

# Women in Prison: is the penal system fit for purpose?

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# Contents

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1. Preface.....	3
2. Executive summary.....	4
3. Introduction.....	6
4. Prison estate.....	7
5. Prison population.....	11
6. Prisoner rights.....	12
7. The Corston Report.....	13
8. Women in Prison: <i>The Corston Report 5 years on</i> .....	14
9. The Corston Review in 2013-14.....	14
10. Social and economic factors.....	15
11. Women’s centres.....	15
12. Reoffending rates.....	17
13. Women-centred services.....	17
14. Multiple needs.....	17
15. Violence and abuse.....	18
16. British and minority ethnic and foreign national women in prison.....	20
17. Pregnancy and childcare.....	21
18. Girls and young women in the criminal justice system.....	22
19. International law: an overview.....	22
20. The International Covenant on Civil and Political Rights (ICCPR).....	23
21. The International Covenant on Economic, Social and Cultural Rights (ICESCR).....	23
22. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).....	24
23. UK response to CEDAW.....	24
24. Other international instruments.....	26
25. The European Convention on Human Rights (ECHR).....	27
26. Other international legal obligations.....	28
27. Politicians v the Judiciary.....	28
28. Prison v community sentencing.....	29
29. Diversion.....	30
30. Adult simple caution.....	31
31. Adult conditional caution.....	32
32. Other out of court disposals.....	33
33. Sentencing.....	34
34. Personal mitigation.....	35
35. Effect on children: some case law.....	35
36. Sentencing reasons.....	37
37. Fines.....	37
38. Discharges.....	38
39. Hospital orders.....	38
40. Community orders.....	39
41. Suspended sentences.....	39
42. Breaches of community orders and suspended sentences.....	40
43. Compensation orders.....	42
44. Preventive or protective sentences/ancillary orders.....	42
45. Immediate custodial sentences.....	42
46. Prison programmes.....	43
47. Release.....	44
48. Rehabilitation.....	44
49. Next steps for this paper.....	45

# Women in Prison: is the penal system fit for purpose?

## 1. Preface

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In 1963, in an address to the Magistrates' Association, Edmund Davis J stated that every court sentence should pass one test: "Is that the best thing to do in the interest of the community?"<sup>1</sup>

This is a discussion paper drafted by Felicity Gerry QC<sup>2</sup> and Lyndon Harris<sup>3</sup> at the request of Halsbury's Law Exchange. All of the current research has been gathered from a range of open sources.<sup>4</sup> It is not comprehensive but is designed to stimulate debate.

It is created with a view to a full report on penal policy and rehabilitation in 2015. The purpose is to create a wide ranging discussion beginning with a panel session on 11 November 2014. The key questions we aim to address are as follows:

- Should prison be the default response to criminal offending by women?
- As prisons are closed and "super prisons" and "house blocks" are in process, what sorts of prisons are available for women offenders?
- Are custodial sentences for women too harsh and should judges have more sentencing options?
- What is the practical reality when a woman is sent to prison?
- What are the alternatives for sentencing women offenders?
- What rights do/should women prisoners have?
- What happens after a woman is released and how can women offenders be rehabilitated?

We look forward to discussing these issues with a view to developing workable penal law and policy suggestions for the UK. It should be noted that Halsbury's Law Exchange is a politically independent think tank and efforts have been made to remain impartial and to present a balanced view.

**Felicity Gerry QC and Lyndon Harris, October 2014**

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<sup>1</sup> *Criminal Law*, Smith and Hogan, 1988 edition, p 12

<sup>2</sup> Felicity Gerry QC was appointed Queen's Counsel in 2014 after 20 years at the criminal Bar in England and Wales. She has been recognised in the Legal 500 as a "fearless and effective advocate" and "tenacious in court" and "an expert in the field of sex offences". At the independent Bar, Felicity has prosecuted and defended in numerous cases involving major, serious and complex crime, often with an international element. This has included cross-jurisdictional rape, murder by foreign nationals involving evidence obtained from abroad, conspiracy to import illegal immigrants and international fraud. Her significant trial and appellate experience has also led to an expertise in online offending in the context of online abuse and exploitation, money laundering and online fraud. She has, for example, used data and metadata as evidence in criminal cases. She is co-author of *The Sexual Offences Handbook* that sets out all the English law, practice and procedure from 1957 to date in this difficult field of law and has a dedicated chapter on indecent images and obscene publications. She regularly publishes in the broadsheet and legal press as well as peer-reviewed papers. Since 2013, Felicity has also held a research active post at Charles Darwin University, Australia, focusing on data and rights, particularly in the context of violence against women and girls and the rule of law online. She lectures in crime, evidence, torts and practical advocacy and is Chair of the Research and Research Training Committee in the School of Law at Charles Darwin University. She specialises in vulnerable offenders including women and speaks regularly on gender equality issues including chairing the G20 televised section of the gender equality summit.

<sup>3</sup> Lyndon Harris is the editor of the *Criminal Appeal Reports (Sentencing)*, the only law reports dedicated to matters pertaining to sentencing, and the General Editor of *Current Sentencing Practice*, the encyclopaedic five-volume work, having taken over responsibility for the sentencing portfolio at Sweet and Maxwell, formerly the responsibility of the late Dr David Thomas QC. He was called to the Bar in 2010 but did not enter practice. Immediately after being called he became editor and co-author of *Banks on Sentence*, remaining in that post for four years from 2010-2014. He is co-author of the *Sexual Offences Handbook* which sets out the law in relation to sexual offences from 1957 to date. He has written for *The Times*, *The New Statesman* and *Criminal Law and Justice Weekly* and regularly appears on television and radio programmes as a sentencing expert.

<sup>4</sup> Felicity and Lyndon would like to thank Ciara O'Neill for managing the research and to the students from Kings College London, Emily Campbell, Lauren Mappedoram, Juliana Ruseva, Ezgi Sahin, Patrick Masi-Phelps, Yu-Kheng Pek, Claire Field and Rebecca Von Blumenthal, for collating the information produced in this paper.

## 2. Executive summary

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As the Ministry of Justice closes old prison stock and embarks upon “super-prison” and “house-block” style building programmes, debate on penal policy is once again stimulated. Recent decisions on prisoner voting, books for prisoners and equal treatment for men and women prisoners on release have focused attention on prisoner rights. The recent custodial sentences for high-profile female figures such as Vicky Pryce and Constance Briscoe bring to wider public attention whether prison is necessary, and indeed suitable, for women.

In order to commission services that will reduce reoffending and promote desistance from crime we need to understand fully the risks and needs of women in the criminal justice system.

Today there are 85,625 people in prison in England and Wales, 3,902 of whom are female. Of the 120 prisons in England and Wales, 11 are for women – two of which are currently being considered for closure. Just seven women’s prisons have mother and baby units, with no consistent policy for maternity healthcare provision. Most female prisoners are serving short-term sentences for non-violent “petty” crime, with two-thirds serving sentences of six months or less. The average sentence length for women has been increasing; it is now 2.7 months longer than in 2002.

In 2007 the Corston Report found that women offenders had been marginalised within a system largely designed for men. Noting that “treating men and women the same results in inequality of outcome”, Baroness Corston called for a fundamental rethink of the position of women in the criminal justice system. Forty-three recommendations were made for improving the approaches, services and interventions in order to create a holistic, integrated and woman-centric system. In 2012, the Women in Prison Report found there had been too little progress in implementing Corston’s recommendations and that what progress had been made was at risk.

There are strong social and economic benefits to keeping women out of prison. The average cost of a women’s prison place is £56,415; almost three times the cost of an intensive community order at £10,000-£15,000. Offenders who have been properly supported within the community are more employable and better able to re-integrate into society, and suffer less psychological harm and “institutionalisation” than those serving prison sentences.

While this paper accepts that custodial sentences are sometimes appropriate, it raises the question of whether prison should be the default response to criminal offending by women. Research has found that prison sentences fail to address the complex needs of female offenders. Many female prisoners experience high rates of mental health disorders, have been victims of sexual and domestic violence, and suffer from substance addictions.

Often women serving short sentences go on to reoffend: 54% of women leaving prison are reconvicted within one year; for those serving less than 12 months this increases to 64%. The Corston Report found that short sentences of around 30 days are particularly futile and damaging, and yet are commonly handed down. Evidence from Anawim Women’s Centre demonstrated that only 3% of women using its support services went on to commit further offences and 7% breached their community order. Yet reports suggest that many centres dedicated to assisting women in crisis are closing due to funding problems.

What are the alternatives for sentencing women offenders? There is at present no specific sentencing regime applicable to female offenders and the current approach is restrictive. One part of this discussion therefore has to be the power of the Sentencing Council to effect change by reviewing sentencing guidelines and whether it is achievable without alternatives and social provision.

The supposedly simple solution for politicians to instruct judges to send fewer women to prison does not resolve the risk of re-offending. Nor does it abate the community appetite for retribution and risks putting the legislature at loggerheads with the judiciary.

The Government’s proposals for rehabilitation reform were billed as a step-change in the way in which we, as a society, rehabilitate offenders. This paper recounts some of the responses to the consultation and sets out the policy which the Ministry of Justice is to implement in respect of rehabilitation of offenders. In relation to female offenders, it was noted that responses stressed that a “one size fits all” approach would not work and that there was a need for a differentiated approach. However, the Ministry intends “to commission all rehabilitation services across geographical areas under a single contract rather than competing services separately for different offender cohorts”. Whilst female offenders’ needs will be catered for, the same providers will deliver services for both male and female offenders and will not be under a specified duty in relation to women.

This paper examines the women's penal system in the context of international human rights law. We do not seek to enter the debate on whether the European Convention on Human Rights is replaced by a British Bill of Rights but, in the light of this recent news, the discussion does need to consider future protection for the rights of women prisoners.

The next stage of this process is to further examine the situation in relation to women offenders following a panel discussion on 11 November 2014, *Women in prison: is the penal system fit for purpose?*, with a view to developing workable penal law and policy suggestions for the UK in 2015.

### 3. Introduction

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The UK Ministry of Justice (MOJ) has implemented a building programme for “super prisons” in the UK. This has once more stimulated debate about penal policy.

There are 120 prisons in England and Wales, 15 of which are contracted out to the private sector.<sup>5</sup> Of those 120, there are 11 prisons for women. However, two of these are currently being considered for closure.<sup>6</sup> At 10 October 2014, there were 85,625 people in prison in England and Wales, 3,902 of whom were female. This paper focuses on women in prison and whether the penal system for women offenders is fit for purpose.

This paper has taken it as an accepted principle (as with all issues of equality and diversity) that equality is about making sure people are treated fairly and have access to equality of opportunity. It does not always mean that everyone will be treated in the same way, but it recognises that individual needs can be met in different ways. Accordingly, women’s prisons do not need to be the same as those for men.

The current Prison Service Order (from 2008) states the following:

“Women prisoners are held in conditions and within regimes that meet their gender specific needs and which facilitate their successful resettlement.” Whilst “most of these standards are ‘best practice’ already in many establishments... it is recognised that it will not be possible to implement all standards immediately because of resource pressures.”<sup>7</sup>

This paper accepts that some women offenders will be sent to prison. For example, there was widespread public revulsion at Woman B and Woman P who were sentenced after allowing Lost Prophets singer Ian Watkins to sexually abuse their babies.<sup>8</sup> However, some recent cases have stimulated debate about whether some custodial penalties are necessary for women offenders. These include Vicky Pryce<sup>9</sup> sentenced for taking her husband’s speeding points (after her defence of marital coercion was rejected) and barrister and author Constance Briscoe, who was sentenced for perverting the course of justice in relation to the same proceedings.

Outside of these high profile cases, there are a range of women who have served, are serving and have been released from terms of imprisonment in the UK. The need to understand fully the risks and needs of women and girls in order to commission services that will deliver the outcomes required to reduce reoffending and promote desistance from crime has long been recognised.<sup>10</sup>

Decades of research has shown that many women prisoners are victims of violence, abuse and addiction and that they (and their families) suffer inordinately in the current penal system. Women in custody are more likely to have mental health issues or drug dependency problems than men and are five times more likely to have a mental health problem than other women in the general population.<sup>11</sup> Proportionately, prison is often more harmful for them as women have higher rates of self-harm – they account for 43% of all incidents of self-harm despite representing just 5% of the total prison population.<sup>12</sup> Reliable research on prison reform has found that prison sentences fail to address the multiple and complex needs of female offenders.<sup>13</sup>

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5 The Howard League (@TheHowardLeague), “There are currently 120 prisons in England and Wales, of which 15 are privately run.” 16 October 2014, 11.06, Tweet

6 The Howard League (@TheHowardLeague), “12 are women’s prisons, although 2 of them (Askham Grange & East Sutton Park) are being considered for closure by MOJ.” 16 October 2014, 11.07. Tweet. The 12 prisons are: Foston Hall; Drake Hall; East Sutton Park; Eastwood Park; Bronzefield; Holloway; Send; Askham Grange; New Hall; Peterborough (mixed male and female); Low Newton; and Styal. Askham Grange and East Sutton Park are being considered for closure. See: <https://twitter.com/TheHowardLeague/status/522699511013974017> and <https://twitter.com/TheHowardLeague/status/522699708415098880>

7 ‘Women Prisoners’, Prison Service Order No 4800, Issued 28/04/08, p 2. See: <http://www.justice.gov.uk/offenders/psos>

8 Courts and Tribunals Sentencing Remarks, Case Number 62CA1726112, 18 December 2013. See: <http://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Judgments/r-v-watkins-and-others.pdf>

9 *Prisonomics*, Vicky Pryce’s book about her experiences, analyses the economic and human costs of imprisoning women.

10 *Transforming rehabilitation: a revolution in the way we manage offenders*, Government Consultation Paper CP1/2013, Response from Women’s Breakout, February 2013, p 10. See: <http://www.womensbreakout.org.uk/wp-content/uploads/downloads/2013/02/Transforming-Rehabilitation-Consultation-response-final-22-February-2013.pdf>

11 *Reforming Women’s Justice: Final Report of the Women’s Justice Taskforce*, Prison Reform Trust, 2011, p11. See: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women’s%20Justice%20Taskforce%20Report.pdf>

12 Ministry of Justice (2010), *Safety in Custody Statistics 2009*, London: Ministry of Justice

13 *Reforming Women’s Justice*, *op cit*, p 4. See: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women’s%20Justice%20Taskforce%20Report.pdf>

In addition, women are often inadequately prepared for their release from prison. Having a stable home, secure employment and proper provision for childcare upon release from prison are some of the most important factors in the successful rehabilitation and resettlement of women.<sup>14</sup> It is notable that prisoners who have problems with both employment and accommodation on release have a reoffending rate of 74% during the year after custody, compared to 43% for those without such problems.<sup>15</sup> Just 11% of women received help with housing matters while in prison. Only 24% of women with a prior skill had a chance to put their skills into practice through prison work.<sup>16</sup>

Women are more likely to be held in custody further away from home than men due to the dispersal of women's prisons across England, which makes it harder to maintain good links with housing providers.<sup>17</sup>

It has been said that "there can be no single solution to the problems with which the criminal justice system as it pertains to women is fraught. Any solutions offered need to accommodate the wide and diverse range of problems with which women offenders are faced."<sup>18</sup>

In its response to Government Consultation Paper CP1/2013, *Transforming Rehabilitation: a revolution in the way we manage offenders*, Women's Breakout called for a national strategy for women offenders – "a justice reinvestment pilot for women" – to provide coherency and structure.<sup>19</sup> This discussion focuses on what that strategy could be.

## 4. Prison estate

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In December 2009 the Ministry of Justice published a report on the Government's strategy for diverting women away from crime. Among the future commitments contained in the strategy was capital funding in 2010 of around £5m to improve approved premises for women. The strategy stated that, subject to planning permission, where appropriate the new facilities would allow more women to use premises in the community, would enable safe rooms for women in crisis, and would offer facilities for women who were older or had disabilities.<sup>20</sup>

In June 2011, the UK Government submitted its seventh periodic report to The Committee on the Elimination of Discrimination against Women (CEDAW). It broadly accepted the findings of Baroness Corston's report in 2007<sup>21</sup> and stated that:

"The UK Government is committed to diverting women away from crime and to tackling women's offending effectively. It broadly accepted the conclusions in Baroness Corston's March 2007 report – *A Review of Women with Particular*

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<sup>14</sup> *Ibid*, p 18. See: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women's%20Justice%20Taskforce%20Report.pdf>

<sup>15</sup> Hedderman, C et al, *Implementing services for women offenders and those 'at risk' of offending: action research with Together Women*, London: Ministry of Justice (2008).

<sup>16</sup> Niven, S and Olagundoye, *Jobs and homes – a survey of prisoners nearing release*, London: Home Office (2002).

<sup>17</sup> *Reforming Women's Justice*, *op cit*, p 18. See: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women's%20Justice%20Taskforce%20Report.pdf>

<sup>18</sup> *Transforming Rehabilitation: a revolution in the way we manage offenders*, Government Consultation Paper CP1/2013, Response from Women's Breakout, February 2013, p 5. See: <http://www.womensbreakout.org.uk/wp-content/uploads/downloads/2013/02/Transforming-Rehabilitation-Consultation-response-final-22-February-2013.pdf>

<sup>19</sup> *Transforming Rehabilitation: a revolution in the way we manage offenders*, Government Consultation Paper CP1/2013, Response from Women's Breakout, February 2013, p 5 of 13, <http://www.womensbreakout.org.uk/wp-content/uploads/downloads/2013/02/Transforming-Rehabilitation-Consultation-response-final-22-February-2013.pdf>

<sup>20</sup> *A Report on the Government's Strategy for Diverting Women Away from Crime*, Ministry of Justice, December 2009. See: <http://www.womeninprison.org.uk/userfiles/file/15-01-2010%20Working%20with%20women%20offenders%20-%20publications%20guide.pdf>

<sup>21</sup> The Committee on the Elimination of Discrimination against Women (CEDAW) is the body of independent experts that monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women. CEDAW Committee consists of 23 experts on women's rights from around the world. Countries who have become party to the treaty (States parties) are obliged to submit regular reports to the Committee on how the rights of the Convention are implemented. During its sessions the Committee considers each State party report and addresses its concerns and recommendations to the State party in the form of concluding observations. In accordance with the Optional Protocol to the Convention, the Committee is mandated to: (1) receive communications from individuals or groups of individuals submitting claims of violations of rights protected under the Convention to the Committee and (2) initiate inquiries into situations of grave or systematic violations of women's rights. These procedures are optional and are only available where the State concerned has accepted them. The Committee also formulates general recommendations and suggestions. General recommendations are directed to States and concern articles or themes in the Conventions. <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Introduction.aspx>

*Vulnerabilities in the Criminal Justice System* – and is supportive of reducing the number of vulnerable women in prison. In order to divert vulnerable women who do not pose a risk to the public away from custody, there is a continuing programme of work under way to provide effective community options for the courts.”<sup>22</sup>

In 2012, the Women in Prison report looked at Baroness Corston’s report five years on<sup>23</sup> and found there had been too little progress in implementing recommendations and that what progress had been made was at risk. In particular, the prison population was too high and a “shocking” number of women were still harming themselves in prison. The Corston reports are dealt with in more detail below.

