

# Cross-Party Group on Women, Families and Justice

Tuesday 5 March 2024 6-7.30pm (Zoom meeting)

## Minute

**Chair: Rona Mackay MSP**

## Attended

### MSPs

Rona Mackay	MSP
Audrey Nicoll	MSP

## Invited guests

Maree Todd	Minister for Social Care, Mental Wellbeing and Sport
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## Non-MSP Group Members and Other Attendees

Adele Hill	CJVSF Representative
Alexandra Slight	Families Outside
Anne Pinkman	CPG Co-secretariat
Dinah Aitken	Salvesen Mindroom Centre
Elizabeth Loose	
Graeme Dickson	SPS
Helen Reilly	QNS
India Pemberton-Pigott	
Janine Bonner	Families Outside
Jonathan Sher	
Julia Swann	CYCJ
Kate Philbrick	
Kathleen Ramsay	Fife College, SPS
Laura Scofield	SPS
Lisa Weylandt	includem
Louisa	
Louise Adams	Families Outside
Lucy Roy-Scott	Families Outside
Maggie Mellon	
Rose McConnachie	Community Justice Scotland
Sarah Rogers	Families Outside / CPG Co-Secretariat
Valerie Campbell	Scottish Government
Wendy Sinclair-Gieben	HMIPS

## Agenda Item 1

Apologies	
Arran Goodfellow	Parenting across Scotland
Audrey Mitchell	Fife College, SPS
Cara Jardine	Strathclyde University
Carol Robinson	Stop it Now
Diane Marr	Cyrenians
Faye Keogh	Turning Point Scotland

Heather Manclark	Families Outside
Kathleen Frew	Family Mediation Central Scotland
Kerry Knox	Families Outside
Lesley Simpson	Community Justice Aberdeen
Lorraine Gillies	Scottish Community Safety Network
Mags Higgins	Justice for Women
Nancy Loucks	Families Outside
Rebecca Mason	The Young Women's Movement
Sam Jelf	Families Outside
Shelia Gordon	CrossReach
Shumela Ahmed	Resilience Learning Partnership
Toni Groundwater	Families Outside

## Agenda item 2

Minutes of previous meeting of CPG Women, Families & Justice September 2023

- Approval of minutes – proposed by Anne Pinkman and seconded by Rona Mackay, MSP.
- Actions – key action was to invite Minister for Social Care, Mental Wellbeing and Sport to update CPG on work relating to FASD.

## Agenda item 3

Dr Jonathan Sher - Fetal Alcohol Spectrum Disorder (FASD) and Scotland's Justice System – presentation, then discussion.

Jonathan provided an introduction to FASD explaining that FASD has only one cause – the consumption of alcohol during pregnancy. FASD is a birth defect, it is not acquired later in life. It is a lifelong incurable neurological, neurodevelopmental condition caused by exposure to alcohol in the womb. FASD was first identified in the 1970s and referred to as Fetal Alcohol Syndrome. It was identified because of distinctive facial characteristics. It has since been learned that people with facial features are only approximately 10% of the people who have FASD. The other 90% have the neurodevelopmental features without the facial features. Therefore, for 90% of people, it can't be determined whether they have FASD or not by looking at them. 100% of people with FASD have executive function problems relating to three things: inability to plan, inability to learn from experience, and inability to control impulses. The degree to which these impaired varies across individuals but all those with FASD have some degree of impairment of these three things.

FASD is highly relevant to the justice system and prisons because the above characteristics are well known in incarcerated populations. It has traditionally been chalked up to 'bad people, bad behaviour', which has underlying it the assumption that the people doing these things have made a bad choice. But, if what you have is a brain impairment and diminished executive function, it's not a matter of choice and that's the most essential thing in the context of the justice system.

Jonathan stated that somewhere around 200,000 people in Scotland have FASD but this is a dramatic underestimate as FASD is the most common neurodevelopmental problem. More is heard about ADHD, Autism and other neurodevelopmental issues but everything known internationally says FASD is significantly more common than the other better known neurodevelopmental conditions. Jonathan further highlighted that if a person has one neurodevelopmental problem, they are far more likely to have more than one than only one. Jonathan noted in the context of the Additional Support for Learning Act, in his experience, there has been a cultural tendency to stop diagnostic processes at one, therefore whichever diagnosis is found first became the thing that the child or young person was labelled with. It

was therefore assumed, that if, for example, you had ADHD, you couldn't have FASD. This is not true, in fact it is more likely that you do, than that you don't.

