information (if anything). Staff in Scottish prisons are now much better about inviting families to take part in prison case conferences, but the decision to involve the family remains the choice of the prisoner, who may not recognise the relevance of including the family/carer.

Recognition of the needs of carers therefore needs to cross both geographical and agency boundaries.

Question 8: Should the Scottish Government and COSLA with relevant interests work together to take forward improvements to the portability of assessment?

Yes

No

Comments: See response to Question 7 above.

Information and Advice

Question 9: Should we introduce a duty for local authorities to establish and maintain a service for providing people with information and advice relating to the Carer's Support Plan and support for carers and young carers?

Yes

No

Comments: To this, we would add that more could be done to help people recognise when they are in a caring role and are therefore entitled to support. People who attempt to support a family member with an addiction, for example, may not see themselves as a 'carer', especially when the person with the addiction is not willingly working towards their own recovery. The consultation notes that carers "say that their outcomes would be much better if only they had access to the right information at the right time" (15: para. 3); in our experience, people in a caring role may not get this information at all. We therefore commend the recognition in the consultation that "knowledge and information [are] crucial enablers for the achievement of personal outcomes" (16: para. 4) and that "When carers are under a lot of stress and pressure, their ability to absorb and make sense of information will be impaired" (16: para. 5).

Question 10: Should we repeal section 12 of the Community Care and Health (Scotland) Act 2002 about the submission of Carer information Strategies to Scottish Ministers, subject to reassurances, which are subject in turn to Spending Review decisions, about the continuation of funding to Health Boards for support to carers and young carers?

Yes

No

Comments: We do not feel qualified to respond to this question but would like to flag up a few salient points. First, geographical divisions between Health Boards can pose problems for access to information and support. Returning to our

example of carers who live in a different area to the prison in which the person they cared for is being held, this has posed problems for support offered on the basis of post codes (e.g. some public health interventions). Another concern is how best to provide support to people who have no access to the internet. The poorest families may not have ready access to a computer or internet-enabled mobile, and those with fewer educational opportunities or less confidence with IT in general will not be able to access IT-based support.

Support to Carers (other than information and advice)

Question 11: Should we introduce a duty to support carers and young carers, linked to an eligibility framework?

Yes

No

Comments: We are slightly wary of this approach rather than fully opposed to it, as it risks becoming a more prescriptive 'tick box' exercise. Good practice would hopefully ensure that this did not happen, but the risk in more challenging financial circumstances or where resources are more limited is that carers in less conventional circumstances will miss out on the support they need.

Question 12: Alternatively, should we retain the existing discretionary power to support carers and young carers?

Yes

No

Comments: Discretionary power allows decisions to be more flexible, though ideally this should be supported by substantive guidance that gives examples of the types of caring roles that could be supported and how they might be supported.

Question 13: Should we introduce a duty to provide short breaks?

Yes

No

Comments: While we support the provision of short breaks, making this a duty appears to reduce the local authority's discretion to provide the support a carer needs and wants. We do not know enough about this field to comment more definitively.

Stages and Transitions

Question 14: Should we issue statutory guidance on the Carer's Support Plan which will include guidance for those undertaking the Carer's Support Plan on managing stages of caring? This would apply to adult carers only. (For young

carers, practice guidance will be developed to support management of a Child's Plan through the stages of caring).

Yes

No

Comments: Guidance would be very helpful, as carers' circumstances will vary widely, and the caring role may not be immediately apparent (e.g. in informal care situations). The consultation gives the example of the stress for the carer and cared-for person experience following poor planning when a young adult with learning disabilities moves from home to supported accommodation (para. 4, page 25). In our experience, this stress is compounded when such a cared-for person is placed in or released from prison – a situation that can be immediate and unplanned, but also not conventional or obvious as a need for carer support.

Carer Involvement

Question 16: Should there be carer involvement in the planning, shaping and delivery of services for the people they care for and support for carers in areas outwith the scope of integration?

Yes

No

Comments: This provision is extremely important, particularly as people in the most vulnerable circumstances, such as the families we support, do not fit neatly into areas covered in existing legislation. Families in general, but formal and informal carers included, have very little voice in the care of and planning for someone who has been placed in prison. The value of their input must be recognised and supported. We note in particular the quote from *Caring Together* on pp. 31-32 of the consultation that refers to carers as equal partners in care. The practice of playing an "equal and active role in care planning and decisions" as well as having "the support and information they need and to be as involved as they choose to be" is not currently recognised in the care of someone held in prison custody. This has to change.

Question 17: Should we make provision for the involvement of carers' organisations in the planning, shaping and delivery of services and support falling outwith the scope of integration?

Yes

No

Comments: As noted in our response to Question 16, the role of carers when someone enters prison is not recognised or supported. Carers' organisations should be able to influence what happens in this context – something that currently falls outside the scope of integration.

Question 18: Should we establish a principle about carer and young carer involvement in care planning for service users (subject to consent) and support for themselves in areas not covered in existing legislation?

Yes

No

Comments: Again, a cared-for person's placement in prison custody currently falls outside the existing carers' legislation and guidance. Also important to note is that a young person may become a carer very suddenly if the person previously providing that care is the one who has gone to prison. The impact of someone's imprisonment on the remaining family/carers should be established at the earliest possible stage in the criminal justice process – ideally from the point of arrest but confirmed at key stages including imprisonment (for remand or sentence) and release.

Identification

Question 22: Should there be no legislative provision for GPs or local authorities to maintain a Carers Register in order to support the identification of carers?

Yes

No

Comments: The wording of the question is confusing here. We condone the use of improved methods of identifying carers, as carers will not always recognise or identify themselves as such. A Carers Register may well help GPs and local authorities identify and support people who provide care.

Question 23: Should the Scottish Government ensure that good practice is widely spread amongst Health Boards about the proactive use of Registers of Carers within GP practices?

Yes

No

Comments: Examples of the diversity of caring roles could usefully be included in this.

Carer and Cared-for Person(s) in Different Local Authority Areas

Question 25: What are the views of respondents on the lead local authority for undertaking the Carer's Support Plan and agreeing support to the carer where the carer lives in a different local authority area to the cared-for person(s)?

Comments: This approach would be very useful for our client group, again where the previously cared-for person is imprisoned in or released to a different local authority and/or Health Board. If the Carer's Support Plan is indeed independent of the cared-for person's support plan, albeit with cross-referral (see pp. 11-12 of

the consultation document and commentary between Questions 6 and 7, above), then the lead local authority for the Carer's Support Plan would be the one in which the carer lived. The lead local authority for the cared-for person, meanwhile, would be the local authority in which he or she lived.

Question 26: What are the views of respondents on which local authority should cover the costs of support to the carer in these circumstances?

Comments: Again, if the Carer's Support Plan is independent of the cared-for person's support plan, the cost of the carer's support should be covered by the local authority in which the carer lives, assuming this is also the local authority that provides that support.

Question 27: Should the Scottish Government with COSLA produce guidance for local authorities?

Yes

No

Comments:

We appreciate the opportunity to comment on the consultation and are happy to provide additional information should the Scottish Government request it.

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