In January 2013 the Ministry of Justice announced plans for much of the prison estate to be closed and new super prisons to be built<sup>24</sup> and that there would be a “rehabilitation revolution” for prisoners.<sup>25</sup>

In March 2013 the Ministry of Justice issued strategic objectives for female offenders setting out its intentions in relation to female offenders and justice policy.<sup>26</sup> The foreword, by Helen Grant MP (now former) Parliamentary-Under-Secretary for Justice, stated that the policy “... [was] not about advocating preferential treatment of women within the criminal justice system or setting arbitrary targets for the number of women in prisons”.<sup>27</sup> The document stated that its key aims were:

- (22) Ensuring the provision of credible, robust sentencing options in the community that will enable female offenders to be punished and rehabilitated in the community where appropriate. We are committed to ensuring all community orders include a punitive element. Other options such as tagging and curfews can also be used to provide greater monitoring and structure to offenders’ lives.
- (23) Ensuring the provision of services in the community that recognise and address the specific needs of female offenders, where these are different from those of male offenders.
- (24) Tailoring the women’s custodial estate and regimes so that they reform and rehabilitate offenders effectively, punish properly, protect the public fully, and meet gender specific standards, and locate women in prisons as near to their families as possible.
- (25) Through the transforming rehabilitation programme, supporting better life management by female offenders ensuring all criminal justice system partners work together to enable women to stop reoffending.<sup>28</sup>

On 15 July 2013 the House of Commons Justice Committee published its report: *Women offenders: after the Corston Report, Second Report of Session 2013–14*.<sup>29</sup> The summary reads as follows:<sup>30</sup>

It is well recognised that women face very different hurdles from men in their journey towards a law abiding life, and that responding appropriately and effectively to the problems that women bring into the criminal justice system requires a distinct approach. Our examination of developments in policy and practice over this period indicates that in the first two years of the Coalition Government there was a hiatus in efforts to make headway on implementing such an approach.

We welcome the fact that, after we announced our inquiry, the Secretary of State recognised the importance of these issues, and assigned particular Ministerial responsibility for women offenders. We consider that clear leadership and a high level of support from other Ministers will be essential in restoring lost momentum. The Minister has set out four strategic priorities, which we support, and has created a new Advisory Board to work across Government and with key stakeholders in order to further these priorities. We would like to see these commitments, which appear to have

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<sup>22</sup> United Nations Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) United Kingdom’s Seventh Periodic Report Submitted June 2011. See: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/85456/7th-cedaw-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/85456/7th-cedaw-report.pdf)

<sup>23</sup> *Corston Report 5 Years On: How far have the government got on the road to reform of the criminal justice system for women?*, Women in Prison, 2012. See: <http://www.womeninprison.org.uk/userfiles/file/Corston+5%20Report.pdf>

<sup>24</sup> <http://www.bbc.co.uk/news/uk-20969898>

<sup>25</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/228580/8517.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228580/8517.pdf)

<sup>26</sup> *Strategic objectives for female offenders*, Ministry of Justice, March 2013, p 4. See: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/177038/strategic-objectives-female-offenders.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/177038/strategic-objectives-female-offenders.pdf)

<sup>27</sup> *Ibid*, p 2. See: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/177038/strategic-objectives-female-offenders.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/177038/strategic-objectives-female-offenders.pdf)

<sup>28</sup> *Ibid*, p 4.

<sup>29</sup> See: <http://www.parliament.uk/documents/commons-committees/Justice/Women-offenders.pdf>

<sup>30</sup> Numbering is added to facilitate reading.

been produced in haste, given greater substance and accompanied by measures of success.

A key lesson still to be learnt is that tackling women's offending is not just a matter for the justice system. We believe that there must be much more explicit recognition, including by the Parliamentary Under-Secretary for Justice, Women and Equalities, of the need to focus as much on those women and girls at the periphery as those who are already involved in the system.

We welcome the commitment to generate a "whole system" approach to these issues but there is little to signal a radical shift in thinking about what this means.

We suggest some additional safeguards to broaden cross-departmental accountability including extending full representation on the newly created Advisory Board to other relevant Government Departments and the inclusion of matters relating to women's offending as a standing item on the agenda for the Inter-Ministerial Group on Equalities.

We recommend that, once adopted, these governance arrangements are subsequently reviewed to consider whether responsibility for the overall strategic approach should transfer to the Department for Communities and Local Government. There is little evidence that the equality duty, and its forerunner the gender equality duty, have had the desired impact on systematically encouraging local mainstream commissioners to provide services tackling the underlying causes of women's offending, or on consistently informing broader policy initiatives within the Ministry of Justice and the National Offender Management Service (NOMS). Both struggle to reflect fully the distinct needs of female offenders.

We are extremely disappointed that there is still not sufficient evidence about what those needs are, or how best to address them. There have been improvements in the provision for women, notably the development of a network of women's community projects. We believe these projects must be maintained as they are central to providing a distinct approach to the treatment of women offenders, as well as playing an integral role in supporting women at risk of criminality.

We urge NOMS to consider gender as a matter of course, rather than seeking to reduce any detrimental impact on women of their general approach after the event. The most striking incidence of this is the likely impact of the *Transforming Rehabilitation* reforms which have clearly been designed with male offenders in mind.

We welcome the Government's extension of "through the gate" support to prisoners sentenced to less than 12 months, which should benefit many women offenders. The concentration on reducing reoffending seems likely to reinforce the loss of generic funding for women's community centres that has occurred since NOMS gained oversight of their funding. It is also uncertain whether there will be sufficiently strong data about what is effective for women offenders to enable new providers to make sensible commissioning decisions.

We consider that there is a compelling case for commissioning services for women offenders separately and for applying other incentive mechanisms that would also encourage the diversion of women from crime.

We make a series of recommendations about the Government's review of the female custodial estate, which we welcome. Taking the size of the women's prison population as a given when recent legislative changes may create some headroom represents a missed opportunity to address wider concerns, including that: the women's prison population has not fallen sufficiently fast; over half of women continue to receive ineffective short-custodial sentences; and appropriate community provision which would arrest the use of custody, such as mental health and substance misuse treatment, remains unavailable to the courts in sufficient volume.

We propose that the custodial estate review should examine in particular: the impact of recent, and planned cost savings and staff headcount reductions; means of encouraging women to take more responsibility; support for the development and sustainability of family ties; resettlement support for foreign national prisoners; staff training and competencies; and alternative forms of community-based residential provision for women who have committed offences of lesser seriousness but who might benefit from constructive regimes and support. Prison is an expensive and ineffective way of dealing with many women offenders who do not pose a significant risk of harm to public safety.

We revisited Baroness Corston's suggestion that those women who have committed serious offences should be held in smaller, more dispersed, custodial units. Having considered this carefully we recommend a gradual reconfiguration of the female custodial estate, coupled with a significant increase in the use of residential alternatives to custody as well as the maintenance of the network of women's centres, as these are likely to be more effective, and cheaper in the long-run, than short custodial sentences.

On 26 July 2013 the Committee on the Elimination of Discrimination against Women released its concluding observations on the UK's seventh periodic report on 26 July 2013 (advance unedited version). Concerns raised by the Committee include protection from discrimination under the Public Sector Equality Duty, the impact of austerity measures on women and women's services, and restrictions on women's access to legal aid.<sup>31</sup> In relation to women in prison, the report reads as follows:

54. The Committee recalls its previous concluding observations (A/63/38, paras 266 and 267) and notes the measures taken to address the recommendations in the Corston Report on women in the administration of criminal justice. However, the Committee remains concerned at reports that the number of women in prison continues to increase partly due to changes in sentencing so that women are more likely than men to be incarcerated for non-violent offences. The Committee is also concerned at women's limited access to mental health care in prisons, and at the over-representation of black and ethnic minority women in prison. The Committee is also concerned at reports of an increase in the number of trafficked women in prison and the lack of adequate integration programmes upon release.

55. Recalling its previous recommendation, the Committee urges the State party to:

- (a) vigorously pursue efforts to implement the recommendations in the Corston Report including those contained in the report of the House of Commons Justice Committee published on 15 July 2013;
- (b) continue to develop alternative sentencing and custodial strategies, including community interventions and services for women convicted of minor offences;
- (c) improve the provision of mental health care in all prisons;
- (d) introduce measures aimed at addressing the root causes of the over-representation of black and minority ethnic women in prison; and
- (e) ensure that authorities, including prison staff, are able to recognise women who may have been trafficked to avoid their criminalisation, and to provide adequate services for their integration into society.

In *September 2013* the Minister for Justice, Chris Grayling, acknowledged the need for women prisoners to be close to home when acknowledging there was no women's prison at all in Wales. He suggested that campus-style prisons were planned.<sup>32</sup> He also unveiled plans for four new "mini-prisons", known as "house blocks", which will provide capacity for 1,260 prisoners to be built at four existing prisons at Parc in south Wales, Peterborough in Cambridgeshire, the Mount in Hertfordshire and Thameside in London.<sup>33</sup>

In *September 2013* plans for a super-prison in Wales were revealed and the BBC produced a list of prisons opened and closed. Whilst provision figures were not too far apart (6,382 lost and 5,945 to be gained), the trend appears to be towards larger out-of-town buildings.<sup>34</sup>

In *October 2013* the Ministry confirmed that two open prisons for women would close and the mother and baby unit at HMP Holloway would close.<sup>35</sup> At this point, interim provision for current prisoners is not clear. Frances Crook of The Howard League for Penal Reform reported as follows:

"... Holloway prison's mother and baby unit is to close. This means that London women prisoners or those from the South East who have babies will be faced with a choice: go hundreds of miles to Cheshire or the Welsh borders to a mother and baby unit, or, separate from your baby so that you can stay in a London prison so you can be near your other children. Askham Grange was the only open prison that had a mother and baby unit and that is to close down. With the closure of two mother and baby units there are now only five units.

"Women are now being moved into Holloway from the prisons being re-rolled. A fifth bunk is being added to rooms so there is hardly any space to move about. Women are being cooped up most of the time because of staff cuts, despite increasing numbers."

In *November 2013* Frances Crook also reported that she suggested to the MOJ review team that "all the women's prisons should be closed down. Money should be diverted to the 50 local women's centres to deliver the sentence of the court but also offer debt advice, help getting free from domestic violence, from drug and alcohol services to reading groups.

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<sup>31</sup> Committee's concluding observations. See: <http://www.edf.org.uk/blog/?p=28176>

<sup>32</sup> BBC News, 'Wrexham Super Prison Concerns'. See: <http://www.bbc.com/news/uk-wales-north-east-wales-29502522>

<sup>33</sup> Public Sector Executive News. See: <http://pse.seniortest.co.uk/Public-Sector-News/moj-announces-prisons-closure>

<sup>34</sup> BBC News, 'Super Prison to be Built'. See: <http://www.bbc.com/news/uk-wales-north-east-wales-23957373>

<sup>35</sup> See: <http://www.bbc.com/news/uk-24669657>

This would have kept the women closer to home and family and saved money<sup>36</sup> and is consistent with over a decade of Government-led reports on how to treat women prisoners to reduce reoffending and allow for rehabilitation.

In *August 2014*, the new minister for female offenders, Lord McNally, announced that the Ministry of Justice was: “keeping women prisoners closer to home and giving them the skills to find employment so they turn their backs on crime for good are at the heart of significant reforms”.

In *September 2014*, work started on a new super prison in Wrexham<sup>37</sup> after prisons minister Jeremy Wright had earlier announced the appointment of Australian firm LendLease as builders for a super prison in Wrexham.<sup>38</sup>

To date, there has been no announcement on building community prisons for women.

## 5. Prison population

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Most women serve sentences for non-violent “petty” crime<sup>39</sup> such as acquisitive offences (eg in 2011 over a third of all female offenders were serving sentences for theft and handling stolen goods).<sup>40</sup> Most of these sentences were short term – two-thirds of women sentenced to custody were serving sentences of six months or less.<sup>41</sup> However, overall the number of women in prison is increasing and the time that they spend in prison is longer. Research also shows that when mothers are handed prison sentences, this creates an inter-generational cycle of crime.

This paper summarises some of the history and key statistics as follows.

### General prison population

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- In 1901 the average prison population in England and Wales was 15,900. From 1901 to 1916 there was a downward trend, with the average falling somewhere between 10,000 and 11,000. By 1998, the average had risen to 65,300.<sup>42</sup>
- Between 2002 and 2012, the prison population in England and Wales grew by 14,830 or 21%. During this period the number on remand fell by 13%, while those sentenced to immediate custody rose by 28%.<sup>43</sup>
- In the 12 months ending March 2013, 1,193,459 people were sentenced by the courts, representing an overall decrease of 7% on the previous 12 months. Of those, 94,350 people were sentenced to immediate custody representing a decrease of 11% compared to the previous 12 months.<sup>44</sup>
- On 29 August 2014, the population of prisons in England and Wales stood at 85,401.<sup>45</sup>
- The proportion of the sentenced prison population serving indeterminate or life sentences increased from 9% in 1993 to 19% in 2012.<sup>46</sup>
- The recall population grew rapidly between 1993 and 2012, accounting for 13% of the overall increase in the prison population.<sup>47</sup>

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<sup>36</sup> Frances Crook’s Blog ‘Don’t Be Fooled’. See: <http://www.howardleague.org/francescrookblog/dont-be-fooled-by-the-governments-deceit-over-womens-prisons/>

<sup>37</sup> BBC News, ‘Work Starts on Super Prison’. See: <http://www.bbc.com/news/uk-wales-north-east-wales-29011647>

<sup>38</sup> BBC News, ‘Lendlease Chosen to Build Super Prison’. See: <http://www.bbc.com/news/uk-wales-north-east-wales-27630202>

<sup>39</sup> *Reforming Women’s Justice: Final Report of the Women’s Justice Taskforce*, Prison Reform Trust, 2011, p 2. See: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women’s%20Justice%20Taskforce%20Report.pdf>

<sup>40</sup> *Ibid*, p 3 <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women’s%20Justice%20Taskforce%20Report.pdf>

<sup>41</sup> Table 6.1, Ministry of Justice (2010) *Offender Management Caseload Statistics 2009*, London, Ministry of Justice

<sup>42</sup> Research Paper 99/111, *VI Crime: Prison Population*, <http://www.parliament.uk/documents/commons/lib/research/rp99/rp99-111.pdf>

<sup>43</sup> Prison Reform Trust, *Bromley Briefings Prison Factfile Autumn 2013*, <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Factfile%20autumn%202013.pdf>

<sup>44</sup> *Ibid*. <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Factfile%20autumn%202013.pdf>

<sup>45</sup> *Weekly Prison Watch August 2014*, The Howard League for Penal Reform, [http://www.howardleague.org/august\\_2014/](http://www.howardleague.org/august_2014/)

<sup>46</sup> Prison Reform Trust, *Bromley Briefings Prison Factfile Autumn 2013*. *Ibid* n23

<sup>47</sup> Prison Reform Trust, *Bromley Briefings Prison Factfile Autumn 2013*. *Ibid* n23

## Women prisoners

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- Women numbered 3,100 in 1901 and 1998. The lowest number of female prisoners in the 20<sup>th</sup> century was 674, in 1936.<sup>48</sup> Between 2000 and 2010 the women's prison population increased by 26%. In 1995 the mid-year female prison population was 1,979. In 2000 it stood at 3,355 and in 2010 it was 4,267. A total of 9,832 women were received into prison in 2012, that is 349 fewer than 2011. At 29 August 2014, the number of female prisoners stood at 3,912.<sup>49 50</sup>
- In 1901, female prisoners represented 16% of the overall prison population. That had fallen to 3% in 1971 but rose to 5% by 1998.<sup>51</sup> Since 1998, that level has remained relatively constant, at around 5%.<sup>52</sup>
- The average sentence length for women has been increasing; it is now 2.7 months longer than in 2002. The average sentence length is 14.7 months.<sup>53</sup>
- Women continue to account for 9% of prison receptions as, since their average length of sentence is shorter to that of men, both from magistrates' courts and the Crown court, their turnover is higher.<sup>54</sup>
- An estimated 17,700 children are separated from their mothers by imprisonment – of these children, only 5% are able to remain in their own home.<sup>55</sup> Children with a parent in prison are three times more likely to have mental health problems or to engage in anti-social behaviour than their peers.<sup>56</sup> Nearly two-thirds of boys who have a parent in prison will go on to commit some kind of crime themselves.<sup>57</sup>

## 6. Prisoner rights

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Recent decisions on prisoner voting, books for prisoners and equal treatment for men and women prisoners on release have fuelled the debate on prisoner rights. Here we take two quotes – one from 1986 and one from 2012 to spark discussion as to what rights women offenders should expect and what rights they should be afforded in a civilised society:

“Prisoners are seen as belonging to a group which has had its rights legitimately curtailed as a consequence of the commission of crimes. It is no secret that a sentence of imprisonment involves the forfeiture of various rights and liberties which are possessed by free citizens. Prisoners are regarded as having implicitly chosen to risk the forfeiture of rights when deciding to commit their offences and thus to be, in effect, voluntarily disentitled. As a result, as Zdenkowski and Brown point out in *The Prison Struggle*, it ‘is almost a political axiom’ that ‘prison reform is not a vote-catcher’ and may well be ‘a vote loser’.<sup>58</sup> Moreover this public indifference, if not hostility, to prisoners’ rights means that the official rationale, that the nature of prison society calls for the abrogation of civil rights, is not questioned. The administration of, and the maintenance of order and discipline in, penal institutions is generally accepted as requiring the curtailment or forfeiture of the great majority of the rights which citizens in general have. And the prisoner has found that the law, to use Gerhard Mueller’s phrase “left him at the prison entrance”.<sup>59 60</sup>

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48 *A Century of Change: Trends in UK Statistics since 1900*, Research Paper 99/111, VI Crime: Prison Population, p 15, <http://www.parliament.uk/documents/commons/lib/research/rp99/rp99-111.pdf>

49 Prison Reform Trust, *Bromley Briefings Prison Factfile Autumn 2013* <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Factfile%20autumn%202013.pdf>

50 *Weekly Prison Watch August 2014*, The Howard League for Penal Reform, [http://www.howardleague.org/august\\_2014/](http://www.howardleague.org/august_2014/)

51 *A Century of Change*, *op cit*, p 15, <http://www.parliament.uk/documents/commons/lib/research/rp99/rp99-111.pdf>

52 On 29 August 2014, the proportion of female prisoners in the prison estate was 4.5% of the total. Figures obtained from *Weekly Prison Watch August 2014*, The Howard League for Penal Reform, [http://www.howardleague.org/august\\_2014/](http://www.howardleague.org/august_2014/)

53 Prison Reform Trust, *Bromley Briefings Prison Factfile Autumn 2013*. Ibid n23

54 *Women offenders: after the Corston Report*, House of Commons Justice Committee, Second Report of 2013-2014, p 8, <http://www.parliament.uk/documents/commons-committees/Justice/Women-offenders.pdf>

55 *Reforming Women's Justice: Final Report of the Women's Justice Taskforce*, Prison Reform Trust, 2011, p 1 <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women's%20Justice%20Taskforce%20Report.pdf>

56 SCIE (2008) *Children's and families resource guide 11: Children of prisoners – maintaining family ties*

57 SCIE: London and Murray, J, and Farington, D, 'Parental Imprisonment: Effects on Boys' Antisocial Behaviour and Delinquency through the Life-Course', *Journal of Child Psychology and Psychiatry* (2005) 46:1269-78.