Jonathan explained that one of the big challenges for the justice system is undertaking a proper assessment of the incarcerated population to begin to sort out people who have FASD. The justice system has to learn how to understand what FASD is, how to diagnose it, and then support people properly taking into account their condition.

Jonathan highlighted the work of Dr Patricia Jackson who led development of the SIGN Guidelines on diagnosing FASD, noting these would be enormously helpful within the prison system and the wider justice system. The Fetal Alcohol Advisory Support and Training (FAST) Team at Edinburgh University and the work of Clinical Forensic Nurse, Jess Davidson were also highlighted.

Jonathan finished by talking about prevention of FASD, stating that Scotland can do better and that other countries are leading the way that we can follow. For example, in Australia, tens of millions of dollars are spent every year on diagnosing, treating and supporting people who have FASD, but \$27 million has also been allocated to FASD prevention. Jonathan explained that one of the economic reasons for doing so is that people with FASD were known in Canada as 'million dollar babies' because research had found it cost government more than \$1 million for each individual with FASD. If we start taking prevention seriously then we can avoid that 'million dollar baby' syndrome, save money, save quality of life, and save a lot of problems within and beyond the justice system that are entirely preventable.

Rona invited Wendy Sinclair-Gieben to speak given her expertise on this issue. Wendy noted that she previously worked in Canada as a teacher where FASD was recognised as a problem, particularly amongst the Inuit who had been introduced to alcohol by people who were not native to Canada. Wendy also spoke of her experience of Australia where the prison population had a high number of people with FASD. The problem was diagnosis, there weren't enough people who were aware of the issue to be able to diagnose it, when in fact every single person who came into the prison should have been screened. Wendy noted this is possible, just complex and difficult. Wendy noted that she was particularly impressed with the Australian determination to prevent FASD and the huge amount of advertising around this. That is something that is lacking in Scotland, there's not an awareness of FASD, certainly not within the justice system, it is not thought about when we screen people when they come into prison. The prevention of alcohol in pregnancy is not a high priority and it needs to be. Wendy noted the biggest problem is that by the time people reach adulthood and are involved with the justice system, it is then very difficult to diagnose, particularly if it isn't recognised as something that should be screened for.

Jonathan highlighted that one of the things in common between, Canada, the USA and Australia was the initial assumption that FASD was somehow a racial issue because it was concerned with Native people in the USA, Indigenous people in Canada and Aboriginal people in Australia. Jonathan noted that research has shown there is no racial biological distinction; the difference between white people drinking alcohol and non-white people drinking alcohol is non-existent. It is simply about where you start to look for the problem and where it was identified, and so Scotland wasn't considered in the early stages of this because FASD was seen in the early years as being a problem that had a racial dimension to it, and in the 1970/80s there were not very many non-white people in Scotland by comparison. However the problem was here and has stayed here.

Jonathan noted that there is the possibility now of good diagnosis – the SIGN guidelines are a huge help – and there are an increasing number of people trained to do diagnosis but it is an afterthought as opposed to something central that happens with everybody coming into the system. Jonathan also raised the extent to which FASD becomes intergenerational.

Maggie Mellon asked what the research is around sex – are male and female fetuses affected similarly? If they are and it causes criminality, why then would there be such a difference between numbers of women in prison / involved in the justice system? Maggie raised concerns that a message of even one drink can cause FASD is alarmist for women who quite often don't know they are pregnant when they've had a drink. Maggie also asked about the relationship with poverty and whether women who are poor are more prone to being affected by alcohol?

