



## **Centre for Women's Justice submission to the Prisons Strategy White Paper consultation**

**4 February 2022**

### **About the Centre for Women's Justice (CWJ)**

CWJ is a lawyer-led charity focused on challenging discrimination against women in the criminal justice system. We carry out strategic litigation and work with frontline women's sector organisations to challenge police and prosecution failings concerning violence against women and girls. Our evidence base is built on the experience of frontline women's sector support workers discussed during our training sessions with them, and the requests for legal advice they send to us. In 2020 we provided pro bono advice in 468 legal enquiries.

Over the past thirty years CWJ's director, Harriet Wistrich, has been at the forefront of challenging convictions of women who have killed their abusive partner while subject to domestic abuse. Through our legal advice and casework service, we regularly receive referrals from women facing prosecution for a wide range of alleged offending resulting from their experience of domestic abuse and other forms of gender-based violence and exploitation.

CWJ recently undertook a major piece of [research](#) considering the barriers to justice for women who kill their abuser.<sup>1</sup> Although this focuses on the small number of women who kill, it also sheds light on the criminal justice system's ability to deliver justice more widely for those who offend due to their experience of abuse. Our criminalisation project focuses on the need for reforms in law and practice to prevent the unjust criminalisation of women whose offending (or alleged offending) results from their experience of domestic abuse and other forms of gender-based violence.

### **About this submission**

Our submission relates to questions 14 and 15 of the consultation document, regarding implementation of the whole system approach for women who face imprisonment or the prospect of it. The evidence and recommendations in our [research](#) about the state response to women who kill their abusers form part of our

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<sup>1</sup> [Centre for Women's Justice \(2021\) Women who kill: how the state criminalises women we might otherwise be burying](#)

submission. Also of key relevance is the final section of our [submission](#) to the Victims' Bill consultation regarding the wider criminalisation of victims of domestic abuse and other forms of gender-based violence.

## **Summary**

Our submission covers three areas:

### **1. Reducing women's imprisonment and strengthening family ties**

Insufficient priority is given in the White Paper to reducing women's imprisonment and to mitigating the negative impact for mothers and their children, where mothers are imprisoned or face the prospect of imprisonment. The White Paper barely mentions the Female Offender Strategy and does not mention the Farmer Review for Women at all. It does not reflect the ambition and investment that is needed to fulfil its commitments in both these areas.

### **2. Taking proper account of the context of gender-based violence in which many women's offending (or alleged offending) occurs**

The Female Offender Strategy as well as other recent policy documents concerning domestic abuse and victims, recognises the links between women's offending and their experience of domestic abuse and other forms of gender-based violence. While the ambition expressed in the White Paper to establish a trauma-responsive approach is welcome, there is a need to go further to implement changes in law and practice to ensure proper account is taken throughout the criminal justice process of the context of abuse in which some women's offending (or alleged offending) occurs. This must include the treatment of women in prison and after their release in relation to rehabilitation, risk assessment, parole and recall.

### **3. Young Women's Strategy and Black, Asian, minoritised and migrant women**

We welcome the plan to establish a Young Women's Strategy and call for the establishment of a strategy to address intersectional discrimination and disparities in treatment and outcomes experienced by Black, Asian, minoritised and migrant women. Both strategies must address the distinct ways in which women in these groups may be criminalised as a result of their experience of abuse.

## **Our evidence-based submissions**

### **1. Reducing women's imprisonment and strengthening family ties**

Insufficient attention is given in the White Paper to reducing women's imprisonment, and implementing the recommendations of the Farmer Review for Women in order to mitigate the damage caused to both mothers and children, when mothers come into contact with the criminal justice system and particularly when they are imprisoned.