58 *The Prison Struggle: Changing Australia's Penal System*, George Zdenkowski and David Brown, Ringwood, vic. : New York, N.Y. : Penguin Books, 1982, p 63

59 Mueller 1966:86

60 *A Study of Human Rights and Commonwealth Prisoners* by Gordon Hawkins Occasional Paper No 12, September 1986, Australian Government Publishing Service Canberra 1986

“When someone is imprisoned their human rights are necessarily compromised... As is extremely well-known, Art 8 furnishes the right to respect for a person’s private and family life, his home and his correspondence. But it is not an absolute right and it may be curtailed ‘in accordance with the law’ where it is necessary, inter alia, for the protection of health and morals, or for the protection of the rights and freedoms of others. It is well-established that even people in detention, whether in prison or in mental health institutions, retain nonetheless these rights, at least up to a point – that point being that the exercise of the right obviously cannot have the effect of destroying the purpose and function of the detention in question: see *R (P and Q) v Home Secretary* [2001] EWCA Civ 1151 at para 78. Thus in the case of imprisonment the right does not extend to allowing prisoners conjugal visits, or to possession of mobile phones, or for that matter single cells. On the other hand it does extend to allowing visits from family and friends, the use of payphones, and the sending and receiving of letters. Thus is the balance struck between the exercise of the right and the purpose and function of imprisonment.”<sup>61</sup>

## 7. The Corston Report

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Baroness Jean Corston was asked by the Home Office to undertake a review of the position of women in the criminal justice system and her report was published in March 2007 (“the Corston Report”). In the course of her inquiry she consulted widely. Her report argued for a fundamental rethink and a more women-centred approach, since women had been marginalised within a system largely designed for men. That did not require treating everyone the same but taking positive action to eliminate gender discrimination. She noted that “[e]qual treatment of men and women does not result in equal outcomes... Treating men and women the same results in inequality of outcome.” One issue identified by the Corston Report was that the small number of women’s prison and their geographical location meant that women in prison tended to be further from their homes than male prisoners, to the detriment of maintaining family ties, receiving visits and resettlement back into the community.<sup>62</sup>

The Corston Report outlined the need for a distinct, radically different, visibly-led, strategic, proportionate, holistic, woman-centred and integrated approach. Forty-three recommendations were made for improving the approaches, services and interventions for women in the criminal justice system and women at risk of offending.<sup>63</sup> The report recommended smaller units for females closer to home and more easily accessible for visitors, for example, by locating them in city centres. It suggested that the units could be multifunctional, with varying levels of security, to perform the role of bail hostels, local training centres and resettlement prisons, and with links to other local support centres. The lack of provision of suitable approved premises, especially for bail, and particularly in rural areas, was touched on in the report. One of its recommendations was that the first principle of every resettlement should be to release prisoners into their home areas. Baroness Corston was especially impressed by the model recommended by a probation board member in Norfolk, in which, particularly in rural areas, there would be a “one-stop shop” providing an integrated approach to services for women offenders.<sup>64</sup>

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<sup>61</sup> Mr Justice Mostyn, *Council v GU & Ors* [2012] EWHC 3531 (COP); [2012] EWCOP 3531

<sup>62</sup> *Griffiths v Secretary of State for Justice* (Equality and Human Rights Commission intervening) [2013] EHC 4077 (Admin)

<sup>63</sup> *The Corston Report*, Prison Reform Trust, <http://www.prisonreformtrust.org.uk/projectsresearch/women/corstonreport>

<sup>64</sup> *Griffiths v Secretary of State for Justice* (Equality and Human Rights Commission intervening) [2013] EHC 4077 (Admin)

## 8. Women in Prison: *The Corston Report 5 Years On*<sup>65</sup>

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Women in Prison, a group campaigning for radical reform of the criminal justice system, created a pictorial overview using a traffic light system of the progress post-Corston.<sup>66</sup> The review made the following observations:

“Five years and two governments later too little distance has been travelled. Whilst we think too little has been done... we are also keen to celebrate the progress that has been made. Highlights include the end to mandatory strip searching and the investment in community support and diversion services for women. There have been developments that were not specifically recommended by Corston, but which have arisen from the impetus for change that her report created.”<sup>67</sup>

## 9. The Corston Review in 2013-2014<sup>68</sup>

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In the Second Report of Session 2013-14, the Justice Committee of the House of Commons heard evidence and reported on the developments in policy and practice since the Corston Report. It concluded:

“Baroness Corston’s report was widely commended by our witnesses. For example, Women’s Breakout described it as a ‘thoughtful and realistic’ vision to improve outcomes for women in the criminal justice system and those at risk of offending, and both Juliet Lyon, of the Prison Reform Trust and the Corston Independent Funders Coalition saw it as a ‘blueprint for reform’. We asked our witnesses for their assessments of the progress that had been made in implementing the Corston Report’s recommendations. Baroness Corston herself told us she felt ‘particularly proud and pleased’ about the then Government’s abolition of routine strip-searching.”<sup>69</sup>

In relation to needs of females in the criminal justice system, the report spoke of a need for cross-departmental accountability, but the committee was “extremely disappointed that there is still not sufficient evidence about what those needs are, or how best to address them”.<sup>70</sup>

Noting the need to tackle the cause of females entering the criminal justice system (as opposed to the reactive approach currently undertaken) it concluded that:

“There is little evidence that the equality duty, and its forerunner the gender equality duty, have had the desired impact on systematically encouraging local mainstream commissioners to provide services tackling the underlying causes of women’s offending, or on consistently informing broader policy initiatives within the Ministry of Justice and the National Offender Management Service. Both struggle to reflect fully the distinct needs of female offenders.”<sup>71</sup>

In relation to financial cost, the report noted:

“Prison is an expensive and ineffective way of dealing with many women offenders who do not pose a significant risk of harm to public safety.”<sup>72</sup>

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65 *Corston Report 5 Years On: how far have the government got on the road to reform of the criminal justice system for women?*, Women in Prison, 2012, <http://www.womeninprison.org.uk/userfiles/file/Corston+5%20Report.pdf>

66 *Ibid*, <http://www.womeninprison.org.uk/userfiles/file/Corston+5%20Report.pdf>

67 *Ibid*, <http://www.womeninprison.org.uk/userfiles/file/Corston+5%20Report.pdf>

68 *Women offenders: after the Corston Report*, House of Commons Justice Committee, Second Report of 2013-2014, <http://www.parliament.uk/documents/commons-committees/Justice/Women-offenders.pdf>

69 *Women offenders: after the Corston Report*, House of Commons Justice Committee, Second Report of 2013-2014, p 11, <http://www.parliament.uk/documents/commons-committees/Justice/Women-offenders.pdf>

70 *Ibid*, p 3, <http://www.parliament.uk/documents/commons-committees/Justice/Women-offenders.pdf>

71 *Ibid*, p 3, <http://www.parliament.uk/documents/commons-committees/Justice/Women-offenders.pdf>

72 *Ibid*, p 4, <http://www.parliament.uk/documents/commons-committees/Justice/Women-offenders.pdf>

In relation to risk, the committee reported as follows:

“In our view there is general agreement that the majority of women offenders pose little risk to public safety and that imprisonment is frequently an ineffective response. It is also now well recognised that it is not permissible for women offenders to be dealt with in the same way as men within a criminal justice system designed for the majority of offenders. This is not about treating women more favourably or implying that they are less culpable. Rather it is about recognising that women face very different hurdles from men in their journey towards a law abiding life, responding appropriately to the kinds of problems that women in the criminal justice system bring into it, and taking the requisite action to be effective in addressing their offending behaviour.”<sup>73</sup>

In relation to penal policy, the report noted:

“... the Government’s stated support for a ‘whole system’ approach...” but highlighted that “there is little to signal a radical shift in the Government’s thinking about what this means”.<sup>74</sup>

The conclusion of the report appears to be that the MOJ has acknowledged the needs of women prisoners but is implementing policies in relation to the construction of a new prison estate which are not consistent with the Corston recommendations.

## 10. Social and economic factors

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Prison is more expensive than alternative measures. The average cost to keep a female offender in prison is approximately £56,415 per annum. By contrast, an intensive community order (that commands the confidence of the police and the courts) could cost approximately £10,000-£15,000.<sup>75</sup>

In addition there are strong social and economic benefits to reducing the reoffending rate. It reduces the costs associated with the criminal justice system (such as court costs, provision of prison places or for community support) and benefits the economy as prisoners who have been properly supported are more employable.<sup>76</sup> A recent report for the G20 gender equality forum provided provable data that equal participation in employment and equal pay raises GDP.<sup>77</sup>

Social benefits include the reduced psychological harm that women are more likely to suffer in prisons and the potential for integration into main stream society.<sup>78</sup>

## 11. Women’s centres

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Although in recent years government investment in women’s centres has increased, proposed cuts to the criminal justice system in the annual spending review have resulted in fewer discretionary funds being available. Many centres have to

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<sup>73</sup> *Ibid*, p 10, <http://www.parliament.uk/documents/commons-committees/Justice/Women-offenders.pdf>

<sup>74</sup> *Ibid*, p 89, <http://www.parliament.uk/documents/commons-committees/Justice/Women-offenders.pdf>

<sup>75</sup> *Reforming Women’s Justice: Final Report of the Women’s Justice Taskforce, Prison Reform Trust*, 2011, p i <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women’s%20Justice%20Taskforce%20Report.pdf>

<sup>76</sup> *Ibid*, p 25, <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women’s%20Justice%20Taskforce%20Report.pdf>

<sup>77</sup> See: <http://genderinstitute.anu.edu.au/news/investing-gender-equality-group-20-leaders-summit-australia-turkey>

<sup>78</sup> Social Exclusion Task Force (2009) *Short Study on Women Offenders*, London: Cabinet Office

rely on income from a variety of sources, with one centre relying on 37 different benefactors.<sup>79</sup> Reports suggest many centres dedicated to assisting women in crisis are closing.<sup>80</sup>

Women's centres can be an effective tool in reducing the risk of recidivism. There are numerous women's centres and projects nationwide which provide support services to women offenders, ex-offenders and women at risk of offending. The projects on the whole tend to take a holistic view of the issue in an attempt to promote the synergy between the welfare and the criminal justice systems. The services they provide include:

- community sentences;
- counselling and psychological therapies;
- life skill training;
- support with court hearings;
- support for domestic and sexual abuse; and
- accredited courses.

Such projects are generally funded (at least in part) by "Justice Funding" (which includes the MOJ, Probation Trusts and NOMS). The MOJ says this recognises the importance of the voluntary sector in assisting in tackling the root causes of crime. However, just £10m of funding over a two-year period is supplied and when that is also seen in the context of funding cuts to many women's centres, the support provided by the Government for such services could be said to be disproportionately low, especially when viewed in light of the cost/benefit analysis of alternates such as short spells in custody.<sup>81</sup>

The MOJ began funding women's centres in 2009. From 2011, NOMS took charge of funding women's centres from the MOJ. In 2013, the Justice Select Committee asked the National Audit Office to look into changes to the way justice funding was allocated to women's centres. It set out government policy in relation to women's centres and the funding that had been allocated to them. The report noted that it was unclear whether the level of services provided was aligned to local need as in 2012-2013, the funding was allocated on the basis of providers applying for funding, with the funding predominantly being allocated to those who had applied for funding in 2009 (where there was no assessment of local need). From 2013-2014, all Probation Trusts have had access to funding.<sup>82</sup>

The Women's Justice Taskforce's report on *Reforming Women's Justice* (2011) identifies the social and economic benefits of community intervention for female offenders in favour of prison sentences. Evidence suggests they can reduce the reoffending rate of female convicts. The report also states that early intervention through local support services can be more cost effective as it better address the issues women face that causes them to offend. Furthermore, the report seeks to remedy the situation where prison is the first time vulnerable women in society are able to access local services to receive the support they need.<sup>83</sup>

Jenny Earle, director of the Prison Reform Trust's Programme to Reduce Women's Imprisonment, said:

"Effective community alternatives for women, which tackle the underlying causes of their offending, face a very uncertain future due to the upheaval of probation services. Many women's centres are already experiencing reduction or loss of funding and are struggling to survive financial insecurity. The Government must act swiftly and decisively to assure the future of these women's services."<sup>84</sup>

Due to the changes in the funding arrangements, there is uncertainty as to the continuance of many women's centres. Some have lost funding or have been given reduced funding, often at short notice, making financial planning very difficult.<sup>85</sup>

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<sup>79</sup> *Reforming Women's Justice: Final Report of the Women's Justice Taskforce*, Prison Reform Trust, 2011, p 7, <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women's%20Justice%20Taskforce%20Report.pdf>

<sup>80</sup> One example relates to refuges: <http://www.theguardian.com/society/2014/aug/03/domestic-violence-refuge-crisis-women-closure-safe-houses>

<sup>81</sup> *Diverting Women Away from Crime: A Guide to the Women's Community Projects*, Ministry of Justice, May 2010 [http://www.cps.gov.uk/legal/assets/uploads/files/diverting\\_women\\_away\\_from\\_crime.pdf](http://www.cps.gov.uk/legal/assets/uploads/files/diverting_women_away_from_crime.pdf)

<sup>82</sup> *Funding of women's centres in the community: A briefing for the Justice Select Committee*, May 2013, p 6-8, <http://www.nao.org.uk/wp-content/uploads/2013/05/Funding-of-Womens-Centres-in-the-Community.pdf>

<sup>83</sup> *Reforming Women's Justice: Final Report of the Women's Justice Taskforce*, Prison Reform Trust, p i, <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women's%20Justice%20Taskforce%20Report.pdf>

<sup>84</sup> Women in the criminal justice system, Prison Reform Trust, <http://www.prisonreformtrust.org.uk/ProjectsResearch/Women>

<sup>85</sup> *Funding of women's centres in the community: A briefing for the Justice Select Committee*, May 2013, p 12, <http://www.nao.org.uk/wp-content/uploads/2013/05/Funding-of-Womens-Centres-in-the-Community.pdf>

## 12. Reoffending rates

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Many women serving short sentences go on to reoffend: 54% of women leaving prison are reconvicted within one year; for those serving less than 12 months this increases to 64%.<sup>86</sup> However, evidence from Anawim Women's Centre, demonstrated that only 3% of women using its support services went on to commit further offences and 7% breached their community order.<sup>87</sup>

## 13. Women-centered services

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The Corston Independent Funders Coalition<sup>88</sup> found that: "Women offenders are often overlooked in policy decisions as they form such a minority, albeit a proportionately costly one. Policy reform necessarily needs to include external service providers beyond the criminal justice system in order to address the multiplicity of complex needs arising from those women committing an array of offences."<sup>89</sup> Research conducted by Social Justice Solutions (SJS) found that the top three critical factors for delivering high quality services to vulnerable women in the community were:

- Gender specific, holistic approach that is flexible and tailored to meet individual needs, offering early and intensive support where appropriate.
- Strong partnerships with other service providers and joint working arrangements with statutory criminal justice agencies.
- Women-centred services informed by service user engagement in design/delivery and service- user satisfaction.<sup>90</sup>

## 14. Multiple needs

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Analysis of data for 11,763 women under probation supervision who had received an OASys (Offender Assessment System) assessment<sup>91</sup> showed that 76% had two or more needs and that a significant number are particularly "high need". Women offenders experience high rates of mental health disorders, victimisation, abuse, and substance misuse, and have low skills and rates of employment. Their specific needs are distinct from those of male offenders.<sup>92</sup> OASys data also suggests women offenders have more problems with their relationships (59%) than male offenders (35%), this includes poor childhood experiences and poor close family relationships, and abuse. Stable relationships have been recognised as a factor in reducing reoffending, and having family ties is positively linked to successful prisoner resettlement and reducing reoffending.<sup>93</sup>

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<sup>86</sup> *Reforming Women's Justice: Final Report of the Women's Justice Taskforce*, Prison Reform Trust, 2011, p 1, <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women's%20Justice%20Taskforce%20Report.pdf>

<sup>87</sup> *Ibid*, p 14, <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women's%20Justice%20Taskforce%20Report.pdf>

<sup>88</sup> The Corston Coalition was an independent fund raiser started to raise awareness of the ongoing problem of a rising number of women in prison throughout the UK. More details can be found on the group's website. <http://www.corstoncoalition.org.uk>

<sup>89</sup> *Transforming Rehabilitation: A revolution in the way we manage offenders*, Government Consultation Paper CP1/2013, Response from Women's Breakout, February 2013, p 11

<sup>90</sup> 'Transforming Rehabilitation: A revolution in the way we manage offenders' Government Consultation Paper CP1/2013, Response from Women's Breakout, February 2013, p 10 of 13, <http://www.womensbreakout.org.uk/wp-content/uploads/downloads/2013/02/Transforming-Rehabilitation-Consultation-response-final-22-February-2013.pdf>

<sup>91</sup> OASys is a risk and needs assessment tool. See Offender Assessment and Sentence Management - OASys, Prison Service Order No.2205

<sup>92</sup> Short Study on Women Offenders, Social Exclusion Task Force, Ministry of Justice / Cabinet Office, p 4 [http://webarchive.nationalarchives.gov.uk/+http://www.cabinetoffice.gov.uk/media/209663/setf\\_shortstudy\\_womenoffenders.pdf](http://webarchive.nationalarchives.gov.uk/+http://www.cabinetoffice.gov.uk/media/209663/setf_shortstudy_womenoffenders.pdf)

<sup>93</sup> Short Study on Women Offenders, Social Exclusion Task Force, Ministry of Justice / Cabinet Office, at p 11 <http://webarchive>.