Jonathan explained that to the best of his knowledge there is no difference in sex in terms of who is affected – male and female fetuses are not differentially affected. Jonathan noted that whilst the statement one drink can cause FASD is theoretically possible, this is not a useful way of talking about things, it is extreme and alarmist. Jonathan highlighted the importance of pre-conception health education and care. If a woman is drinking and doesn't know she is pregnant and drinks regularly it might take a month or two to confirm a pregnancy and so the idea of not drinking whilst pregnant is right but it's at least as much of an issue if you are planning to be pregnant or you are likely to become pregnant to stop drinking prior to pregnancy because the damage can be done before women know they are pregnant. In relation to poverty, Jonathan explained that if anything, there is an inverse relationship which is counter-intuitive. Women who are middle-class and above are more likely to be drinking more often because there's a perceived difference between having a binge drinking session on the weekend and having two or three glasses of wine every night at dinner and so there isn't the relationship that might be suspected. Just as FASD is not a racial issue, it is also not fundamentally a poverty issue.

Maggie noted that despite this, the children of the middle class women who drink are not going to jail. Jonathan noted that there are a complicated set of reasons why they are not going to jail including how people are able to disguise and protect to keep people out of 'official' trouble but emphasised that there is FASD in all classes of people, in all levels of income, in all strata of society – it is not the case that it only affects the most deprived amongst us.

Graeme Dickson asked in relation to Australia, what does prevention look like? In terms of where we put any available money, does it belong in advertising, education or are there other factors to also consider? Jonathan explained that it is a multidisciplinary effort – it is not any one thing, it is the combination of things all working together toward the same end. One thing in Scotland we can learn from, is the extent to which drink driving has been reduced, noting that over time there has been a very sharp drop in drink driving and part of that was the campaign which everyone knows "if you drink, don't drive, and if you drive, don't drink". The message here is, "if you're drinking, don't get pregnant, and if you're pregnant, don't drink". One place to start in a multidisciplinary way is with that basic campaign. Wendy highlighted that the real issue is a lack of awareness noting that we're going to have to have some sort of campaign in order to raise awareness. We all know alcohol is a real issue in justice and FASD is so preventable that we do need to raise awareness before we consider anything else.

Dinah Aitken highlighted that with other neurodevelopmental conditions, there's a tendency to underdiagnose women and girls and asked if this is also an aspect of diagnosis of FASD? Jonathan explained yes, whilst there is no known difference in the prevalence of FASD, there is a difference in diagnosis. This is in part to do with the extent to which boys and young men are socialised to act out, and not so strongly for many girls and women. Therefore prevalence is the same, but diagnosis isn't. Women and girls are significantly underdiagnosed, but so are boys and men.

Audrey Nicoll asked if Jonathan is aware of any work that is being done around drinks producers and supermarkets that produce alcohol but also sell it in prominent positions, noting that we know alcohol has never been so inexpensive and given the pushback we have already seen by manufacturers e.g. minimum unit pricing it is troubling that we seem to be in a situation

where those who are most affected, most vulnerable and perhaps least able to turn things around and address their drinking, they seem to be the people that need to find the solutions. Is Jonathan aware of anything in an international context that we could look at? Jonathan noted that corporations are good at looking after their corporate bottom line – they will do things that increase revenue and profits and avoid things that decrease them. Internationally, the alcohol industry has been very good at diverting attention away from FASD or making minimal token efforts so that they are seen as concerned as opposed to actually being concerned. This is a multifaceted problem and there is no question that the alcohol industry is a net contributor to harm and not a net solution to the problem.

## Agenda item 4

Maree Todd, Minister for Social Care, Mental Wellbeing and Sport

The Minister provided an update on the work the Scottish Government is doing in relation to FASD, specifically within a justice context.

Considering first prevention, the Scottish Government is aware of the huge impact that FASD has on people who are living with the condition and their families and is committed to preventing the harm that is caused by alcohol consumption during pregnancy. During 2018, the Scottish Government published an alcohol framework which sets out a commitment to increase awareness of FASD and support improved diagnosis and there is also a commitment within the Women's Health Plan on pre-pregnancy planning. The Scottish Government want to make sure that the right information is available for people at the right time including pre-conception. Information is published on NHS Inform, and in the Ready Steady Baby book where there's a clear message of 'no alcohol, no risk' when you're either pregnant or trying to conceive. The Minister noted it was interesting to hear the preceding discussion about how complex it is to shift a culture which has been long ingrained and long documented - the troubling relationship we have in Scotland with alcohol and a changing and increasing level of drinking amongst women in Scotland and noted how challenging it is to make changes in this area and the potential kickback that can come from industry. There are also challenges from working across the UK and there are many times where there is a different focus in Scotland in terms of public health efforts to the rest of the UK.