The National Audit Office has recently reported on the government's 'limited' progress in implementing the Female Offender Strategy, pointing to insufficient

priority and investment being given to this work.<sup>2</sup> The government projects a significant 'temporary' increase in women's imprisonment due to the planned recruitment of over 20,000 police officers, while continuing to advocate that custody should be a last resort. Government [plans](#) to invest £150m in 500 new women's prison places, which ministers have sought to justify partly on the basis of the projected prison population rise and partly on the need for improved prison conditions, have shaken public confidence in the government's commitment to reducing women's imprisonment.

It appears defeatist to assume that increasing numbers of police officers should necessarily result in increases in women's imprisonment, without also considering the potential impact of local whole system approaches if properly implemented. Particularly given recent revelations of appalling Police practice in relation to women and girls<sup>3</sup>, it is incumbent on the government to ensure that the expansion of police numbers is accompanied by a strategic, adequately funded approach to transforming the Police response to women and girls, whether as victims or as alleged offenders. This must include significantly increased investment in improved responses to gender-based violence and diversion of women from the criminal justice system.

A whole system approach for women in contact with the criminal justice system, and those at risk of such contact, is a central element in the government's Female Offender Strategy.<sup>4</sup> A successful whole system approach requires greater investment and more meaningful joint working by the Ministry of Justice with other central government departments. The Women's Budget Group has made a detailed case for better funding of women's specialist services,<sup>5</sup> illustrating that government expenditure on community services to deliver the whole system approach has been minimal particularly when viewed against the Female Offender Strategy's own estimate of the cost to the government of women's offending (£1.7 billion per year). Investment in early intervention is scarce and this has been identified as a key gap in breaking the cycle of offending by women and girls.<sup>6</sup>

Greater Manchester has seen the largest reduction in the use of immediate prison sentences for women of under six months, at 60%. A whole system approach for women has been in place in Greater Manchester since 2014, including a problem solving court.<sup>7</sup> Surrey (which has the lowest rate of women's imprisonment in the country<sup>8</sup>) has seen the second largest reduction in the use of sentences of under six months for women in the same period, at 59%. Surrey Police attributes its success to its out of court disposal scheme for women, now known as Surrey Checkpoint Plus.<sup>9</sup> These results show that investment in an effective local strategy to divert

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<sup>2</sup> [National Audit Office \(2022\) Improving outcomes for women in the criminal justice system](#)

<sup>3</sup> [Letter from Centre for Women's Justice to the Home Secretary, the Rt. Hon. Priti Patel MP, 15 October 2021](#)

<sup>4</sup> Ministry of Justice (2018) [A Whole System Approach for Female Offenders: Emerging evidence](#)

<sup>5</sup> Women's Budget Group (2020) [The Case for Sustainable Funding for Women's Centres](#)

<sup>6</sup> Advance (2020) [A Place To Go Like This: breaking the cycle of harm for mothers involved in offending who are survivors of domestic abuse, and their children; Agenda and Alliance for Youth Justice \(2021\) Falling through the gaps: young women transitioning to the adult justice system](#)

<sup>7</sup> [Lowthian, J. et al \(2019\) Greater Manchester Women's Support Alliance Evaluation Report, Manchester: Manchester Metropolitan University](#)

<sup>8</sup> [Prison Reform Trust press release, 'New figures reveal significant north-south divide in rates of women's imprisonment, 10 December 2020](#)

<sup>9</sup> [Surrey Police \(2021\) Press release, 'Surrey has lowest rate of imprisoning women thanks to rehabilitation scheme', 16 February 2021](#)

women from the criminal justice system and from custody can reduce the number of women imprisoned, particularly on short sentences.