Surveying Prisoner Crime Reduction (SPCR) prisoners' childhood and family backgrounds were often problematic, with a large minority reporting having lived in care, or having experienced abuse and/or observed violence as a child.<sup>94</sup> Those experiencing care, abuse, or having observed violence in the home as a child, had higher one-year reconviction rates than those without these issues.<sup>95</sup> One of the major issues relates to mental health. In 2007, Lord Bradley was asked to undertake a six-month independent review to determine to what extent offenders with mental health problems or learning disabilities could be diverted from prison to other services and what were the barriers to such diversion. The review was extended to a 12-month period, allowing Lord Bradley to consider the "offender pathway" and associated mental health services, not just the then current court liaison and diversion schemes. The report made a number of recommendations.<sup>96</sup> These included:

- A comprehensive mentoring programme for people leaving custody with mental health problems or learning disabilities and returning to the community should be established.
- All staff in schools and primary healthcare, including GPs, should have mental health and learning disability awareness training in order to identify individuals (children and young people in particular) needing help and refer them to specialist services.
- Community support officers and police officers should link with local mental health services to develop joint training packages for mental health awareness and learning disability issues.
- Information on an individual's mental health or learning disability needs should be obtained prior to an Anti-Social Behaviour Order or Penalty Notice for Disorder being issued, or for the pre-sentence report if these penalties are breached.
- The Criminal Justice Mental Health Teams should have direct involvement with and input into local Multi Agency Public Protection Arrangements (MAPPA).

## 15. Violence and abuse

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The Corston Report in 2007 found that women with histories of violence and abuse are over represented in the criminal justice system. Up to 50% of women in prison reported having experienced violence at home compared with a quarter of men. One in three women in prison have suffered sexual abuse compared with just under one in ten men. One in 20 women (all women not just prisoners for whom the figure may be higher) have been raped at least once since the age of 16.<sup>97</sup> Forty-six per cent of female offenders in prison have been identified as having suffered a history of domestic abuse.<sup>98</sup> In a case study of 50 prolific self-harmers in women's prisons, conducted for Baroness Corston by the Safer Custody Group (SCG) in the National Offender Management Service (NOMS), only 12 of the women reported that they had *not* experienced abuse or rape in their lives. Of those women who disclosed past abuse, 18 said that they had been abused as a child.<sup>99</sup> Here are some shocking statistics:

- (i) Experiences of physical abuse and sexual abuse were recorded in the majority of women's pre-sentence reports (74.5% physical abuse, 10.5% sexual abuse).<sup>100</sup>
- (ii) Over half the women in prison reported having suffered domestic violence and one in three had experienced

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[nationalarchives.gov.uk/+http://www.cabinetoffice.gov.uk/media/209663/setf\\_shortstudy\\_womenoffenders.pdf](http://nationalarchives.gov.uk/+http://www.cabinetoffice.gov.uk/media/209663/setf_shortstudy_womenoffenders.pdf)

<sup>94</sup> Kim Williams, Vea Papadopoulou and Natalie Booth (March 2012) *Prisoners' Childhood and Family Backgrounds: Results from the Surveying Prisoner Crime Reduction (SPCR) Longitudinal Cohort Study of Prisoners*, Ministry of Justice Research Series 4/12, p 24, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/278837/prisoners-childhood-family-backgrounds.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278837/prisoners-childhood-family-backgrounds.pdf)

<sup>95</sup> *Ibid*, Available at <http://www.justice.gov.uk/downloads/publications/research-and-analysis/moj-research/prisoners-childhood-family-backgrounds.pdf>. NOTE: The question here specifically relates to abuse experienced as a child, not as an adult. The report examines the childhood, family background, family relationships, of 1,435 prisoners sentenced between 2005 and 2006 and a longer-term prisoner sample of 2,414 prisoners sentenced to between 18 months and four years.

<sup>96</sup> *The Bradley Report: Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system*, April 2009, [http://www.centreformentalhealth.org.uk/pdfs/Bradley\\_report\\_2009.pdf](http://www.centreformentalhealth.org.uk/pdfs/Bradley_report_2009.pdf)

<sup>97</sup> *The Corston Report: A report by Baroness Jean Corston of a review of women with particular vulnerabilities in the criminal justice system*, Home Office, 2007, para.2.3, <http://www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf>

<sup>98</sup> *Ibid*, para.5.24, <http://www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf>

<sup>99</sup> *Ibid*, para.2.3, <http://www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf>

<sup>100</sup> *Short Study on Women Offenders*, Social Exclusion Task Force, Ministry of Justice/Cabinet Office, p 15, [http://webarchive.nationalarchives.gov.uk/+http://www.cabinetoffice.gov.uk/media/209663/setf\\_shortstudy\\_womenoffenders.pdf](http://webarchive.nationalarchives.gov.uk/+http://www.cabinetoffice.gov.uk/media/209663/setf_shortstudy_womenoffenders.pdf)

sexual abuse.<sup>101</sup> At least one in four women experience domestic violence in their lifetime, and between one in eight and one in ten women experience it annually. Less than half of all incidents are reported to the police, but they still receive one domestic violence call every minute in the UK.<sup>102</sup>

- (iii) Even before the current austerity measures that have seen funding for violence against women's services cut, over one in four local authorities in Britain had no specialised violence against women support services at all.<sup>103</sup>
- (iv) Women offenders are far more likely to have experienced domestic and sexual violence than the general female population: evidence suggests that between 50% and 80% of women in prison have experienced domestic and/or sexual abuse. There is also a high prevalence of current and past domestic and sexual violence amongst women on community-based sentences and they may continue to experience violence from partners and ex-partners whilst serving their sentence.<sup>104</sup>
- (v) Over half of the women in prison report having suffered domestic violence and one in three has experienced sexual abuse.<sup>105</sup>
- (vi) Concentrations of particular kinds of experience in women's prisons reflect patterns of gender relations in society as a whole. A third of women prisoners have been sexually abused, for example, and over half have been victims of domestic violence.<sup>106</sup> This is according to Prison Reform Trust July 2010 findings, but figures in Autumn 2013 are very similar.
- (vii) Many female offenders have a background of abuse, and first-hand experience of the care system. The proportion of women prisoners that report abuse in their lifetime is double that of males.<sup>107</sup> Forty-two per cent of young female offenders have experienced domestic violence.<sup>108</sup>
- (viii) In a case study conducted by the Safer Custody Group of 50 "prolific self-harmers", only 12 of the women studied had not experienced abuse or rape in their lives. Of those who had experienced rape or abuse, 18 were children when it happened. Half had been in a psychiatric inpatient unit in the past, and 19 had been receiving psychiatric treatment prior to custody.<sup>109</sup>
- (ix) The Crime Survey for England and Wales (CSEW) self-completion module showed that a greater proportion of women (7%) interviewed in 2011/12 reported being victims of intimate violence (partner or family non-physical abuse, threats, force, sexual assault or stalking) than men (5%).<sup>110</sup>
- (x) The 2011/12 Crime Survey for England and Wales (CSEW) module was completed by 5,991 women and over 5,129 men. It showed that a higher proportion of women than men aged 16 to 59 reported having been victims of intimate violence (across all categories of abuse) once or more in the last year (7% and 5%) and since age 16 (31% and 18%).<sup>111</sup>
- (xi) A greater proportion of women reported having been sexually assaulted than men. In 2011/12, 3% of women and 0.3% of men aged 16-59 years reported having experienced at least one or more sexual assaults (including attempts) in the previous year. Serious sexual assaults (including attempts) were experienced by 0.6% of women (aged 16-59) surveyed, and fewer than 0.1% of men surveyed.<sup>112</sup>
- (xii) Twenty-nine per cent of Surveying Prisoner Crime Reduction (SPCR) prisoners stated that they had experienced emotional, physical or sexual abuse as a child. Women (53%) were more likely to report having experienced some sort of abuse than men (27%), as were prisoners from a non-black, asian and minority ethnic (BAME) background (31%), compared with prisoners from a BAME background (20%). Those serving short-term sentences were more likely to state that they had experienced abuse as a child than those on longer-term sentences (29% compared with 24%).<sup>113</sup>

<sup>101</sup> *Short Study on Women Offenders*, Social Exclusion Task Force, Ministry of Justice / Cabinet Office, p 15, 34 [http://webarchive.nationalarchives.gov.uk/+/http://www.cabinetoffice.gov.uk/media/209663/setf\\_shortstudy\\_womenoffenders.pdf](http://webarchive.nationalarchives.gov.uk/+/http://www.cabinetoffice.gov.uk/media/209663/setf_shortstudy_womenoffenders.pdf)

<sup>102</sup> *Safety, Justice and Support*, Fawcett Society, <http://www.fawcettsociety.org.uk/issue/crime-andjustice/#sthash.KL1wb7H3.dpuf>

<sup>103</sup> *Ibid*, <http://www.fawcettsociety.org.uk/issue/crime-andjustice/#sthash.KL1wb7H3.dpuf>

<sup>104</sup> *Supporting women offenders who have experienced domestic and sexual violence*, Women's Aid, 2011, p 7, [www.womensaid.org.uk/core/core\\_picker/download.asp?id=3409](http://www.womensaid.org.uk/core/core_picker/download.asp?id=3409)

<sup>105</sup> *Breaking the Cycle Effective Punishment, Rehabilitation and Sentencing of Offenders*, CM 7972, Ministry of Justice, 2012, para 104, [www.justice.gov.uk/consultations/docs/breaking-the-cycle.pdf](http://www.justice.gov.uk/consultations/docs/breaking-the-cycle.pdf)

<sup>106</sup> Rowe, A (2011) *Doing prison: experiences of women in the UK prison system*, Politics, Social policy, criminology, The Open University.

<sup>107</sup> *Strategic objectives for female offenders*, Ministry of Justice, March 2013, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/177038/strategic-objectives-female-offenders.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/177038/strategic-objectives-female-offenders.pdf)

<sup>108</sup> *Safety, Justice and Support*, Fawcett Society, <http://www.fawcettsociety.org.uk/issue/crime-andjustice/#sthash.KL1wb7H3.dpuf>

<sup>109</sup> *Short Study on Women Offenders*, Social Exclusion Task Force, Ministry of Justice / Cabinet Office, p 55 [http://webarchive.nationalarchives.gov.uk/+/http://www.cabinetoffice.gov.uk/media/209663/setf\\_shortstudy\\_womenoffenders.pdf](http://webarchive.nationalarchives.gov.uk/+/http://www.cabinetoffice.gov.uk/media/209663/setf_shortstudy_womenoffenders.pdf)

<sup>110</sup> *Statistics on Women and the Criminal Justice System*, 2011, Ministry of Justice, p 10 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/220081/statistics-women-cjs-2011-v2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220081/statistics-women-cjs-2011-v2.pdf)

<sup>111</sup> *Statistics on Women and the Criminal Justice System*, 2011, A Ministry of Justice, p 10 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/220081/statistics-women-cjs-2011-v2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220081/statistics-women-cjs-2011-v2.pdf)

<sup>112</sup> *Statistics on Women and the Criminal Justice System*, 2011, A Ministry of Justice, p 10 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/220081/statistics-women-cjs-2011-v2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220081/statistics-women-cjs-2011-v2.pdf)

<sup>113</sup> *Prisoners' childhood and family backgrounds: Results from the Surveying Prisoner Crime Reduction (SPCR) longitudinal cohort study of*

- (xiii) Female prisoners who had experienced abuse as a child were more likely to report suffering sexual abuse (67%) than male prisoners who had experienced abuse (24%). It is possible that women are more likely to report sexual abuse than men. There were no significant differences between men and women for emotional and physical abuse. There was little difference between those from a non-BAME and BAME background and short- and longer-term prisoners who stated that they had suffered abuse with regards to the type of abuse they reported suffering.<sup>114</sup>
- (xiv) 41% of Surveying Prisoner Crime Reduction (SPCR) prisoners said that they had observed violence at home as a child. Women were more likely (50%) to report having observed violence at home than men (40%). Prisoners from a non-BAME background (42%) were more likely to report having observed violence than prisoners from a BAME group (32%), as were short-term prisoners compared to longer-term prisoners (42% compared to 36%).<sup>115</sup>
- (xv) Prisoners who stated they currently had a family member with an alcohol problem (18% of the sample) were more likely to report having experienced abuse as a child than those who did not report having family members with an alcohol problem (53% compared to 23%). These prisoners were also more likely to have reported observing violence in the home as a child (65% compared to 35%). Similar results were found for those stating that they had a current family member with a drug problem (14% of the sample). Forty-two% of these prisoners stated that they had experienced abuse, and 62% reported they had observed violence as a child, compared to 26% and 36% respectively of those who did not.<sup>116</sup>
- (xvi) Those Surveying Prisoner Crime Reduction (SPCR) prisoners who had experienced abuse or observed violence in the home as a child were more likely than those who had not to be reconvicted after release from custody (58% of those who had experienced abuse were reconvicted, compared to 50% who had not, and 58% who had observed violence were reconvicted, compared to 48% who had not).<sup>117</sup>

## 16. Black and minority ethnic (BME) and foreign national women (FNW) in prison

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Prison Service Order 4800: Women Prisoners states: “BME women and foreign nationals are more likely to experience isolation in custody leading to increased levels of depression but may be less likely to seek help from health care staff.”<sup>118</sup> Various sources identify both BME and FNW as significant and vulnerable proportions of the female prison population. Although statistics show that the number of FNW in prison has fallen since 2007, they still represent a high proportion of women in prison. In this paper we look at statistics on the BME and FNW prison populations, their distinct crime patterns of crime and particular risks they face while in prison, briefly at what support is available to them, and finally sentencing approaches.

The most prevalent offence FNW commit are drug offences, involving the import and export of drugs. The Sentencing Council has expressed the need for a sentencing guideline for cases involving the importation of controlled drugs, including the particular issues raised in relation to the sentencing of foreign nationals. Studies have indicated that more BME women go to prison for drug offences, but fewer BME women are actually dependent on drugs compared to white women in prison. Particular problems faced by foreign national women are not being addressed, and factors such as language barriers mean that they are less able to access support services that do exist. Furthermore, due to the majority of BME being situated in cities, they have more difficulties in maintaining family contact while in prison, partly due to the distances that they are imprisoned from their home.

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*prisoners*, Ministry of Justice Research Series 4/12, March 2012, p 9, table 2.3, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/278837/prisoners-childhood-family-backgrounds.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278837/prisoners-childhood-family-backgrounds.pdf)

<sup>114</sup> *Prisoners' childhood and family backgrounds: Results from the Surveying Prisoner Crime Reduction (SPCR) longitudinal cohort study of prisoners*, Ministry of Justice Research Series 4/12, March 2012, p 9, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/278837/prisoners-childhood-family-backgrounds.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278837/prisoners-childhood-family-backgrounds.pdf)

<sup>115</sup> *Prisoners' childhood and family backgrounds: Results from the Surveying Prisoner Crime Reduction (SPCR) longitudinal cohort study of prisoners*, Ministry of Justice Research Series 4/12, March 2012, p 10, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/278837/prisoners-childhood-family-backgrounds.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278837/prisoners-childhood-family-backgrounds.pdf)

<sup>116</sup> *Prisoners' childhood and family backgrounds: Results from the Surveying Prisoner Crime Reduction (SPCR) longitudinal cohort study of prisoners*, Ministry of Justice Research Series 4/12, March 2012, p 10, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/278837/prisoners-childhood-family-backgrounds.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278837/prisoners-childhood-family-backgrounds.pdf)

<sup>117</sup> *Prisoners' childhood and family backgrounds: Results from the Surveying Prisoner Crime Reduction (SPCR) longitudinal cohort study of prisoners*, Ministry of Justice Research Series 4/12, March 2012, p 10, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/278837/prisoners-childhood-family-backgrounds.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278837/prisoners-childhood-family-backgrounds.pdf)

<sup>118</sup> Prison Service Order 4800, Women Prisoners, Issued 28 April 2008, p 13, <https://www.justice.gov.uk/offenders/types-of-offender/women>

The foreign national prison population sentenced to immediate custody stood at 7,516 on 30 June 2011. There was a slightly higher proportion of women in this total (7%) than in the sentenced prison population as a whole (5%).

The differences in offence profiles were more pronounced among foreign national versus British national women in prison. Of this population, on 30 June 2011:

- 39% were in prison for drugs offences (compared with 18% for British national women); and
- 14% were in prison for fraud and forgery (compared with 3% for British national women).

British national women were in prison more often for violence against the person (29%) or robbery (10%) than FNW (13% and 3% respectively).

Juliet Lyon, Director of the Prison Reform Trust, has said:

“Far too many foreign national women are languishing in British jails having been coerced or trafficked into offending. There are ways out of this mess but only if the government is prepared to redouble its efforts to catch the traffickers, who profit from their grubby trade, rather than allowing the burden of punishment to fall on vulnerable women; many of whom have been victims as well as perpetrators of crime.”<sup>119</sup>

## 17. Pregnancy and child care in prison

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Studies have found maternal risk is *directly* related to the child’s cognition thus reinforcing the integral role of the mother in the child’s cognitive development at infancy. Mother and baby units (MBUs) allow women who give birth in prison to keep their baby with them for the first 18 months, or allow women prisoners with a child under 18 months old to apply to bring their baby to prison. Children over 18 months old are usually cared for externally, and social services may make these arrangements. However, there are generally fewer places available in the MBUs than the number of women with babies, and prisoners must apply for a place.<sup>120</sup> An admissions board decides whether or not to allocate a space, and its principal consideration is what is in the best interests of the child. The decision as to whether to award a place in an MBU can be taken in consultation with a local authority’s social services department. If the admissions board awards a place but there are no spaces available at the prisoner’s current prison then she may be offered a place at a unit elsewhere. There is an appeal process for mothers who are not awarded a place in a unit.<sup>121</sup> The statutory instrument laid on 4 November 2013 would remove legal aid funding for women seeking legal advice and assistance to appeal a refusal to grant a MBU space. Subject to means and merits (and the residence test), a judicial review case for the decision taken by the admission board could still be funded.<sup>122</sup>

Seven women prisons had MBUs where the child is allowed to remain with the mother until 18 months of age unless in exceptional circumstances. This was regulated by PSO 4801 (supplementing PSO 4800, as to which, see above) which gives specific direction as to the management of MBUs. PSO 4081 is now replaced by PSI 54/2011. Her Majesty’s Inspectorate of Prisons (HMIP) reports are in general positive with some exceptions. It appears that more could be done to train prison officers deployed to MBUs. Parenting training also appears to be lacking.