The Minister noted that the Scottish Government knows how important it is to provide support and education and training on FASD. The Scottish Government fund two key organisations to deliver that work with the FASD Hub through Adoption UK Scotland to support people who are affected by FASD as well as providing support, training, and advice to professionals working with people with FASD. The Scottish Government also works with the FAST team at the University of Edinburgh. The team provide consultation and training to professionals to provide them with the tools they need to recognise, support and diagnose people affected by FASD and have provided their 'Fundamentals of FASD' training to over 1,000 health and social care professionals in the last year. In relation to justice, the Scottish Government also funds and supports the Supporting Offenders with Learning Disabilities Network (SOLD) noting that the remit of SOLD has now expanded beyond learning disabilities and includes people who need communication support including people with FASD. SOLD Network have produced a range of resources for professionals to better support people with communication support needs and its members regularly engage and lobby for change.

The Minister highlighted the consultation on the Learning Disabilities, Autism and Neurodivergence Bill (LDAN Bill) noting that the proposed Bill is a unique and exciting opportunity to improve the rights of all neurodivergent people including people with FASD. The proposals cover the whole lifespan, from the cradle to the grave, and many different

areas of life. Subjects range from health and social care through to education, housing, and justice and there are a number of specific cross-cutting themes including mandatory strategies, mandatory training, improvements to data, and inclusive communications. The Minister urged anyone with an interest to respond to the consultation paper. The consultation has a chapter specifically addressing neurodivergence in the justice system. The Scottish Government wants to ensure better identification of neurodivergent people within the criminal justice system, and to ensure victims, witnesses and offenders are appropriately supported. The Scottish Government also wants to make sure that people have accessible and inclusive information. People working in the system should have a better understanding of the impact of neurodivergence and learning disabilities, have confidence in identifying people through better training and support, and people should also be diverted from the criminal justice system where that is appropriate for their needs.

Finally, in relation to diagnosis and support for people with FASD, the Minister stated that the Scottish Government recognises that a diagnosis can be really important for people but that a diagnosis of FASD is often difficult to obtain for some people due to a whole range of reasons. The Scottish Government has been working with the FAST team who have produced and delivered their diagnostic course to a number of medical professionals allowing them to gain the knowledge and skills to be able to support and diagnose FASD and to translate assessment findings into indications of what post-diagnostic support is needed. The Scottish Government has also published a national neurodevelopmental service specification for children and young people helping to ensure that children and families receive the support and access to services that meets their needs at the earliest opportunity. The Scottish Government has also allocated £55.5 million to boards this year via the mental health outcomes framework to improve the quality and delivery of mental health and psychological services for everyone. For adults, the Scottish Government works with the National Autism Implementation Team to develop services around support and diagnosis for neurodivergent adults including people with FASD.

The Minister closed by saying she hoped the quick summary of the Scottish Government's work illustrates a commitment to working with neurodivergent people including people with FASD and to improving their lives. The LDAN Bill is a unique opportunity to bring forward a set of proposals that will initiate some real step changes where neurodivergent people are recognised and supported in their rights to live full and fulfilling lives alongside neurotypical people. It also brings a particular opportunity to address some of the issues that are related to the justice system and reiterated her ask for members to respond to the consultation.

Rona thanked the Minister for her update. Rona asked whether we have any statistics or any indication of how many women in prison have been diagnosed with FASD or maybe undiagnosed? Wendy answered that she does not know of any figures and noted it is quite interesting that when she asks about FASD in her role, the level of knowledge around FASD is very poor. Wendy invited Jonathan to contribute his knowledge on this issue. Jonathan stated that he does not have the answer to that question but offered a couple of comments in relation to the Minister's presentation. Firstly, he noted progress has been made in that the knowledge of FASD is dramatically better than it was 19 years ago. Secondly, he highlighted the Additional Support for Learning Act which was a landmark bit of legislation in 2004 noting it was a very distinctive thing that was very much to Scotland's credit in creating it. The crucial line in the 2004 legislation was that children and young people who are not living up to their learning potential for whatever reason are entitled to get the support that they want and need through that Act. The Act has now been around for twenty years and whilst in favour of the LDAN proposals Jonathan expressed his hope that we will take a look at what has been learned through the ASL Act because had it been fully and properly implemented,

people with autism and neurodiversity should have been identified and assisted for the last twenty years. Lastly, in relation to the Women's Health Plan, Jonathan noted that there is one paragraph in the plan about pre-conception health which would include the prevention of FASD. It is not a top priority in the plan and doesn't replace the fact of actually doing things that improve the lives of women and their offspring in real ways in real time.

