

## **Agenda's response to the APPG on Women in the Penal System Inquiry into the sentencing of women**

*11<sup>th</sup> May 2018*

### **Executive summary**

Agenda, the alliance for women and girls at risk, welcomes the opportunity to contribute to this inquiry into the sentencing of women. Ten years on from the Corston Review, and with a strategy for female offenders due later this year, the inquiry presents a welcome opportunity to call for a diversion of women from the criminal justice system, and the provision of more effective community options for sentencers to use. This submission outlines Agenda's concerns about the sentencing of women, before going on to give recommendations of potential solutions.

It is well established that women in the criminal justice system face considerable disadvantage, with backgrounds of mental ill health, poverty, addiction and experiences of abuse and trauma across their lives. They tend to be the victims of violent crimes like sexual and domestic abuse and the perpetrators of non-violent ones like handling stolen goods and shoplifting. BAME women are overrepresented within the prison population and face particular issues and challenges.

Because they commit less serious crimes, most women in prison are on remand or serving short sentences with little opportunity to address the underlying causes of their crimes and prevent their re-offending.

Changes to the justice system could bring about significant improvements in the experiences of women. Sentencers need to be made aware of women's particular needs, of the impact of prison on their lives, and of the effective alternatives to custody that are available. There must be a greater focus on diverting women away from prison and earlier intervention to prevent women from reaching crisis point before they access services through the justice system.

We are concerned about Government proposals to build new prisons for women, and believe the funds allocated to these prisons would be better spent investing in improved support in the community. We are also concerned at the considerable negative impact Transforming Rehabilitation has had on the commissioning and stability of services for female offenders, and the rise in recall of female offenders to prison as a result of these reforms.

We know that women can be more effectively rehabilitated outside the criminal justice system, but community provision is under resourced and faces ongoing cuts. Women's centres are key to providing the holistic and trauma-informed support women need and we would like to see a national network of such centres adequately funded and accessible to women across the country.

We believe this inquiry should have a clear call for the reduction of the female prison population, and a focus on the ways the Ministry of Justice can improve prevention, diversion and support in the community so women can turn their lives around and be free from crime.

## Women and multiple disadvantage

There are very high levels of vulnerability amongst the female prison population, with high rates of poverty, addiction, homelessness, mental health issues, and long term histories of abuse.

46% of women in prison report having suffered domestic violence and 53% report having experienced emotional, physical or sexual abuse during childhood.<sup>1</sup> These figures are likely to be a significant underestimate: Women in Prison report that 79% of the women who use their services have experienced domestic and/or sexual violence.<sup>2</sup>

Women account for 18% of self-harm incidents in prison despite making up only 5% of the prison population<sup>3</sup>, and 2016 saw suicides among female offenders more than double on the preceding year.<sup>4</sup> Despite this, very few women receive support for their mental health while in prison.<sup>5</sup> Housing is another key issue: many women enter custody homeless or lose their homes while in custody and up to 60% of women prisoners do not have homes to go to on release<sup>6</sup>.

## BAME Women in the Criminal Justice System

There is a significant overrepresentation of BAME women in the female prison population: 17% of female prisoners are BAME<sup>7</sup>, compared to 14% of the general population.<sup>8</sup> Within this, some groups of women are particularly overrepresented, most notably Black or Black British<sup>9</sup> women who make up 8% of female prisoners, compared to 3.3% of the general population<sup>10</sup>.

Ministry of Justice analysis shows that black women are about 25% more likely than white women to be sentenced to custody at crown court. Disproportional outcomes are particularly noticeable for certain offences. For every 100 white women sentenced to custody at crown courts for drug offences, for example, 227 black women received custodial sentences.<sup>11</sup> Agenda and Women in Prison's recent report, *Double Disadvantage*<sup>12</sup>, explores how gender and ethnicity combine to shape the experiences of BAME women in the system, and found that many felt that their ethnicity and gender had adversely affected the sentence they received.

## Short sentences

The majority of women in prison are serving short sentences<sup>13</sup> with little opportunity to carry out rehabilitative work and causing great disruption to their lives and their families. Shorter sentences can make through the gate work more challenging.

Shorter sentences also mean women have been particularly impacted by the extension of probation supervision to offenders sentenced to less than 12 months under the Government's Transforming Rehabilitation programme. There is growing concern about the number of women being recalled to prison whilst under supervision after their release – this number has doubled since the introduction of mandatory supervision for those released on sentences of 12 months or less.<sup>14</sup>

## Sentencing guidelines

There are suggestions that some magistrates view prison as “places of safety” for vulnerable women and opt for a custodial sentence because they believe women are at risk or will not be able to access

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<sup>1</sup> Women In Prison, [Key Facts](#)

<sup>2</sup> Prison Reform Trust press release, '[Majority of women in prison have been victims of domestic abuse](#)', 4<sup>th</sup> December 2017

<sup>3</sup> Ministry of Justice, [Safety in Custody Statistics, England and Wales](#) (2018)