There is no specific PSO or PSI<sup>123</sup> dealing with the management of pregnant prisoners. It would appear that this lack of specific centralised regulation has led to a large variation in the amount and standard of healthcare services offered to pregnant women across the prisons. This observation is made by Maternity Action through qualitative data obtained by

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<sup>119</sup> *No Way Out: a briefing paper on foreign national women in prison in England and Wales*, Prison Reform Trust, 2012, <http://www.prisonreformtrust.org.uk/portals/0/documents/nowayout.pdf>

<sup>120</sup> The Ministry of Justice reports that the number of MBU places nationally is 77 (84 spaces in total to allow for twins): <http://www.justice.gov.uk/offenders/types-of-offender/women>

<sup>121</sup> See <https://www.gov.uk/life-in-prison/pregnancy-and-childcare-in-prison> for the guidelines on MBUs places

<sup>122</sup> *The implications for access to justice of the Government’s proposals to reform legal aid*, Joint Committee on Human Rights Report on the Government’s Legal Aid Proposals, Seventh Report of Session 2013–14, <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/100/100.pdf>

<sup>123</sup> Prison Service Instruction

interviews with relevant personnel – midwives in particular were frustrated in their efforts to offer an antenatal service comparable to that offered outside of prison.<sup>124</sup>

The lack of centralised direction means services for pregnant women are subject to the initiatives of employees of specific prisons – individual prisons tend to run to their own rules and maternity care is often provided in an inconsistent and ad hoc manner.<sup>125</sup> Some prisons such as HMP Holloway are more successful than others in addressing the needs of expecting mothers. For instance, HMP Holloway allows access to a drop-in clinic three times a week. In contrast HMP Styal has access to only one weekly clinic. It has also made efforts towards accommodating all pregnant women on one wing subject to their wishes but these are limited by operational constraints. It is also noted that some prisons offer ante-natal classes while others do not.<sup>126</sup>

It thus seems that due to the lack of a minimum standard, the discretion of the individual prisons play a large role in determining the level of care received. Maternity Action suggests a PSO directly addressing the needs of pregnant women. The report published in 2013<sup>127</sup> has not noted that PSOs are no longer issued after 31 July 2009.<sup>128</sup> Rules, regulations and guidelines are now outlined in PSIs since August 2009. Apart from the clear lacuna in policy, there are also administrative issues. These include staff shortages, slow decision-making processes and movement of pregnant prisoners at short notice.

## 18. Girls and young women entering the criminal justice system

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The ways in which women and girls in prostitution vulnerable to sexual exploitation come to the attention of the authorities is often through crime. This means they are criminalised when it may be more appropriate to recognise and treat them as victims. According to the Howard League for Penal Reform, “often girls and young women come to the attention of the authorities due to offences they have committed as a result of their sexual exploitation. Many girls use crime as a means to escape their exploiters or as a cry for help. Some use it as a way to express a sense of justice as they feel excluded from traditional mechanisms of justice”.<sup>129</sup>

## 19. International law: an overview

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States assume obligations under international law to respect, to protect and to fulfil human rights. Individuals are entitled to human rights and should also respect the human rights of others. This includes offenders. *The Universal Declaration of Human Rights* (UDHR) preamble recognises that “the equal and inalienable rights of all members of the human family are the foundation of freedom, justice and peace in the world”.<sup>130</sup> The Declaration emphasises the need for “a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society”. This applies to all people regardless of whether they are offenders or prisoners. There are, of course, some rights which are qualified but the basic principles that human beings are born free and equal in

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<sup>124</sup> *Getting It Right? Services for pregnant women, new mothers and babies in prison*, Jenny North, p 12, <http://www.maternityaction.org.uk/wp/wp-content/uploads/2013/09/prisonsreport.pdf>

<sup>125</sup> *Ibid*, p 13, <http://www.maternityaction.org.uk/wp/wp-content/uploads/2013/09/prisonsreport.pdf>

<sup>126</sup> *Ibid*, p 13, <http://www.maternityaction.org.uk/wp/wp-content/uploads/2013/09/prisonsreport.pdf>

<sup>127</sup> A publication date is not listed on the report itself but it was posted to Maternity Action’s website in 2013

<sup>128</sup> See <http://www.justice.gov.uk/offenders/psos>

<sup>129</sup> *Out of Place: the policing and criminalisation of sexually exploited girls and young women*, The Howard League for Penal Reform, 2012, [https://d19ylpo4aovc7m.cloudfront.net/fileadmin/howard\\_league/user/pdf/Publications/Out\\_of\\_place.pdf](https://d19ylpo4aovc7m.cloudfront.net/fileadmin/howard_league/user/pdf/Publications/Out_of_place.pdf)

<sup>130</sup> Universal Declaration of Human Rights (UDHR), GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948) [Preamble].

dignity and rights remains.<sup>131</sup>

Standard Minimum Rules providing a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment, were set out in The United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), GA res 45/110, Annex, 45 UN GAOR Supp (No 49A) at 197, UN Doc A/45/49 (1990): “The Rules are intended to promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society.”<sup>132</sup> The fundamental aims are set out as follows:

- 1.3 The Rules shall be implemented taking into account the political, economic, social and cultural conditions of each country and the aims and objectives of its criminal justice system.
- 1.4 When implementing the Rules, Member States shall endeavour to ensure a proper balance between the rights of individual offenders, the rights of victims, and the concern of society for public safety and crime prevention.
- 1.5 Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalise criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.

## 20. The International Covenant on Civil and Political Rights (ICCPR)

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The United Kingdom of Great Britain and Northern Ireland signed the ICCPR on 16 September 1968 and acceded to the Covenant on 18 March 1969.<sup>133</sup> Article 1 provides that all peoples have... the right to freely determine their political status and freely pursue their economic, social and cultural development... in conformity with the provisions of the Charter of the United Nations. By Art 2, each State Party... undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. By Art 3, those who have their rights violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity. It follows that international human rights law is binding on the UK and their agents, including prison officials.<sup>134</sup> These rights are to be applied equally to men and women.<sup>135</sup>

## 21. The International Covenant on Economic, Social and Cultural Rights (ICESCR)

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The UK signed the ICESCR on 16 September 1968 and acceded to the Covenant on 20 May 1976.<sup>136</sup> The preamble recognises that human rights derive from the inherent dignity of the human person. Article 1 provides that all peoples have... the right to freely determine their political status and freely pursue their economic, social and cultural development and signatories guarantee these rights are to be “exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.<sup>137</sup> This

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<sup>131</sup> UDHR preamble and Art 1; ICCPR preamble

<sup>132</sup> <http://www1.umn.edu/humanrts/instree/i6gunsmr.htm>

<sup>133</sup> [https://treaties.un.org/pages/viewdetails.aspx?chapter=4&src=treaty&mtdsg\\_no=iv-4&lang=en#EndDec](https://treaties.un.org/pages/viewdetails.aspx?chapter=4&src=treaty&mtdsg_no=iv-4&lang=en#EndDec)

<sup>134</sup> See, for example, the code of conduct for law enforcement officers. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>

<sup>135</sup> See Art 4 ICCPR

<sup>136</sup> [https://treaties.un.org/pages/viewdetails.aspx?chapter=4&lang=en&mtdsg\\_no=iv-3&src=treaty](https://treaties.un.org/pages/viewdetails.aspx?chapter=4&lang=en&mtdsg_no=iv-3&src=treaty)

<sup>137</sup> Article 2 ICESCR

applies in the employment context<sup>138</sup> of work and the family, to include protection and assistance to a family, and the care and education of dependent children.<sup>139</sup> There are a number of provisions in the ICCPR relevant to the treatment of prisoners:

- Article 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
- Article 10.1: All persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person.
- Article 10.3: The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.

## 22. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

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The UK has an international obligation to eliminate discrimination against women pursuant to the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*. The UN Committee on the Elimination of Discrimination against Women has held that the treatment and conditions of detention for women must be gender-sensitive.<sup>140</sup>

## 23. UK response to CEDAW

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In June 2011, the UK Government submitted its seventh periodic report to CEDAW. Paragraphs 22 to 29 deal with women offenders and read as follows:

- (22) The UK Government is committed to diverting women away from crime and to tackling women's offending effectively. It broadly accepted the conclusions in Baroness Corston's March 2007 report on "A Review of Women with Particular Vulnerabilities in the Criminal Justice System" and is supportive of reducing the number of vulnerable women in prison. In order to divert vulnerable women who do not pose a risk to the public away from custody, there is a continuing programme of work underway to provide effective community options for the courts, including:
- » over £10m of grant funding provided by the Ministry of Justice (MoJ) for voluntary sector organisations to deliver a network of over 40 community-based interventions for women to tackle the underlying causes of their offending;
  - » funding an enhanced women's bail service to provide intensive personalised support for up to 500 women in 2010/11;
  - » working with a Coalition of Independent Funders to strategically fund high level initiatives to support women's organisations which work to change the behaviour of women at risk or who have offended;
  - » working with the voluntary sector, the criminal justice system and other partners in promoting the new community options to the courts;
  - » changing the use of a women's prison so that the target to reduce the women's prison estate by 300 places by March 2011 has been met and further supporting the target to reduce the number of female prison places by 400 by March 2012;
  - » supporting a project to explore the benefits of early intervention for women with multiple needs in order to divert them at their first point of contact with the criminal justice system; and funding 25 local authorities to deliver women-specific family intervention services in 2010/12 as part of a wider approach to supporting

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<sup>138</sup>Article 7 ICESCR

<sup>139</sup>Article 10 ICESCR

<sup>140</sup> *Inga Abramova v Belarus*, Communication No 23/2009, UN Doc CEDAW/C/49/D/20/2008 (29 August 2011)

families with multiple problems.

- (23) The UK Government has recently set out its vision of more effective punishment and rehabilitation of offenders in the Green Paper "Breaking the Cycle, Effective Punishment, Rehabilitation and Sentencing of Offenders". Through the proposals set out in the Green Paper, the UK Government will ensure that women who offend are successfully rehabilitated, whether they serve sentences in custody or in the community. The UK Government is also developing a strategy that will ensure that the women's sentence delivery, in both custodial and community environments, is fit for purpose and meets the complex needs of women offenders.
- (24) The National Offender Management Service (NOMs) has committed to provide funding to sustain the majority of women's community-based services in the financial year 2011/12. It has also made a commitment from 2012/13 onwards to commission services that demonstrate their effectiveness in diverting women from custody.
- (25) It is not UK Government policy to accommodate female offenders under the age of 18 in adult prisons. Those aged 17 are accommodated in dedicated units commissioned by the Youth Justice Board and run by the prison service. Those under the age of 17 are held in either secure training centres or secure children's homes. There has been approximately a 14% fall in the number of young people (under 18) in custody over the past five years. In Northern Ireland, female offenders under the age of 18 are accommodated in the Juvenile Justice Centre.
- (26) The UK Government believe that all offenders with learning needs should have a personalised learning offer, based on a proper assessment of needs and set out clearly in an Individual Learning Plan tailored to them. Through the new Offender Learning and Skills Service Contracts in 2009 it has enhanced existing services, including by providing:
- » individual screening followed by appropriate assessment to identify the individual's learning and skills needs;
  - » a broad-based curriculum in custody, but with a strong "core" to facilitate progression on transfer, in order to meet learning needs;
  - » properly managed transition into the community on release, including signposting female offenders to places where they can get the advice and support they need eg relevant Women's Centres and organisations; and
  - » Information, Advice and Guidance services to support offenders with learning needs. These services are integrated into the universal adult careers service. This ensures support and guidance is provided for all women, including all offenders.
- (27) The Northern Ireland Executive published a three-year strategy on 29 October 2010, entitled "A Strategy to Manage Women Offenders and those Vulnerable to Offending Behaviour". A key aim of the strategy is to reduce the number of women entering the criminal justice system in Northern Ireland. To achieve this, it focuses on four key areas:
- » providing alternatives to prosecution and custody;
  - » reducing women's offending;
  - » gender-specific community supervision and interventions; and
  - » developing a gender-specific approach to custody.
- (28) Northern Ireland has reviewed the current location of women prisoners and, in keeping with the development of its overall strategy, the Northern Ireland Prison Service has been examining the options for providing more appropriate purpose-built accommodation and facilities for women prisoners. In the interim, the Northern Ireland Prison Service has an ongoing programme of improvement and refurbishment of women's prison facilities.
- (29) The Scottish Government has:
- » opened two Community Integration Units. These enable low supervision female prisoners coming to the end of their sentence to prepare for reintegration into the community by providing them with a structured programme of opportunities, such as college or family visits;
  - » continued funding of £1.7m per annum for the 218 Centre in Glasgow, a specialist multi-disciplinary facility for women offenders who may have co-existing addiction issues. The 218 Centre has both residential and day programmes and provides a unique opportunity to deliver responsive and innovative social care and health services from a single site;
  - » introduced the Community Payback Order which provides the opportunity for the order to be tailored to the needs of women offenders, with guidance underlining the importance of ensuring access to appropriate unpaid work, taking account of childcare or other caring requirements; and
  - » given community justice authorities an additional £800,000 funding per year for 2010/11 and 2011/12 to strengthen efforts to prevent women reoffending. These fund programmes such as a mentoring project for women on community disposals or on release from prison.

## 24. Other international instruments

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Other international instruments are binding on the UK. The following list is largely taken from the UN publication *Human Rights and Prisons: A Pocketbook of International Human Rights Standards for Prison Officials*. See that publication for all relevant footnotes for each bullet point set out in this document. Taken together, these instruments are designed to ensure the following:<sup>141</sup>

### Non-custodial measures

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- The use of non-custodial measures should be recommended and encouraged.
- Non-custodial measures should be applied without discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status.
- Consideration should be given where possible to dealing with offenders in the community, without resort to the courts.
- Non-custodial measures should be used in accordance with the principle of minimum intervention.
- Any form of release from an institution to a non-custodial programme shall be considered at the earliest possible stage.
- There should be suitable mechanisms to facilitate linkages between services responsible for non-custodial measures and other relevant agencies in the criminal justice system, social development and welfare agencies, both governmental and non-governmental, in such fields as health, housing, education and labour, and the mass media.
- The criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions in order to avoid the unnecessary use of imprisonment.
- Pre-trial detention shall be used as a means of last resort in criminal proceedings, and alternatives to pre-trial detention should be employed as early as possible.
- The number and types of non-custodial measures available should be determined in such a way that consistent sentencing remains possible.
- Sentencing authorities when considering non-custodial measures, should take into consideration the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted whenever appropriate.
- The development of non-custodial measures should be encouraged and closely monitored and their use systematically evaluated.

### Prisoners

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- All persons deprived of their liberty shall be treated at all times with humanity and with respect for the inherent dignity of the human person.
- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.<sup>142</sup>
- Law enforcement officials should be fully informed and educated and apply international standards for human rights.
- All persons deprived of their liberty have the right to physical and moral integrity.
- All persons deprived of their liberty have the right to an adequate standard of living.
- All persons deprived of their liberty have the right to the enjoyment of the highest attainable standards of physical and mental health.
- Prisons should be safe environments for all who live and work in them – inmates, staff and visitors.
- The aim of prison authorities in their treatment of prisoners should be to encourage personal reformation, re-integration and social rehabilitation to help prisoners to lead law-abiding and self-supporting lives after release and to give prisoners skills via work, education, religious and cultural activities and involved as much as possible with family and community.
- Prisoners to have contact with the outside world to include, news, family and diplomatic representatives and requests to be held in a prison near his/her home to be granted as far as possible.
- Prisoners have the right to complain and the right to reasonable facilities for communication, interpretation and effective remedies. All persons are equal before the law and are entitled to protection of the law without discrimination.

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<sup>141</sup> Largely taken from the UN publication *Human Rights and Prisons: A Pocketbook of International Human Rights Standards for Prison Officials*. See that publication for all relevant footnotes for each bullet point set out in this document.

<sup>142</sup> For definitions see UDHR and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. This also includes scientific experimentation which may be detrimental to health

## Women prisoners in particular

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There are no exceptions. In relation to women prisoners in particular, the collective approach of international law is designed to ensure the following:

- Women are entitled to the equal enjoyment and protection of all human rights in political, economic, social, cultural, civil and all other fields.
- Women prisoners shall not suffer discrimination and shall be protected from all forms of violence or exploitation.
- Women prisoners shall be detained separately from male prisoners.
- Women prisoners shall be supervised and searched only by female officers and staff.
- Pregnant women and nursing mothers who are in prison shall be provided with the special facilities which they need for their condition.
- Whenever practicable, women prisoners should be taken to outside hospitals to give birth.

## Juveniles in detention

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There are also overarching principles in relation to juveniles in detention:

- Children are to benefit from all the human rights guarantees available to adults.
- In addition, the following rules shall be applied to juveniles:
  - » Children who are detained shall be treated in a manner which promotes their sense of dignity and worth, facilitates their reintegration into society, reflects their best interests and takes their into account.
  - » Children shall not be subjected to corporal punishment, capital punishment or life imprisonment without possibility of release.
  - » Children who are detained shall be separated from adult prisoners. Accused juveniles shall be separated from adults and brought for trial as speedily as possible.
  - » Special efforts shall be made to allow detained children to receive visits from and correspond with family members.
  - » The privacy of a detained child shall be respected and complete and secure records are to be maintained and kept confidential.
  - » Juveniles of compulsory school age have the right to education and vocational training.
  - » Weapons shall not be carried in institutions which hold juveniles.
  - » Disciplinary procedures shall respect the child's dignity and be designed to instill in the child as sense of justice and self-respect and respect for human rights.
  - » Parents are to be notified of the admission, transfer, release, sickness, injury or death of a juvenile.
  - » There are additional requirements in relation to un-convicted persons who are detained and the suitability of prison/detention staff, to include recruitment of female staff.

## 25. The European Convention on Human Rights (ECHR)

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The UK is a signatory to the European Convention on Human Rights (ECHR), which is a human rights convention proposed and signed by the Council of Europe (CoE). It was adopted in 1950 and entered into force in 1953.<sup>143</sup> The CoE has 47 member states,<sup>144</sup> 28 of which are members of the European Union (EU).<sup>145</sup> All CoE member states have ratified the ECHR, which is described as “a treaty designed to protect human rights, democracy and the rule of law.”<sup>146</sup> The European

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<sup>143</sup><http://human-rights-convention.org/>

<sup>144</sup> Member states of the CoE: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Republic of Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, The Former Yugoslav Republic of Macedonia, Turkey, Ukraine, UK; Observer states: Canada, Holy See, Israel, Japan, Mexico, United States

<sup>145</sup><http://www.coe.int/en/web/about-us/our-member-states>

<sup>146</sup> <http://www.coe.int/en/web/about-us/who-we-are>

Court of Human Rights (ECtHR) regulates member states' implementation of and compliance with the ECHR.<sup>147</sup> The EU is intended to be a common European legal space for over 820 million citizens.<sup>148</sup> As set out above, in the section headed "prisoner rights", rights to family life and nondiscrimination are protected, albeit they can be qualified in relation to prisoners.