The Minister agreed there has been progress but not enough. In 19 years we have seen immense progress in the recognition and diagnosis of FASD but culturally we've seen such a shift in drinking, particularly in women in Scotland that the risks and numbers are probably going to be higher. We have seen some cultural shifts so many young women who are trying for pregnancy and who become pregnant do know that they are not to drink but it is a really challenging area and whilst there is progress it does feel like we could go further. It is also frustrating because the condition is preventable but the challenge is reaching everyone who needs to know this information and use that knowledge to change their behaviour – these are tricky things when you're up against strong cultural influences and peer influences. On the ASL Act, the Minister noted that she says time and time again that people don't need a diagnosis to get the support they need and often within a school setting that is available to them. She noted that the Scottish Government is trying to invest in community capacity so that support is available to people that don't have a diagnosis. However, there is a challenge in our education system, in terms of girls and boys and the differential diagnostic rates in males and females, in that the focus is very much on behaviour rather than on educational attainment and if your challenges impact on your behaviour you're much more likely to get the support you need than if your challenges just mean that you are not fulfilling your educational potential. That is an area of real concern for the Minister and the Cabinet Secretary for Education and they will be working together to address that challenge. The Minister noted that she thinks the LDAN Bill does offer something and the idea of mandatory training and mandatory strategies does help to close the implementation gap. Also, the Minister regularly hears from parents that whilst things might be fine for their child at school, not having a diagnosis makes it impossible to get things right for them in terms of housing as they don't get points on their housing application until they get a diagnosis. The Minister noted that she thinks there is a real role for the LDAN Bill, in particular the whole life aspect of it. In terms of the Women's Health Plan, the Minister noted this isn't the be all and end all of health for women in Scotland. It is a specific programme of work – the issues in it were chosen by women for women – there is other work going on outside it. The work going on with midwives and in the Ready Steady Baby book and resources on the internet is every bit as important as a paragraph in the Women's Health Plan that not many women will access.

Jonathan noted that in terms of cultural issues, we are still a culture in which close to half of all pregnancies are unplanned for and unintended and in relation to FASD specifically if you are drinking without any intention of doing harm and you are also pregnant unbeknownst to you that creates a problem. The solution to that is not naming, blaming and shaming women. The point is to take seriously prevention and preconception health education care around preparing for pregnancy which would include preventing FASD.

## Agenda item 5

Discussion of recently published SPS Policy for the Management of Transgender People in Custody

Graeme Dickson provided an introduction to the policy. The policy was published in December 2023 following review of the 2014 policy and has been supplemented by operational guidance published in February 2024. The policy review involved five stages: policy initiation phase, evidence and engagement, analysis and recommendation,

authorisation and publishing, and implementation. The engagement phase included an anonymised survey to all women across the prison estate and an equal number of men to get their views and experiences of the impacts of living alongside transgender people in custody. Interviews were also conducted with transgender people in prison, and people in prison (5 women and 6 men) who had responded to the survey saying they were willing to take part in further engagement to speak through their particular issues and concerns. The engagement phase also involved speaking to staff ranging from governors to operational officers to understand the impacts of what it meant operationally to have a transgender person in custody, in terms of admission and management of placement longer term. Engagement also involved speaking to a range of stakeholders – public bodies, academics, and communities of interest which included organisations who work with women and with expertise in preventing violence against women and girls. A spectrum of understandings, viewpoints, and interests were engaged with as part of the consultation. Over 400 people were consulted over the course of the review (including post the implementation stage) and were involved in gathering information and understanding how the policy is going to work in an operational setting. SPS has cast the net particularly wide to capture a range of interests in relation to this policy review. Noting the cross-over in issues, Graeme highlighted that he leads on this policy area and also work on the Women's Strategy.