It is welcome that the White Paper includes a commitment to reduce the use of remand for women. A similar focus is needed on reducing custodial sentencing, through investment in community solutions and improvements in the consistent use, and quality, of pre-sentence reports for women – particularly those who are primary carers. This should include a focus on Black, Asian, minoritised and migrant women, who are over-represented in custody. Migrant women are particularly over-represented amongst remanded women, and this should be addressed together with the work planned on bail accommodation.<sup>10</sup> We also support calls for an end to the imprisonment of pregnant women.<sup>11</sup>

There are welcome initiatives underway, including planned women’s problem-solving courts. However the government must adopt a relentless focus on reforms to law and practice, in order to prevent the projected increase in women’s imprisonment becoming a reality and instead drive down the harmful use of prison. This must include:

- Investment in a transformation of the police response to women and girls, informed by a statutory public inquiry into the Police response to gender-based violence, and misogyny within the Police<sup>12</sup>.
- Reforms in law and practice to ensure women’s experience of gender-based violence is properly taken into account in decisions to prosecute/imprison.<sup>13</sup>
- Reforms in the use of both remand<sup>14</sup> and custodial sentencing for women.
- Increased investment in early intervention, prevention, diversion and community solutions.
- Action to tackle the unequal treatment faced by Black and minoritised women<sup>15</sup> and migrant women<sup>16</sup> as recommended in the recently published Double Disadvantage 10-point Action Plan.<sup>17</sup>
- Implementation of the Farmer Review for Women and reforms to criminal justice practices and sentencing law, to ensure that the children of women involved in the criminal justice system are carefully considered and supported

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<sup>10</sup> Robson, M. (2022) A suspect population? An examination of bail decision making for foreign national women in criminal courts in England and Wales

<sup>11</sup> [Brown, G. et al \(2022\) Why are pregnant women in prison?](#)

<sup>12</sup> [Letter from Centre for Women’s Justice to the Home Secretary, the Rt. Hon. Priti Patel MP, 15 October 2021](#)

<sup>13</sup> [Centre for Women’s Justice \(2022\) Submission to the Victims’ Bill consultation](#), pages 31 onwards

<sup>14</sup> [Howard League for Penal Reform \(2020\) Reset: rethinking remand for women](#)

<sup>15</sup> [Prison Reform Trust \(2017\) Counted Out: Black, Asian and minority ethnic women in the criminal justice system](#); [Agenda and Women in Prison \(2017\) Double Disadvantage: the experiences of Black, Asian and minority ethnic women in the criminal justice system](#)

<sup>16</sup> [Prison Reform Trust \(2018\) Still No Way Out: Foreign national women and trafficked women in the criminal justice system](#); [Benedict, S. \(2020\) Just no future at the moment: examining the barriers to community resettlement for foreign national women](#)

<sup>17</sup> [Hibiscus Initiatives \(2022\) Tackling Double Disadvantage: Ending inequality for Black, Asian, minoritised and migrant women – 10-point action plan for change](#)

throughout<sup>18</sup>, including through implementation of the recommendations of the Joint Committee on Human Rights<sup>19</sup>.

## 2. Taking proper account of the context of gender-based violence in which many women's offending (or alleged offending) occurs

### Introduction

At least 57% of women in prison and under community supervision in England and Wales are victims of domestic abuse.<sup>20</sup> Research by the Disabilities Trust revealed that of 173 women screened at HMP Drake Hall, 64% reported a history indicative of brain injury and for most this was caused by domestic violence.<sup>21</sup> Research has shown how women's offending is often directly linked to their own experience of domestic abuse.<sup>22</sup> Our own casework reveals how survivors can also be criminalised as a result of their experience of other forms of gender-based violence.<sup>23</sup>

### International law

The Bangkok Rules require the government to ensure that women in the criminal justice system who have experienced violence are identified, treated appropriately and receive the right support, and that they have their experience taken into account in sentencing decisions.<sup>24</sup> The Rules require sufficient resources to be available for suitable community alternatives to custody, and the UN Special Rapporteur on Violence Against Women recommended in 2015 that the UK government should "ensure that women's histories of victimization and abuse are taken into consideration when making decisions about incarceration, especially for non-violent crimes".<sup>25</sup> Also of relevance are the provisions of Convention on the Elimination of all forms of Discrimination against Women<sup>26</sup> and the Istanbul Convention<sup>27</sup>.