Here we do not seek to enter the debate on whether the ECHR is replaced by a British Bill of Rights but, in the light of this recent news, the discussion does need to consider future protection for the rights of women prisoners.

## 26. Other international legal obligations

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This discussion focuses on women offenders. However, also applicable to the issues being discussed are:<sup>149</sup>

- principles of medical ethics in the protection and treatment of prisoners;
- principles on detention or imprisonment;
- principles on force and firearms;
- rules for juveniles deprived of their liberty;
- the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
- the UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and
- the Convention on the Rights of the Child.

## 27. Politicians v the judiciary

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It is worth considering a short history of successive government policies:

- (i) In 1993, John Major said of law and order that "society needs to condemn a little more and understand a little less", and launched a "crusade against crime".<sup>150</sup> Tony Blair, then Shadow Home Secretary, pledged that Labour would be "tough on crime, [and] tough on the causes of crime".<sup>151</sup>
- (ii) Under the last Labour Government, prison numbers rose from 61,114 in 1997<sup>152</sup> to 84,982 in 2010<sup>153</sup>. In March 2011, Yvette Cooper, the Shadow Home Secretary, was adamant that the Labour Party "will keep up [their] long standing determination to be tough on crime and on the causes of crime and reoffending too".<sup>154</sup>
- (iii) On 27 March 2012, the then Justice Minister, Kenneth Clarke launched the *Punishment and Reform: Effective Community Sentences* consultation. The Minister had announced that there was to be a "sea change" in the way offenders are dealt with by the criminal justice system and stated that "criminals must be reformed".<sup>155</sup>
- (iv) In Autumn 2012, Mr Clarke was replaced as Minister of Justice by Chris Grayling, who pledged to be "a tough

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<sup>147</sup><http://www.coe.int/en/web/about-us/who-we-are>

<sup>148</sup> <http://www.coe.int/en/web/about-us/who-we-are>

<sup>149</sup>We have not included principles on summary execution at this stage

<sup>150</sup>Major on crime: 'Condemn more, understand less', The Independent, 21 February 1993, <http://www.independent.co.uk/news/major-on-crime-condemn-more-understand-less-1474470.html>

<sup>151</sup>*New Labour because Britain deserves better*, The Labour Party Manifesto, 1997, <http://www.labour-party.org.uk/manifestos/1997/1997-labour-manifesto.shtml>

<sup>152</sup><http://www.telegraph.co.uk/news/uknews/1551091/Blair-in-numbers.html#>

<sup>153</sup><http://www.howardleague.org/1048/>

<sup>154</sup> 'Yvette Cooper: Labour remains tough on crime, tough on the causes of crime', The Guardian, 10 March 2011, <http://www.theguardian.com/politics/wintour-and-watt/2011/mar/10/yvette-cooper-labour>

<sup>155</sup>'Clarke: Reform of community sentences and probation service's, Ministry of Justice press release, 27 March 2012, <https://www.gov.uk/government/news/clarke-reform-of-community-sentences-and-probation-services>

justice secretary”.<sup>156</sup>

The supposedly simple solution for politicians to instruct judges to send fewer women to prison does not resolve the risk of re-offending nor abate the community appetite for retribution and risks putting the legislature at loggerheads with the judiciary:

“It is not for Ministers to give instructions to judges on sentencing policy, nor indeed for the Chief Justice. There are, however, ways in which each can legitimately have an influence on this. A Home Secretary can sponsor legislation that sets the sentencing framework. He is also able to request the Sentencing Guidelines Council<sup>157</sup> to consider issuing a guideline in relation to some particular area of offending and he is someone that the Council is required, by statute, to consult before introducing a sentencing guideline. And he can, of course, seek to influence public perception and the approach of judges that may reflect public perception, by public pronouncements. Finally, and this is very important, he can make available resources necessary to present the sentencer with sentencing options that would not otherwise be available”.<sup>158</sup>

One part of this discussion therefore has to be the power of the Sentencing Council to effect change by reducing sentencing guidelines and whether it is achievable without alternatives and social provision.

## 28. Prison v community sentencing

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The Corston Report compared community sentencing to custodial sentencing and noted as follows:

- Community sentencing may involve: hard work, a curfew while holding down a job, and a requirement to keep appointments.
- Custodial prison sentencing demands less of offenders and can quickly lead to institutionalisation.
- Short sentences (around 30 days) are particularly futile (because of low expectations) and damaging (because of disruption, lost employment and accommodation), yet are common.<sup>159</sup>

The Corston Report concluded that holistic coincidence of the public, politicians and the judiciary in the alternatives to prison was key.<sup>160</sup>

Jenny Earle, director of the Prison Reform Trust’s Programme to Reduce Women’s Imprisonment, has stated:

“Effective community alternatives for women, which tackle the underlying causes of their offending, face a very uncertain future due to the upheaval of probation services. Many women’s centres are already experiencing reduction or loss of funding and are struggling to survive financial insecurity. The government must act swiftly and decisively to assure the future of these women’s services.”<sup>161</sup>

In 2006, Lord Phillips, when he was Chief Justice of England and Wales, set out the case for community sentencing at a lecture to the Centre for Criminology at Oxford University:

- “An unpaid work requirement now forms part of about 50% of community sentences imposed. Up to 300 hours can be ordered. That potentially equates to nearly six months’ worth of weekends improving the community by working without pay.

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<sup>156</sup><http://www.telegraph.co.uk/news/uknews/law-and-order/9554533/Prison-should-be-tougher-for-criminals-Justice-Secretary-Chris-Grayling-warns.html>

<sup>157</sup>Now the Sentencing Council

<sup>158</sup>‘Alternatives to Custody – The Case For Community Sentencing’, Lord Phillips of Worth Matravers, Speech at the Centre For Criminology, Oxford University, 10 May 2006, <http://www.rethinking.org.nz/images/newsletter%20PDF/Issue%2062/03%20Lord%20Phillips%20UK%20Address%20May%2006.pdf>

<sup>159</sup>*The Corston Report: A report by Baroness Jean Corston of a review of women with particular vulnerabilities in the criminal justice system*, Home Office, 2007, para.5.10, <http://www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf>

<sup>160</sup> *Ibid*, Home Office, 2007, para.6.32 et seq., <http://www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf>

<sup>161</sup> *Women in the criminal justice system*, Prison Reform Trust, <http://www.prisonreformtrust.org.uk/projectsresearch/women>

- A total of some 5 million hours are currently performed and the goal is to raise this to approaching 10 million by 2011. The aim is to involve the local community in identifying the work that they want done and to demonstrate the work that has been done by a highly visible “Community Payback” logo. A typical example of such work has been the removal of graffiti from park walls and buildings and cleaning up a children’s playground in Ipswich. More imaginative has been the use of offenders in restoring Brunel’s ship SS Great Britain in Bristol, which led some to gain qualifications in carpentry and to volunteer to continue with the work once the mandatory quota had been completed.
- An activity requirement can require an offender to present himself at a designated place, such as a community rehabilitation centre for up to 60 days. There the offender may receive help with employment, or group work on social problems. Reparative activities involving contact with those affected by offences may be included.
- A programme requirement can require an offender to participate in an accredited programme such as anger management, or a programme designed to counter sex offending or substance abuse.
- A mental health treatment requirement can direct an offender to undergo mental health treatment under the direction of a doctor or chartered psychologist.
- A drug rehabilitation requirement or an alcohol treatment requirement may be imposed.<sup>162</sup>
- Whilst there have been amendments to the community sentencing options available to the criminal courts, the brief description above sets out the nature of the options currently available to a court where the offending is deemed suitable for a community penalty.”<sup>163</sup>

## 29. Diversion

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“Diversion” is a process whereby people are assessed and their needs identified as early as possible in the offender pathway (including prevention and early intervention), thus informing subsequent decisions about where an individual is best placed to receive treatment, taking into account public safety, safety of the individual and punishment of an offence. In his review of people with mental health problems or learning disabilities in the criminal justice system, Lord Bradley identified the opportunities for diversion:<sup>164</sup>

- Police officer while at street level to use discretion and take no further action.
- To impose a formal warning. This often applies in cases of harassment.
- Record the crime but choose to take no further action. This seems largely to be applied in relation to those with mental health problems. “No further action” in this scenario should mean no further criminal justice action, but officers should signpost to or liaise with appropriate local health and social care services where a mental health or learning disability problem has been identified. This is clearly dependent on an officer’s knowledge of local services, but anecdotal evidence from stakeholders suggests that in many cases this knowledge is far from comprehensive.
- Where an offender is taken into custody, the responsibility for an assessment of the offender lies with the custody officer. Where custody staff have identified a mental health need, a forensic medical examiner may be asked to undertake further assessment, In turn, this may result in an assessment under the Mental Health Act 2007.

Lord Bradley also identified the role that the Crown Prosecution Service (CPS) has to play in diverting offenders away from the criminal justice system; his report noted that they relied at the time of his report upon the information given to them by the police.

The Seventh Report of the Justice Committee<sup>165</sup> considered the progress made in relation to youth justice. In respect of

<sup>162</sup> ‘Alternatives to Custody – the Case for Community Sentencing’, Lord Phillips of Worth Matravers, Speech at the Centre For Criminology, Oxford University, 10 May 2006, <http://www.rethinking.org.nz/images/newsletter%20PDF/Issue%2062/03%20Lord%20Phillips%20UK%20Address%20May%2006.pdf>

<sup>163</sup> The bulletting here is for ease of reading and is not in the original document.

<sup>164</sup> *The Bradley Report: Lord Bradley’s review of people with mental health problems or learning disabilities in the criminal justice system*, April 2009, [http://www.centreformentalhealth.org.uk/pdfs/Bradley\\_report\\_2009.pdf](http://www.centreformentalhealth.org.uk/pdfs/Bradley_report_2009.pdf), p 37

<sup>165</sup> *Youth Justice*, Seventh Report, House of Commons Justice Select Committee, 26 February 2013 <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/339/33902.htm>

[a] Q 385 [John Drew]. It is not possible to tell the age of offenders from police-recorded crime data. Police in England and Wales arrested 210,660 under-18s in 2010/11 (data from 2011/12 is not yet available); this number has declined every year since 2006/07.

[b] National Audit Office, *The youth justice system in England and Wales: reducing offending by young people*, HC 663, December 2010

diversion, the Committee noted the following:

“Although the volume of youth offending is itself believed to have declined,<sup>[a]</sup> as the National Audit Office noted in 2010, it is not known to what extent falls in first time entrants reflect genuine reductions in crime.<sup>[b]</sup> Our witnesses agreed that the scale of the reduction in first time entrants from 2008 stemmed mainly from changes to the way in which offending is dealt with by the authorities, in particular the removal of the ‘offences brought to justice’ target for the police service. This target created perverse incentives for officers to pursue very minor offending, and consequently conflicted with the first-time entrants target and drove a lot of young people into the system unnecessarily.<sup>[c]</sup> A growing body of evidence suggests that diverting children from formal criminal justice processes is ‘a protective factor against serious and prolonged reoffending’,<sup>[d]</sup> therefore diversion should have a long-term impact on youth crime levels.

“Areas which have achieved large reductions in the number of first-time entrants have adopted alternative means of resolving cases.<sup>[e]</sup> The Youth Restorative Disposal, piloted in eight forces between 2008 and 2009, offered police officers more discretion in dealing with minor offending through the use of restorative justice, often on the street.<sup>[f]</sup> Bradford YOT established restorative justice clinics as an arrest diversion: evaluation showed that only 10% of young people attending a clinic were re-arrested.<sup>[g]</sup> Assistant Chief Constable Wilkins, representing the Association of Chief Police Officers, cited “clear evidence” that restorative justice has a positive impact on victim satisfaction and re-offending rates<sup>[h]</sup> and Jeremy Wright MP, the Minister for Prisons and Rehabilitation, clarified that the Government is committed to expanding the use of restorative justice.”<sup>[i]</sup><sup>166</sup>

The report continued to commend the use of diversion in relation to young offenders:

“We strongly welcome the substantial decrease since 2006/07 in the number of young people entering the criminal justice system for the first time, and commend local partnerships for their successful efforts to bring this figure down. Justice agencies play a crucial role in preventing youth crime by diverting young people away from formal criminal justice processes, which, when done well, means they are less likely to go on to serious and prolonged offending. We are particularly encouraged that many youth offending teams and police forces are using a restorative approach to resolving minor offending.”<sup>167</sup>

## 30. Adult simple caution

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The general guidance for an adult simple caution states:

“Simple cautions may be offered when the offender admits an offence and there is sufficient evidence for a realistic prospect of conviction but it is not in the public interest to prosecute. An offender must also agree to accept the simple caution. Simple cautions are available for any offence. They are intended for low level offences but can be used for any offence where it is not in the public interest to prosecute. The police are permitted to make the decision to offer a simple caution for any offence triable summary or either way. Authorisation from a Crown Prosecutor should be sought before offering a simple caution for an indictable only offence.”<sup>168</sup>

There are numerous competing interests when considering whether a simple caution should be offered. These include

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[c] Q 3 [Enver Solomon]; Q 5 [Andrew Neilson; Alexandra Crossley]; Q 143 [Assistant Chief Constable Wilkins]

[d] Ev 115 [Office of the Children’s Commissioner]. See also Ev 141 [MoJ/YJB]

[e] Q 96-7 [Paul O’Hara, Wendy Poynton]

[f] Andrew Rix, Katy Skidmore, Richard Self, Tom Holt, Steve Raybould, Youth Restorative Disposal Process Evaluation (London, 2011)

[g] Q 96 [Paul O’Hara]

[h] Q 144

[i] Q 437

166 *Youth Justice, Seventh Report*, House of Commons Justice Select Committee, 26 February 2013, Section 2 ‘Prevention’, paras 7-8 ‘Diversion’, <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/339/33902.htm>

167 *Ibid*, para 10 ‘Diversion’, <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/339/33902.htm>

168 *Quick Reference Guides to Out of Court Disposals*, July 2014, Ministry of Justice, <https://www.justice.gov.uk/downloads/oocd/quick-reference-guides-oocd.pdf>, p 12

the views of the victim, the circumstances of the offence and of the offender. A key requirement is that it is in the public interest to offer a simple caution rather than prosecute. In respect of this, the detailed guidance divides the topic by reference to the category of offence; indictable and specified either way offences, non-specified either way and summary offences, and specific offence types (such as domestic abuse).

In relation to non-specified either-way or summary only offences, the more detailed guidance states:

The more serious the offence, the less likely a simple caution will be appropriate. Wherever the circumstances of an offence indicate that an immediate custodial sentence or high level community order is the appropriate sentence, a simple caution should not be offered unless at least one of the exceptional circumstances set out at paragraph 21 below are met.<sup>169</sup>

The decision-maker has to balance the public interest in immediate prosecution as against the likelihood that a court would not impose a period of imprisonment or high level community order.<sup>170</sup> There is also a list of non-exhaustive factors for exceptional cases.<sup>171</sup>

In essence, the test requires the police officer considering a caution to take on the role of the sentencer. At such an early stage, it is most likely that such decisions are taken without the benefit of any additional information, a period for reflection or submissions as to the appropriate method of disposal. A simple caution is spent immediately but can still be disclosed by a Disclosure and Barring Service (DBS) check (formally Criminal Records Bureau, (CRB)) depending on the nature of the check and of the employment.

## 31. Adult conditional cautions

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A conditional caution allows an authorised person (usually a police officer) or a relevant prosecutor (usually the CPS) to decide to give a caution with one or more conditions attached. When an offender is given a conditional caution for an offence, criminal proceedings for that offence are halted while the offender is given an opportunity to comply with the conditions. Where the conditions are complied with, the prosecution is not normally commenced.<sup>172</sup> This is a statutory disposal governed by the Criminal Justice Act 2003 Part 2. A conditional caution can be offered when five requirements are met:

- (i) Evidence that the offender has committed an offence.
- (ii) A relevant prosecutor or the authorised person decides –
  - » that there is sufficient evidence to charge the offender with the offence, and
  - » that a conditional caution should be given to the offender in respect of the offence.
- (iii) the offender admits to the authorised person that he committed the offence.
- (iv) the authorised person explains the effect of the conditional caution to the offender and warns him that failure to comply with any of the conditions attached to the caution may result in his being prosecuted for the offence.
- (v) the offender signs a document which contains –
  - » details of the offence,
  - » an admission by him that he committed the offence,
  - » consent to being given the conditional caution, and
  - » the conditions attached to the caution.

General guidance issued by the Ministry of Justice states:

Adult conditional cautions are a statutory disposal introduced by the Criminal Justice Act 2003. They are a caution with

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<sup>169</sup> *Simple Cautions for Adult Offenders*, Ministry of Justice guidance, 14 November 2013, <https://www.justice.gov.uk/downloads/oecd/adult-simple-caution-guidance-oecd.pdf>, p 6

<sup>170</sup> *Ibid*, 153. See para 22

<sup>171</sup> *Ibid*, 153. See para 23

<sup>172</sup> Code of Practice for Adult Conditional Cautions: Part 3 of the Criminal Justice Act 2003, Ministry of Justice, 8 April 2013, para 1.2, <https://www.justice.gov.uk/downloads/oecd/code-practice-adult-conditional-cautions-oecd.pdf>

conditions attached. The conditions that can be attached must be rehabilitative, reparative, or a punitive, financial penalty. Rehabilitative conditions can include attendance at a treatment course, and reparative conditions can include apologising to the victim, paying compensation and making good any damage. Conditions must always be appropriate, proportionate and achievable. If the offender is a “relevant foreign offender” – that is someone without permission to enter or stay in the UK, conditions can be offered that have the object of effecting departure from and preventing return to the UK.<sup>173</sup>

Again, such a disposal must be in the public interest, yet little guidance is given as to how to assess whether that requirement is met. The Secretary of State for Justice, in line with his statutory obligations<sup>174</sup> issued a Code of Practice (“the Code”) in respect of conditional cautions. The current incarnation took effect from 8 April 2013, replacing the previous code.<sup>175</sup> The Code requires the individual who is considering offering a conditional caution to consider the full code test (both the evidential stage and the public interest stage).<sup>176</sup> The Code offers guidance as to when a conditional caution should be offered: in most cases, and subject to paragraph 2.9, a conditional caution should not be given where a court, if the offender were convicted, would be likely to impose a significant community sentence or a period of imprisonment for the offence.<sup>177</sup> Again, the Code requires the individual to consider a list of factors akin to those which would be considered by a sentencer if the matter reached court. Similarly, the Code requires the individual to act as a sentencer without the benefit of much of the necessary information required to make an informed and pragmatic decision.