Maggie Mellon voiced her opposition to the policy noting that she does not believe it considers women and women's interests and that she is concerned it was developed without any consultation with female prisoners or staff. Maggie noted that she has spoken to women who have been in prison and to prison officers who are strongly against the policy. She questioned why the SPS has decided to introduce the policy. Maggie explained she feels there is an intolerant attitude to women objecting to men being in single sex spaces such as prisons and refuges and that a number of organisations that claim to represent women are actively supporting the policy meaning women are not safe to speak out. Maggie raised concerns about the policy noting that although violent men will not be admitted to the women's estate, they will still be able to mix with women. She noted her view that sex runs through the whole of the justice system, as referred to in the earlier discussion about FASD, and stated her view that nobody should be able to delete sex and women's oppression as a fact.

Graeme responded to the range of points raised. Firstly, in terms of hearing stories from women who are against the policy, Graeme noted that the evidence paper published by SPS highlights that there are women who are uncomfortable with the position. He explained that SPS have listened to the discomfort that some women have expressed and they are using it to make sure there are more robust processes in place in terms of case conferencing and in terms of admission to make sure SPS are making the right choices for everyone in custody. In relation to the point that women are interacting with transgender people in relation to programmes and work parties he explained that this was something that was trialled within a particular establishment where there were men and women living within that establishment and that the particular set-up was risk assessed and supervised. Anytime that a transgender person who was not for any reason assessed as appropriate to stay in the women's estate, there would be a very high threshold that would be applied in order for them to interact with women at all within the set-up that had been mentioned. It is one issue that was spoken about with staff as part of the implementation discussions that took place across all prisons around the operational impacts of the policy and staff made very clear there would be no instance in which they would allow that to happen without thorough risk assessment and supervision.

Maggie expressed her concern that women were not properly considered in the risk assessment that was carried out as existing reports about women in custody show the risks to women's mental health. She stated that women in prison have been the subject of at least three major reports none of which have been implemented. Maggie noted that there is an increase in the number of women going into prison and that a huge number of women in prison suffer from traumatic brain injury and stated her view that the idea that they are having to share gyms and showers with transgender people is wrong and she cannot understand why any agency would be doing this.

Graeme explained that the policy is about the placement and admission of transgender people and there are both transgender men and women in custody and highlighted that the Women's Strategy exists to look at the impacts and experiences of women in custody. Graeme further noted there have been separate shower arrangements in place since 2014 but is willing to have a further discussion around this issue if needed.

Audrey Nicoll noted that the concerns raised in the discussion echoed those heard during the Criminal Justice Committee evidence sessions when the policy was refreshed and published. She explained that the Parliament has no formal role in endorsing SPS policies and that the evidence sessions were held in recognition of the public interest in the policy and to allow questions to be asked of SPS. The Committee is aware that the issue is sensitive and potentially divisive and Audrey noted her hope that the opportunities to read more detail about the policy and operational guidance will provide some reassurance as to what the SPS approach is.

Julia Swann asked whether there had been any research or consultation with the YOI around this issue? Graeme explained SPS did reach out to any transgender person in custody but at the time there weren't any young people identifying as transgender within the YOI estate. SPS also reached out to particular organisations with experience of having transgender individuals in the secure care environment and there was nothing specific from that consultation that varied majorly between the different populations. He highlighted that the aim is that there will be no children in custody and there will therefore not be a need for specific guidance for children and young people.

Anne Pinkman asked if SPS was required to have a transgender policy? Graeme explained that the needs and impacts that transgender people in custody can have, and staff asking for guidance as they wanted to make sure they were getting things right, meant there was an operational need for the policy. Audrey noted that the information given to the Criminal Justice Committee was that a bespoke policy was needed because transgender people are the only group of people in custody where a decision must be made about what gender of estate they will be placed in and about what gender of prison officer should undertake a search.

**Agenda item 6** Agency updates – there was no time for updates so members were invited to email any updates to be shared with the group following the meeting.

**Agenda item 7** AOB - It was noted that the next meeting of the CPG will be held on 4<sup>th</sup> June at the Scottish Parliament.