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<sup>18</sup> [Prison Reform Trust \(2018\) What About Me? The impact on children when mothers are involved in the criminal justice system](#); see also: Advance (2020) [A Place To Go Like This: breaking the cycle of harm for mothers involved in offending who are survivors of domestic abuse, and their children](#)

<sup>19</sup> Joint Committee on Human Rights (2019) Twenty-Second Report of Session 2017–19, [The right to family life: children whose mothers are in prison](#), HC 1610 / HL Paper 411; [JCHR \(2020\) Sixth Report of Session 2019-2021, Human rights and the government's response to COVID-19: children whose mothers are in prison](#), HC 158 / HL 90; [JCHR \(2021\) First Report of Session 2021-2022, Children of mothers in prison and the right to family life: the Police, Crime, Sentencing and Courts Bill](#), HC 90 / HL Paper 5

<sup>20</sup> Ministry of Justice (2018) [Female Offender Strategy](#), London: MoJ. This is likely to be an underestimate because many women fear disclosing abuse. (Gelsthorpe, L., Sharpe, G., and Roberts, J. (2007) [Provision for Women offenders in the community](#) London: Fawcett Society)

<sup>21</sup> [The Disabilities Trust \(2019\) Making the link: Female offending and brain injury, London: The Disabilities Trust](#)

<sup>22</sup> [Prison Reform Trust \(2017\) There's a reason we're in trouble: Domestic abuse as a driver to women's offending, London: PRT](#)

<sup>23</sup> [Centre for Women's Justice \(2022\) Submission to the Victims' Bill consultation](#), pages 31 onwards

<sup>24</sup> [The United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders \(the Bangkok Rules\)](#)

<sup>25</sup> Office of the High Commissioner for Human Rights (Manjoo, R. (2014) [Special Rapporteur on Violence Against Women country mission](#)

<sup>26</sup> See the recommendations of the CEDAW committee's March 2019 Concluding Observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland relating to resourcing of the Female Offender Strategy and protection of women from gender-based violence. ([CEDAW/C/GBR/CO/8](#))

<sup>27</sup> [The Council of Europe Convention on preventing and combating violence against women and domestic violence](#)

## Current failings and recommended reforms

Despite these legal safeguards, it nonetheless remains common practice for limited, if any, consideration to be given to women suspects' and defendants' experiences of domestic abuse and other forms of gender-based violence in criminal justice proceedings. In many cases, the abuse will not even be disclosed until late on in proceedings, or indeed until after women have been convicted and sentenced.<sup>28</sup> Addressing these failings is key to reducing women's criminalisation and imprisonment, in line with the public interest, as well as ensuring women receive fair treatment post-conviction in relation to opportunities for rehabilitation and support, and appropriate risk assessments in relation to parole, community supervision and recall.

This work must take account of the distinct ways in which women with protected characteristics may be criminalised as a consequence of their experience of abuse. Evidence of this in relation to young women and care leavers, and Black, Asian, minoritised and migrant women, is summarised in our submission to the Victims' Bill consultation.<sup>29</sup> Account should also be taken of the vulnerability of women with learning disabilities to domestic abuse and consequent criminalisation.<sup>30</sup>

Please refer to the detailed evidence and recommendations for reform set out in our submission to the Victims' Bill consultation.<sup>31</sup> In summary, we have called on the government to use the Victims' Bill and its surrounding policy framework to:

1. Introduce law reforms to provide effective defences for those whose offending results from their experience of domestic abuse.
2. Establish as a strategic priority the protection and non-prosecution of victims of domestic abuse and other forms of VAWG (subject to exceptions in line with the public interest), as is the case for victims of trafficking.
3. Establish a mechanism to expunge criminal records that arise from crimes committed as a consequence of coercion and abuse, or at least to filter them from mandatory disclosure.
4. Set out plans to implement reforms in practice throughout the criminal justice process in order to achieve the following outcomes:
  - (a) **Identification of victims:** Suspects/defendants who are potential victims of domestic abuse and other forms of VAWG are identified as such at the earliest possible stage in proceedings.