The conditions that can be attached to a conditional caution must have one or more of the following objectives:

- rehabilitation – conditions which help to modify the behaviour of the offender, serve to reduce the likelihood of re-offending or help to reintegrate the offender into society;
- reparation – conditions which serve to repair the damage done either directly or indirectly by the offender;
- punishment – financial penalty conditions which punish the offender for their unlawful conduct.<sup>178</sup>

A conditional caution is spent three months after it is administered. An offender can also be prosecuted for the incident leading to the conditional caution if the conditions imposed under the caution are not complied with, or the offender withdraws from the caution. Again, it may be disclosed in certain circumstances as a result of a DBS check.

## 32. Other out of court disposals

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The following sets out the available out of court disposals available to the police and the Crown Prosecution Service (CPS) for both adult and young offenders (male or female):<sup>179</sup>

- Community resolutions – adults (18+) and youths
- Cannabis warnings – adults (18+)
- Penalty notices for disorder – adults (18+)
- Youth cautions – youths (10-17)
- Simple cautions – adults (18+)
- Conditional cautions – adults (18+) and youths (10-17)

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<sup>173</sup> *Quick Reference Guides to Out of Court Disposals*, July 2014, Ministry of Justice, <https://www.justice.gov.uk/downloads/oecd/quick-reference-guides-oecd.pdf> p 15

<sup>174</sup> Criminal Justice Act 2003 s 25(1)

<sup>175</sup> Criminal Justice Act 2003 (Conditional Cautions: Code of Practice) Order 2013 (SI 2013/801)

<sup>176</sup> Code of Practice for Adult Conditional Cautions: Part 3 of the Criminal Justice Act 2003, Ministry of Justice, 8 April 2013, para.2.5 <https://www.justice.gov.uk/downloads/oecd/code-practice-adult-conditional-cautions-oecd.pdf>

<sup>177</sup> Code of Practice for Adult Conditional Cautions: Part 3 of the Criminal Justice Act 2003, Ministry of Justice, 8 April 2013, para.2.6 <https://www.justice.gov.uk/downloads/oecd/code-practice-adult-conditional-cautions-oecd.pdf>

<sup>178</sup> Code of Practice for Adult Conditional Cautions: Part 3 of the Criminal Justice Act 2003, Ministry of Justice, 8 April 2013, para.2.14 <https://www.justice.gov.uk/downloads/oecd/code-practice-adult-conditional-cautions-oecd.pdf>

<sup>179</sup> *Quick Reference Guides to Out of Court Disposals*, July 2014, Ministry of Justice, <https://www.justice.gov.uk/downloads/oecd/quick-reference-guides-oecd.pdf> p 2

## ➤ Harassment warnings<sup>180</sup>

The MOJ published general guidance as to the key features of the disposals as an aid to determining which may be appropriate in a given situation. The guidance sets out the evidential standard, whether there is a requirement for an admission of guilt and whether the disposal forms part of a criminal record, among other information. There are various specific options in relation to female offenders.

The first four items on the above list relate to low-level crime, youths or cannabis possession. There is detailed guidance which came into effect on 14 November 2013.<sup>181</sup> It sets out in detail the decision-making process in respect of simple cautions and conditional cautions.

## 33. Sentencing

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There is no specific sentencing regime applicable to female offenders. The current approach is restrictive. This paper necessarily allows for consideration of both rehabilitation and/or punishment in the context of current domestic law. The discussion here can centre on the following:

- How the criteria for community orders and suspended sentences can be improved in the context of women offenders.
- Whether current sentencing guidelines are too harsh.
- Whether there is a need for a specific sentencing guideline in relation to female offenders.
- Whether there is a need for gender specific and unconscious bias training for judges.
- Whether there is a need for a reduction of pressure on the judiciary to enable time or administrative assistance to produce written reasons in all cases.<sup>182</sup>
- Whether there is a need to define “mitigation” in relation to a women offender.
- Whether there is a need to require judges to investigate local support services before sentencing.

Below, in order to assist, this paper sets out some provisions, guidelines and case law as an outline for any discussion in relation to sentencing.

The purpose of sentencing adults is set out in s 142 of the Criminal Justice Act 2003 as follows:<sup>183</sup>

- (22) Any court dealing with an offender in respect of his offence must have regard to the following purposes of sentencing –
- (a) the punishment of offenders,
  - (b) the reduction of crime (including its reduction by deterrence),
  - (c) the reform and rehabilitation of offenders,
  - (d) the protection of the public, and
  - (e) the making of reparation by offenders to persons affected by their offences.<sup>184</sup>

In respect of young offenders, regard must also be had to the principal aim of the youth justice system (to prevent reoffending) and the obligation under Children and Young Persons Act 1933 s 44 (duty to have regard to the welfare of the child).<sup>185</sup>

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<sup>180</sup> Also known as Police Information Notices (PINs) They are not provided for in the Protection from Harassment Act 1997 and do not themselves constitute any kind of formal legal action. See House of Commons Library Standard Note SN/HA/6411 for more information.

<sup>181</sup> *Simple Cautions for Adult Offenders*, Ministry of Justice guidance, 14 November 2013, <https://www.justice.gov.uk/downloads/oecd/adult-simple-caution-guidance-oecd.pdf>

<sup>182</sup> Some preliminary research has shown that this does occur in other jurisdictions

<sup>183</sup> There are also statutory purposes of sentencing for youths contained within Criminal Justice Act 2003 s 142A, however this provision is yet to be brought into force. See Criminal Justice and Immigration Act 2008 s 9(1)-(4)

<sup>184</sup> Those aims do not apply where the sentence is fixed by law, or there falls to be imposed a statutory sentence such as a minimum three-year sentence for a third domestic burglary conviction, CJA 2003 s 142(2).

<sup>185</sup> CJA 2003 s 142A(2)

A court which is to impose a sentence upon a defendant must determine the seriousness of the offence by reference to factors such as the offender's culpability, the harm caused, intended or foreseen, and the presence of previous convictions.<sup>186</sup> A court must not pass a custodial sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that neither a fine alone nor a community sentence can be justified for the offence.<sup>187</sup> Where an individual fails to express a willingness to comply with a community order which requires such a willingness to be expressed, the restriction outlined above does not prevent the court from imposing a custodial sentence.<sup>188</sup> When imposing a discretionary custodial sentence, the custodial sentence must be for the shortest term (not exceeding the permitted maximum) that in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.<sup>189</sup>

## 34. Personal mitigation

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Given that women offenders make up a small proportion of those in prison, it is likely that, at least in part, their multiple needs have to some extent been taken into account in a decision to divert or not to prosecute. At this stage, we have to assume that, having identified the category of offending, a court will take into account the personal mitigation of a woman offender in mitigation of the offence.

Mitigation tends to come in the form of factors which relate to the offence or the offender. Factors which relate to the offence could be such things as the offender's conduct immediately after the offence by assisting the victim, apologising, or handing themselves in to the police. Factors which relate to the offender are far more difficult to quantify, due to the infinite ways in which they can manifest.

Under Criminal Justice Act 2003 s 166, a sentencing court may take into account any matters that "in the opinion of the court are relevant in mitigating the sentence". This is a very general term which is frequently used to describe matters such as mental health issues, drug addiction (where attempts have been made to overcome substance abuse) and a good employment record. Understandably there is no data on the effect of personal mitigation or whether it is determinative of sentence although anecdotally, the effect is more limited since the introduction of sentencing guidelines.

## 35. Effect on children: some case law

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Research shows that care of children is still disproportionately carried out by mothers.<sup>190</sup> Almost by definition, imprisonment interferes with, and often severely, the family life not only of the defendant but of those with whom the defendant normally lives and often with others as well. This can lead to the loss of home, school and family ties.

Accordingly, the issue of removing a mother from the home (and therefore preventing her from caring for her children) disproportionately affects female offenders. Specifically in relation to mothers, the recent decision of the Court of Appeal in *R v Petherick* [2012] EWCA Crim 2214; [2013] 1 Cr App R(S) 116 (p 598) is of direct relevance. The appellant had pleaded guilty to causing death by dangerous driving and driving with excess alcohol. At the appeal against sentence, the appellant raised the issue of her son's rights under Art 8 of the European Convention on Human Rights. The court set out a number of principles:

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<sup>186</sup> CJA 2003 s 143

<sup>187</sup> CJA 2003 s 152(2): the restriction does not apply to a sentence fixed by law or a statutory sentence

<sup>188</sup> CJA 2003 s 152(3)

<sup>189</sup> CJA 2003 s 153(2)

<sup>190</sup> *Women and mental health*, Mental Health Foundation, <http://www.mentalhealth.org.uk/help-information/mental-health-a-z/W/women/>

- (i) That the sentencing of a defendant inevitably engages not only her own Art 8 family life but also that of her family and that includes (but is not limited to) any dependent child or children.
- (ii) The right approach in all Art 8 cases is to ask these questions:
  - » Is there an interference with family life?
  - » Is it in accordance with law and in pursuit of a legitimate aim?
  - » Is the interference proportionate?
- (iii) Long before the Human Rights Act 1998, domestic law in England and Wales had recognised that where there are dependent children that is a relevant factor to sentencing.
- (iv) A criminal court ought to be informed about the domestic circumstances of the defendant and where the family life of others, especially children, will be affected it will take it into consideration. It will ask whether the sentence contemplated is or is not a proportionate way of balancing such effect with the legitimate aims that sentencing must serve.
- (v) In a criminal sentencing exercise the legitimate aims of sentencing which have to be balanced against the effect of a sentence often inevitably has on the family life of others, include the need of society to punish serious crime, the interest of victims that punishment should constitute just deserts, the needs of society for appropriate deterrence and the requirement that there ought not to be unjustified disparity between different defendants convicted of similar crimes.
- (vi) It will be especially where the case stands on the cusp of custody that the balance is likely to be a fine one. In that kind of case the interference with the family life of one or more entirely innocent children can sometimes tip the scales and means that a custodial sentence otherwise proportionate may become disproportionate.
- (vii) The likelihood, however, of the interference with family life which is inherent in a sentence of imprisonment being disproportionate is inevitably progressively reduced as the offence is the graver.
- (viii) In a case where custody cannot proportionately be avoided, the effect on children or other family members *might* afford grounds for mitigating the length of sentence, but it may not do so. If it does, it is quite clear that there can be no standard or normative adjustment or conventional reduction by way of percentage or otherwise. It is a factor which is infinitely variable in nature and must be trusted to the judgment of experienced judges (the court's emphasis).<sup>191</sup>

In *R v Spencer-Whalley* [2014] EWCA Crim 912, the appellant and her husband committed large scale mortgage frauds. Both were sentenced to an immediate custodial penalty of two years. They had two young daughters, aged 10 and 14, who were residing at the family home in France, being cared for by members of the family. It was likely that they would have to move back to the UK as the family home could not be maintained and there would be inevitable disruption to their education. The appellant submitted that, (relying on *Petherick*), the impact that having both parents serving custodial sentences had had on their two daughters, aged 10 and 14, required a reduction in sentence on the basis that the sentence was disproportionate. The court said that none of the material in relation to the impact of the sentences upon the family could be seen as surprising and that it was inevitable that where both parents committed serious offences which justified imprisonment, their family would not only be deprived of breadwinners, but, it could be that the family home had to be sold and that schools had to be changed. The inevitable difficult decisions relating to the children and the family home in France were direct consequences of their criminality. Accordingly, there was no disproportionality in the sentence imposed and the appeal would be dismissed.<sup>192</sup>

Despite the sentence of two years, no suspended sentence was imposed on either offender although, no doubt it was put forward by the advocates. The existence of a dependents seems, in this case, to have been treated as an aggravating feature.

<sup>191</sup> *R v Petherick* [2012] EWCA Crim 2214; [2013] 1 Cr App R (S) 116 (p 598) at [17]-[24]

<sup>192</sup> *R v Spencer-Whalley* [2014] EWCA Crim 912

## 36. Sentencing reasons

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When a court is faced with the task of sentencing an offender, it has at its disposal many options. Subject to statutory maximum sentences and the availability of the particular sentence,<sup>193</sup> there are well over one hundred sentencing options at the court's disposal. Having imposed a sentencing upon a defendant, there is duty on the court to explain the sentence and provide reasons for the imposition of that sentence. This can have a powerful effect on public reaction. The court must state in open court, in ordinary language and in general terms, the court's reasons for deciding on the sentence and must explain to the offender in ordinary language:

- (i) the effect of the sentence;
- (ii) the effects of non-compliance with any order that the offender is required to comply with and that forms part of the sentence;
- (iii) any power of the court to vary or review any order that forms part of the sentence; and
- (iv) the effects of failure to pay a fine, if the sentence consists of or includes a fine.<sup>194</sup>

In reality, most sentences are not the subject of written sentencing remarks which means the public rely on court reports. In modern times, fewer courts are manned by court reporters. Anecdotally it is said that judges are over stretched and many requirements are dealt with "on the hoof" with a significant disparity depending on whether advocates are involved or a litigant is in person. Currently, many sentencers explain the effect of the sentence but provide on very general reasons as to why, for example, an immediate custodial sentence was required or not and, in any event, the reasons are not widely reported.

The sentencing options available to the court are essentially punitive in nature. Whilst in many cases, there will be a need for a punitive response, for example to act as a deterrent or simply as a punishment, the options do not require examination of the underlying cause of the breach nor do they require consideration of what services might be available locally as an alternative to custody. In addition, the responsible officer has little discretion (unlike a police officer investigating a crime) to examine why the offender has been unable to keep to her obligations.

## 37. Fines

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A court can, subject to statutory maximum sentences, impose a fine upon an offender.<sup>195</sup> A fine is the most commonly used sentencing disposal in England and Wales.

In 2011, 66% all offenders received a fine, with the amount totalling £851,607.<sup>196</sup>

However, between 2009 and 2013, a total of £237.1m of court fines, costs, compensation orders and victim surcharge were "administratively cancelled" and in 2011, a total of £1.9bn of financial penalties were still outstanding but it was feared less than £500 million of that may ever be recovered.<sup>197</sup>

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<sup>193</sup> Many sentencing orders have requirements which must be met before the sentence is 'available' as a disposal.

<sup>194</sup> CJA 2003 s 174(2) and (3).

<sup>195</sup> In the Crown court, the power is by virtue of CJA 2003 s 163 and subject to statutory maximums, by virtue of Criminal Law Act 1977 s32(1), the power is unlimited. In the magistrates' court, the power is by virtue of Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 85, the court has the power to impose an unlimited fine, subject to any statutory maximum. Currently, s 85 is not in force but the government recently published a draft statutory instrument, The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Disapplication of Section 85(1), Fines Expressed as Proportions and Consequential Amendments) Regulations 2014, which would increase fine levels 1 to 4, and make level 5 fines unlimited. For an explanation of the effect, see the UK Criminal Law Blog, 'Government propose to increase level of fines in Magistrates' Courts', 10 June 2014, <http://ukcriminallawblog.com/2014/06/10/government-propose-to-increase-level-of-fines-in-magistrates-courts/>

<sup>196</sup> 'Fines', The Sentencing Council, <http://sentencingcouncil.judiciary.gov.uk/sentencing/fines.htm>

<sup>197</sup> 'Quarter of billion in court fines written off', Tom Whitehead, The Telegraph, 26 April 2014, <http://www.telegraph.co.uk/news/uknews/law-and-order/10788130/Quarter-of-billion-in-court-fines-written-off.html>

Against that background, it is interesting to note the following:

- (i) 72% of prisoners in Scotland were in receipt of benefits immediately before entering prison;<sup>198</sup>
- (ii) Prisoners in Scotland are 13 times more likely to be unemployed;<sup>199</sup>
- (iii) Women are more likely to be employed in low paid, part-time work, more likely to head a single parent household, more likely to have less financial assets and more likely to live in poverty, especially in older age.<sup>200</sup>
- (iv) According to the Women's Health and Equality Consortium:<sup>201</sup>
  - » Women are at greater risk of poverty than men and are more likely to suffer recurrent and longer spells of poverty (22% of women have a persistent low income compared to 14% of men)<sup>202</sup> which negatively impacts their physical and mental health.
  - » Women are the main "shock absorbers" of poverty of households<sup>203</sup> and feel the pressures of managing on a low budget most.
  - » Single parent families, the vast majority of whom are women, are more likely to be below the poverty line,<sup>204</sup> and women are more likely to be in minimum wage, low paid and insecure employment – two-thirds of those in low paid work are women.<sup>205</sup>

## 38. Discharges

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Courts have the ability to impose absolute or conditional discharges. A discharge is a sentence vitiating the finding of guilt in which the offender receives no punishment. A discharge is not a conviction.<sup>206</sup>

Where the court is of the view that it is inexpedient to inflict punishment, having regard to the nature of the offence and the characteristics of the offender, it may impose an absolute or conditional discharge.<sup>207</sup> A conditional discharge operates for a period up to three years and is breached if the offender commits another offence during that period.

## 39. Hospital orders

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Where an offender is convicted of an offence punishable with imprisonment and the court is satisfied, upon the evidence of two registered medical practitioners that the offender is suffering from a mental disorder and either a) the disorder is such that makes it appropriate for the offender to be detained in a hospital for medical treatment, and appropriate medical treatment is available, and b) the court is of the view that a hospital order is the most appropriate disposal having regard to

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<sup>198</sup> *What works in tackling poverty: Routes out of prison: Case study 145*, The Scottish Government, <http://www.scotland.gov.uk/Topics/Built-Environment/regeneration/pir/learningnetworks/cr/casestudies/povertyoutofprison>

<sup>199</sup> *What works in tackling poverty: Routes out of prison: Case study 145*, The Scottish Government, <http://www.scotland.gov.uk/Topics/Built-Environment/regeneration/pir/learningnetworks/cr/casestudies/povertyoutofprison>

<sup>200</sup> *What about women? Key questions for parliamentarians concerned with advancing women's equality and human rights in the UK*, The Fawcett Society, p 7, <http://www.fawcettsociety.org.uk/wp-content/uploads/2013/02/Fawcett-Society-What-About-Women-report-low-res.pdf>

<sup>201</sup> *Why Women's Health?*, The Women's Health and Equality Consortium, <http://www.whec.org.uk/wordpress/wp-content/uploads/downloads/2011/11/WhyWomensHealth11.pdf>

<sup>202</sup> The Fawcett Society, <http://www.fawcettsociety.org.uk/index.asp?PageID=22>

<sup>203</sup> WBG (2005) 'Women's and childrens poverty: making the links'

<sup>204</sup> Gingerbread, <http://www.gingerbread.org.uk/content.aspx?CategoryID=368>

<sup>205</sup> Millar, J and Gardiner, K (2004) *Low Pay, Household Resources and Poverty*

<sup>206</sup> Powers of Criminal Courts (Sentencing) Act 2000 s 14(1)

<sup>207</sup> Powers of Criminal Courts (Sentencing) Act 2000 s 12(1)

factors such as nature of the offence and the offender's character, the court may impose a hospital order.<sup>208</sup>

A hospital order allows an individual to receive treatment for their mental health problem in a hospital as opposed to a prison. There are various permutations of a hospital order with different conditions for release, but in essence, the focus is on treating any mental health issue as opposed to punishing the offender for their conduct.

## 40. Community orders

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Where the custody threshold is not crossed, the court can impose a community order.<sup>209</sup> A community order is a noncustodial sentence which operates for a maximum of three years. It is available for those aged 18 and over. In 2012, there were 1,223,252 community orders imposed.<sup>210</sup>

A community order can impose requirements upon the offender, but it doesn't have to. If a court does not impose a punitive requirement, it must impose a fine as well.<sup>211</sup> The court has the power to add one or more "requirements" which must be complied with during the currency of the order. These include such things as unpaid work (commonly known as "community service"), mental health treatment, drug rehabilitation, alcohol treatment, supervision, a curfew, residence and programme requirements.

## 41. Suspended sentences

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If the court determines that the appropriate length of sentence, after a reduction in sentence for any guilty plea, is 24 months or less, then it can decide to suspend the sentence.<sup>212</sup> The effect of such a suspension is that the custodial sentence that was determined to be appropriate does not take immediate effect. There is an "operational period" during which if the offender commits a further offence or fails to comply with any requirements under the suspended sentence, the custodial element of the sentence can be activated in part or in full.

When imposing a suspended custodial sentence, the court can impose similar requirements to those in relation to a community order.

There is guidance for a court when imposing a suspended sentence. The *New Sentences: Criminal Justice Act 2003 Guideline 2004* states that a sentencer ought to consider: a) has the custody threshold been passed? b) if so, is it unavoidable that a custodial sentence be imposed? and c) if so, can that sentence be suspended? It provides no assistance as to how a court should approach the question of whether the sentence can be suspended and the Court of Appeal has repeatedly avoided giving guidance on the matter.

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<sup>208</sup> Mental Health Act 1983 s 37

<sup>209</sup> CJA 2003 s 177

<sup>210</sup> *Banks on Sentence*, Volume 1, 9th edition, Robert Banks and Lyndon Harris, p 223

<sup>211</sup> CJA 2003 s 177(2A)

<sup>212</sup> CJA 2003 s 189

## 42. Breaches of community orders and suspended sentences

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A suspended sentence or a community order can be breached in two ways; firstly the offender can commit another offence during the currency of the order. Secondly, the offender can fail to comply with the terms of the order.

### Further offences

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For a community order, the current approach is to either revoke the order, or alternatively revoke the order and re-sentence for the original offence. Compliance with the order is then taken into account. The powers to sentence for breach are then thus: a) impose more onerous requirements; or b) re-sentence for the offence.<sup>213</sup>

When considering offences committed within the operational period of a suspended sentence, the current regime focuses on punishment by imposing: a) a sentence for the new offence by a punishment appropriate to that offence; and then b) consider the question of the suspended sentence. The presumption however, is that the suspended sentence will be activated. It is also presumed that the activated suspended sentence will be consecutive to the sentence imposed for the new offence.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 68 removed the requirement to impose at least one community requirement, replacing it with a discretionary power. The Parliamentary Under-Secretary of State for Justice, Crispin Blunt, stated that this provision “is intended to increase the court’s discretion in dealing with the breach of a suspended sentence order”.<sup>214</sup>

The power to fine is applicable in limited circumstances, and once more, is focused on punishment. It is also subject to the means of the defendant.

As with minimum sentences, where judges are constrained by legislation, they look for, and find, methods of achieving the desired result. The following is a statement by a judge:

“One of the major problems is the fact that one has to, on a breach, if you’re going to allow the order to continue, make it more onerous... Under the old law... you could fine for the breach or make no order, allow the order to continue with no adjudication, depending upon the reasons for the breach. Now you have to make it more onerous and it can become a little bit artificial to the extent that I have, on occasions, added a requirement of a very, very short curfew – for example, two days.” (DJ01)<sup>215</sup>

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<sup>213</sup>Criminal Justice Act 2003 Sch 8 para 21(2)

<sup>214</sup>Hansard, HC Public Bill Committee, 14<sup>th</sup> Sitting, col.629 (September 15, 2011)

<sup>215</sup>*The community order and the suspended sentence order: The views and attitudes of sentencers*, Centre for Crime and Justice Studies, [http://www.crimeandjustice.org.uk/opus677/ccjs\\_sentencers\\_views.pdf](http://www.crimeandjustice.org.uk/opus677/ccjs_sentencers_views.pdf) p 19

## Failure to comply with the terms of the order

The current powers are set out in the table below.

	Crown court	Magistrates' court
Community order	<p>The court must deal with the offender in one of the following ways:</p> <p>a) Amend the terms to make them more onerous.</p> <p>b) Re-sentence for the original offence (sentencing powers limited to those available to the court which imposed the original order).</p> <p>c) Where the original offence was not punishable by imprisonment, and the offender, aged over 18 had wilfully and persistently failed to comply, a custodial sentence of up to six months.</p> <p><b>Criminal Justice Act 2003 Sch 8 para 10(1)</b></p>	<p>The court must deal with the offender in one of the following ways:</p> <p>a) Amend the terms to make them more onerous.</p> <p>b) Where the order was made by the magistrates' court, re-sentence for the original offence.</p> <p>c) Where the order was made by the magistrates' court and the offence is not punishable by imprisonment, and the offender aged over 18 had wilfully and persistently failed to comply, impose a custodial sentence of up to six months.</p> <p><b>Criminal Justice Act 2003 Sch 8 para 9(1)</b></p>
Suspended sentence order	<p>The court must deal with the offender in one of the following ways:</p> <ul style="list-style-type: none"> <li>➤ Order the suspended term to take effect.</li> <li>➤ Order that the suspended term is to take effect but substitute the original term for a lesser term.</li> <li>➤ Impose a fine up to £2,500.</li> <li>➤ Where there are requirements attached to the order, amend the order to impose more onerous requirements, extend the supervision period or extend the operational period.</li> <li>➤ Where there are no requirements attached to the order, extend the operational period.</li> </ul> <p><b>Criminal Justice Act 2003 Sch 12 para 8(2)</b></p>	

It is inevitable that women with multiple needs will struggle to keep to obligations without support. The result of the current legislation is to force many offenders who fail to comply into short custodial sentences, which brings with it further problems such as housing issues, disruption to the family unit and financial trouble. For those who have their orders increased in intensity, who have proven themselves unable to comply with the existing order, the offender is pushed across the custody threshold.

Where a suspended sentence order is breached, the responsible officer must give the offender a warning. If the order is subsequently breached, it is mandatory that the offender is brought back to court. The options are then similarly restrictive; amend the order making it more onerous, or order the suspended custodial element to take effect. This once again fails to deal with why the order has been breached, why the order is failing to fulfill its rehabilitative purpose and which is the best way to secure its successful completion.

As a part of the sentencing package when a community order or suspended sentence order is imposed, courts can impose supervision or unpaid work requirements. These include requirements to attend meetings with an offender manager from a probation trust. The goal of a supervision requirement is to identify the things in the offender's life that need to change and then support them to help them achieve those changes, provide assistance to complete other aspects of the community order or suspended sentence order and to identify other issues and refer the offender to the appropriate services such as education and training, housing assistance and substance misuse. The offender manager should explain the sentence, create a sentence plan and work with the offender to complete the sentence successfully and make appropriate changes to help ensure further offences are not committed.

As to the practical reality of the provision of support provided during a community order suspended sentence order,

particularly in regard to such issues as housing needs and support in respect of education, training and employment, anecdotal evidence suggests it is mixed.

## 43. Compensation orders

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A court has the power to impose an order requiring the offender to pay to the victim a sum of compensation, where it has been demonstrated that the victim has suffered loss arising out of the commission of the offence for which the offender was convicted.<sup>216</sup> In fact, it has a duty to consider making a compensation order wherever it is empowered to do so.<sup>217</sup> In 2012, there were 154,252 compensation orders imposed by magistrates' and Crown courts in England and Wales.<sup>218</sup>

It has been held that a compensation order is not a way for a wealthy defendant to "buy" a shorter custodial sentence.<sup>219</sup>

## 44. Preventive or protective sentences/ancillary orders

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Courts also have the power to impose sentences which are wholly or partly aimed at protecting the public from a risk. Again, putting to one side sentences of life imprisonment or sentences imposed upon dangerous offenders, below we list a few of the orders which a court can impose to deal with specific issues raised by the offender's behaviour or by pre-sentence reports.

A court can impose a restraining order where it will protect the person mentioned in the order from further conduct which amounts to harassment or will cause fear of violence.<sup>220</sup> The order prohibits the offender from doing any act specified within the order but cannot impose positive obligations.

There are numerous behaviour orders which the court can impose upon conviction. These include Anti-social Behaviour Orders, Drinking Banning Orders, Sexual Offences Prevention Orders and Individual Support Orders. Currently, there is legislation enacted but not in force to repeal those orders and replace them with Criminal Behaviour Orders (CBO) and Sexual Harm Prevention Orders (SHPO).<sup>221</sup> CBOs will have the ability to impose both positive and negative requirements upon an offender.

## 45. Immediate custodial sentences

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If the court has decided that the custody threshold is passed it must then determine the length of sentence appropriate

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<sup>216</sup>Powers of Criminal Courts (Sentencing) Act 2000 s 130

<sup>217</sup>Powers of Criminal Courts (Sentencing) Act 2000 s 130(2A)

<sup>218</sup>*Banks on Sentence*, 9<sup>th</sup> edition, Volume 1, Robert Banks and Lyndon Harris, p 275

<sup>219</sup>*R v Mortimer* [1977] Crim LR 624

<sup>220</sup> Protection from Harassment Act 1997 s 5

<sup>221</sup> Anti-social Behaviour, Crime and Policing Act 2014 s 33 and Sch 5

for the offence(s). That is by reference to any applicable sentencing guidelines and to the duty imposed upon the court to assess the seriousness and impose the shortest possible sentence commensurate with the seriousness of the offence.

The Sentencing Council is a non-departmental government body which seeks to promote consistency in sentencing through the production of a framework to assist sentencers in respect of sentencing exercises for a large number of – but not all – offences.

The Sentencing Council has produced guidelines for offences such as burglary, assault, drugs and fraud. The approach, set in statute<sup>222</sup> must be followed by courts in England and Wales<sup>223</sup> unless the court is satisfied it would be contrary to the interests of justice to do so. That test is quite imprecise and is utilised rarely by sentencers.

The creation of categories of sentencing has caused concern that it has created a tick box mentality and that guidelines prevent flexibility which can lead to injustice in relation to women offenders. It has to be noted that over 80% of the judiciary are male and there is no provision for unconscious bias training in relation to women. The issue of judicial diversity is outside the scope of this report.

The Court of Appeal regularly states that: a) sentencing is not a mathematical exercise; and b) that the appropriate sentence remains fact specific. However, despite this, the Sentencing Council continues to issue guidelines which attempt to place most offences into one of three or four categories.

The guidelines do not preclude sentencers from reflecting the individual features of an offence in the resulting sentence. However, they advocate a mechanistic, rigid approach to the sentencing of offenders. The current approach makes it difficult for sentencers to move outside of the categories, or to disregard the guidelines altogether. The result is that judges cannot consider the gender specific needs of a female offender. It takes boldness or an exceptional case to ignore the guidelines but such imagination means the judges inevitably make the headlines.

## 46. Prison programmes

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There are programmes to assist women prisoners with skills including the following examples:

- Recent launch of The Clink Gardens at HMP Send.<sup>224</sup> The project will enable female offenders gain skills and a City and Guilds qualification, with the eventual aim being to encourage employment opportunities upon release from custody.
- Coaching Inside and Out (CIAO) coaches people who have offended or are at risk of offending. CIAO began by supporting women in HMP Styal and has 20 staff who have helped 250 men and women, in prison and out.<sup>225</sup>
- HM Prison Service offers Accredited Offending Behaviour Programmes.<sup>226</sup> In order for a programme to become accredited, it must be demonstrated that it is based on “sound evidence” as to the techniques used to help offenders to address their offending behaviour. Programmes specifically designed for women include:
  - » The Women’s Programme – this is a cognitive and motivational programme specifically designed for women who have committed acquisitive offences and are at risk of reconviction for non-violent crimes.
  - » Choices, Actions, Relationships and Emotions (CARE) – this is a course for female prisoners whose offending is related to difficulties with emotion regulation. The course aims to help participants identify and label emotions and develop skills for managing emotion.

Additionally, there are substance abuse programmes, programmes designed to assist with violence and aggression and sexual offences treatment.

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<sup>222</sup> Coroners and Justice Act 2009 s 121

<sup>223</sup> Coroners and Justice Act 2009 s 125 (there are slightly different rules for guidelines issued by the Sentencing Guidelines Council).

<sup>224</sup> ‘Next Clink restaurant announced in women’s prison’, Ministry of Justice press release, 22 September 2014, <http://www.gov.uk/government/news/next-clink-restaurant-announced-in-womens-prison>

<sup>225</sup> Coaching Inside and Out, <http://coachinginsideandout.org.uk>

<sup>226</sup> Offender Behaviour Programmes (OBPs), Ministry of Justice, <https://www.justice.gov.uk/offenders/before-after-release/obp>

Another example is Women in Prison (WIP). WIP is a nationwide, women-centred, women-run organisation that provides England-wide specialist services to women offenders. It offers a national free-phone advice line, information sessions throughout the women’s prison estate, “through-the-gate” resettlement support, specialist projects for BME women, specialist projects for women with a history of diagnosed mental illness, the Re-Unite supported housing project and independent advocacy for women using the CARE programme.<sup>227</sup>

## 47. Release

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When the Offender Rehabilitation Act 2014 comes into force,<sup>228</sup> offenders serving more than one day but less than two years will also be subject to supervision requirements. This only applies to offenders aged 18 or over at the half-way point of the sentence, who are not serving at extended sentence and who are being sentenced for an offence committed on or after the implementation date of the Offender Rehabilitation Act 2014.<sup>229</sup> The offender is initially on licence when released. Once the licence period comes to an end, the offender begins a period of “rehabilitative” supervision which ends 12 months after the prisoner was released from custody.<sup>230</sup> The effect is that those serving shorter sentences spend a long time on rehabilitative supervision whilst those on sentences closer to two years spend most of their time on licence. The Secretary of State sets the offender’s supervision conditions drawn from the list set out in CJA 2003, s 256AB. These include being of good behaviour, keeping in touch with a supervising officer, not to undertake particular work and not to travel abroad.<sup>231</sup> Breach of supervision requirements is to be dealt with in the magistrates’ court and will be punishable with up to 14 days’ custody.<sup>232</sup>

The insertion of s 3(6A) into the Offender Management Act 2007 by the Offender Rehabilitation Act 2014 imposes a duty on the Secretary of State to: “ensure that arrangements [in relation to probation services] for the supervision or rehabilitation of persons convicted of offences:

- (a) state that the Secretary of State has, in making the arrangements, complied with the duty under s 149 of the Equality Act 2010 (public sector equality duty) as it relates to female offenders, and
- (b) identify anything in the arrangements that is intended to meet the particular needs of female offenders.”<sup>233</sup>

## 48. Rehabilitation

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The Government’s proposals for reform were billed as a step-change in the way in which we, as a society, rehabilitate offenders. The paper recounts some (but not all) of the responses to the consultation and sets out the policy which the MOJ will look to implement in respect of rehabilitation of offenders.<sup>234</sup>

In relation to female offenders, it was noted that responses stressed that a “one size fits all” approach would not work

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<sup>227</sup> *Diverting Women Away from Crime: A Guide to the Women’s Community Projects*, Ministry of Justice, May 2010, [http://www.cps.gov.uk/legal/assets/uploads/files/diverting\\_women\\_away\\_from\\_crime.pdf](http://www.cps.gov.uk/legal/assets/uploads/files/diverting_women_away_from_crime.pdf)

<sup>228</sup> No current commencement date

<sup>229</sup> CJA 2003, s 256AA(1) as inserted by the Offender Rehabilitation Act 2014, s 2. No date yet given for implementation

<sup>230</sup> CJA 2003, s 256AA(4) as inserted by the Offender Rehabilitation Act 2014, s 2. No date yet given for implementation

<sup>231</sup> CJA 2003, ss 256AA(3) and 256AB as inserted by the Offender Rehabilitation Act 2014, s 2 and Sch 1, para 1. No date yet given for implementation

<sup>232</sup> CJA 2003, s 256AC as inserted by the Offender Rehabilitation Act 2014, s 3. No date yet given for implementation

<sup>233</sup> Inserted by Offender Rehabilitation Act 2014 s 10, commenced by Offender Rehabilitation Act 2014 (Commencement No. 1) Order 2014 (SI 2014/1287) art.2(a) in force 1 June 2014

<sup>234</sup> *Transforming Rehabilitation – A strategy for reform: Government response*, pp 7 and 33 et seq., <https://consult.justice.gov.uk/digital-communications/transforming-rehabilitation/results/transforming-rehabilitation-response.pdf>

and that there was a need for a differentiated approach.<sup>235</sup> However, the response later states:

“Having considered the options, it remains our intention to commission all rehabilitation services across geographical areas under a single contract rather than competing services separately for different offender cohorts. This will enable us to minimise duplication across the system, and deliver services at reduced cost. However, we will expect providers to be able to articulate and respond to the particular needs of women offenders where these differ from men and may be more complex.”<sup>236</sup>

In essence, whilst female offenders’ needs will be catered for, the same providers will deliver services for both male and female offenders and will not be under a specified duty in relation to female offenders.

## 49. Next steps for this paper

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This paper does not reach any conclusions. It is deliberately designed to stimulate debate. The next stage of this process to discuss and examine the situation in relation to women offenders as follows:

- We intend to carry out a comparative analysis with other nations and states.
- We will consider any useful proposals.
- We will examine the role of the media in affecting community input in sentencing.
- We intend to propose some sensible direction for law and policy. This might include, for example, conditional release or harnessing the framework of delayed prosecution agreements, currently applicable to commercial enterprises.
- We will consider if and how an holistic approach to offender management in the context of women offenders to include education, health, housing, social welfare, employment can be achieved.

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<sup>235</sup> *Ibid*, p 10 <https://consult.justice.gov.uk/digital-communications/transforming-rehabilitation/results/transforming-rehabilitation-response.pdf>

<sup>236</sup> *Ibid*, p 16 <https://consult.justice.gov.uk/digital-communications/transforming-rehabilitation/results/transforming-rehabilitation-response.pdf>