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<sup>28</sup> Sakande, N. (2019) [Righting Wrongs: What Are the Barriers Faced by Women Seeking to Overturn Unsafe Convictions or Unfair Sentences in the Court of Appeal](#) (Criminal Division); Centre for Women's Justice (2021) [Women who kill: how the state criminalises women we might otherwise be burying](#)

<sup>29</sup> [Centre for Women's Justice \(2022\) Submission to Victims' Bill consultation](#), pages 38-41

<sup>30</sup> [Prison Reform Trust and KeyRing \(2018\) Out of the shadows: women with learning disabilities in contact with or on the edges of the criminal justice system](#)

<sup>31</sup> [Centre for Women's Justice \(2022\) Submission to Victims' Bill consultation](#), page 31 onwards

- (b) **Protection of victims:** Once identified, victim suspects/defendants are protected from abuse, effectively referred to support services, have their rights upheld as victims, and are not stigmatised.
  - (c) **CJS competency and accountability for considering contextual abuse:** Criminal justice practitioners at every stage of the process (police, CPS, judges, magistrates, juries, prisons and probation) have access to the necessary guidance, tools, processes and expertise to enable them to take proper account of the abuse suffered by victim suspects/defendants/offenders and its relationship to any alleged offending, and are accountable for doing so.
  - (d) **Accessible procedural safeguards:** Effective procedural safeguards are accessible to enable victim suspects/defendants to give their best evidence about contextual domestic abuse at the police station and in court.
5. Ensure disaggregated data collection to improve understanding of the criminalisation of women who are victims of domestic abuse and other forms of VAWG, including intersectional discrimination based on race, religion or immigration status.

## **Women in prison and post-release**

As CWJ's recent research shows, there are multiple barriers throughout criminal justice proceedings which prevent women defendants' experiences of gender-based violence being taken properly into account.<sup>32</sup> Although this research concerns the very small number of women who kill their abusers, its learning is relevant to the many other cases in which women's alleged offending is linked to their experience of domestic abuse and other forms of gender-based violence. These barriers are explained more fully in our submission to the Victims' Bill consultation and include inadequacies in the appeal process for women whose offending resulted from abuse, barriers to parole for women whose offending resulted from abuse, and rising levels of recall of women to prison and lack of appropriate community support.

It must be ensured that women whose offending arose from their experience of domestic abuse and other forms of gender-based violence have access to support, rehabilitation and resettlement planning that takes proper account of this. Risk assessments used in parole proceedings, community supervision and recall decisions appear to have been designed for men, and should be re-designed – with appropriate training for their use - to ensure a gender-informed approach which is able to take proper account of the context of abuse in which some women's offending occurs.

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<sup>32</sup> [Centre for Women's Justice \(2021\) Women who kill: how the state criminalises women we might otherwise be burying](#)

### **3. Young Women’s Strategy and Black, Asian, minoritised and migrant women**

We are pleased to see plans in the White Paper to develop a Young Women’s Strategy. A strategic approach is also needed to address the unequal treatment of Black, Asian, minoritised and migrant women. This should address the over-use of imprisonment and ensure these women have equal access to diversion, community alternatives to custody, rehabilitation and resettlement support. This work should take account of recommendations in Hibiscus Initiatives’ Tackling Double Disadvantage [10-point Action Plan](#). Criminal justice data disaggregated by gender, ethnicity and nationality must be collected and regularly published, to understand the experiences of minoritised women and enable disparities to be addressed.

Both the Young Women’s Strategy and the strategy for Black, Asian, minoritised and migrant women must set out measures to ensure proper account is taken of the distinct ways in which they can be criminalised as a consequence of their experience of domestic abuse and other forms of gender-based violence.<sup>33</sup>

**Centre for Women’s Justice**  
**4 February 2022**

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<sup>33</sup> [Centre for Women’s Justice \(2022\) Submission to Victims’ Bill consultation](#), pages 38-41