<sup>4</sup> INQUEST, [Still Dying on the Inside: Examining deaths in women's prisons](#) (May 2018)

<sup>5</sup> HM Chief Inspector of Prisons annual report: 2016 to 2017

<sup>6</sup> Prison Reform Trust and Women in Prison, [Home Truths: housing for women in the criminal justice system](#) (September 2016)

<sup>7</sup> [Prison Population Statistics](#), 31 March 2018

<sup>8</sup> [Office of National Statistics](#), 2011

<sup>9</sup> 305 of the 380 female prisoners were black or black British (Prison Population Statistics, 31 March 2018)

<sup>10</sup> [Office of National Statistics](#), 2011

<sup>11</sup> Ministry of Justice, [Black, Asian and Minority Ethnic disproportionality in the Criminal Justice System in England and Wales](#), 2016

<sup>12</sup> Agenda and Women in prison, [Double Disadvantage](#), 2017

<sup>13</sup> Prison Reform Trust, [Bromley Briefing](#), Autumn 2017

<sup>14</sup> Ibid

support in the community. We are concerned that, in the absence of an improvement in community options, this pattern will continue.

Female offenders are often the primary or sole carers for children<sup>15</sup>, and custodial sentences can have a very negative impact on those children<sup>16</sup>. Case law, and the UK Bangkok rules,<sup>17</sup> are clear that the impact of a sentence on an offender's children should be taken into account in sentencing if the offender is a primary or sole carer. Wider familial caring responsibilities should also be considered.

We are also concerned about the high use of remand against women: around 45% of women entering prison do so on remand but less than half of those convicted go on to receive a custodial sentence.<sup>18</sup>

### **Community sentencing requirements**

Any community sentencing requirements should recognise an offender's support needs. Conditions may sometimes prevent women from accessing existing specialist support at particular times or in particular areas.

For women carrying out community sentences who are the sole or primary carer for a child, some requirements can be very difficult to meet. For example, a curfew which does not allow a woman to leave her home in time to drop her children at school, or a requirement that she regularly attend probation appointments during school holidays may cause significant childcare challenges, especially to women who are socially isolated or living in poverty. Putting women in a position where they must choose between caring responsibilities and the requirements of their sentence increases the risk of breaches<sup>19</sup>, and sets women up to fail, even if they are otherwise willing to engage with their sentence.

### **Liaison and Diversion Schemes**

We welcome the roll out of Liaison and Diversion services and the requirement for a specific referral pathway for women.<sup>20</sup> Liaison and Diversion schemes have a valuable role to play but must respond to the specific needs and experiences of women. Women are broadly more likely than men to internalise mental distress and so it can be harder to detect. Referring to medical professionals is currently left to the discretion of a custody sergeant or court officer who is unlikely to have had training to identify women at risk.

### **Specialist women's services**

Women's services including women's centres have a proven track-record of providing effective therapeutic and practical help and interventions that support rehabilitation and help women turn their lives around. Ministry of Justice's own analysis shows a statistically significant reduction in re-offending rates for those who receive support from women's centres<sup>21</sup> and Modelling suggests that investing £18m per year in women's centres could save almost £1billion over 5 years.<sup>22</sup> The public are also overwhelmingly in favour of the use of local community centres where women can address the root causes of their crime and carry out compulsory work to pay back the community.<sup>23</sup>

*Mapping the Maze*, a report by Agenda and AVA (Against Violence and Abuse), found patchy provision of services for women facing addiction, homelessness, contact with the criminal justice system, and mental ill health, with a woman's ability to access services being dependent on where she lives.<sup>24</sup>

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<sup>15</sup> Liebling, A. & Maruna, S. (2005) *The effects of imprisonment* Devon: Willan.

<sup>16</sup> Sheehan R and Flynn C, *Women prisoners and their children*, in *What Works with Women Offenders*, ed Sheehan R, Mcivor and Trotter C, Willan Publishing, UK, 2007

<sup>17</sup> [United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders \(the Bangkok Rules\)](#)

<sup>18</sup> Prison Reform Trust, [Why focus on reducing women's imprisonment?](#), (February 2017)

<sup>19</sup> Revolving Doors, [Response to Effective Community Sentences consultation](#), (2012)

<sup>20</sup> Prison Reform Trust, [Fair Cop? Improving outcomes for women at the point of arrest](#), (March 2017)

<sup>21</sup> Ministry of Justice, [Re-offending Analysis: Women's Centres Throughout England](#), (2015)

<sup>22</sup> Revolving Doors, [Counting the Cost](#), (2011)

<sup>23</sup> ICM Polling for Prison Reform Trust, 9–11 February 2007, 1006 UK adults aged 18+

<sup>24</sup> Agenda and AVA, [Mapping the Maze](#), (2017)

We know that many of these already limited services are under considerable financial pressure with a risk that some may reduce the services they can provide or be unable to operate altogether.

### **The effect of Transforming Rehabilitation on community services for women**

Women's centres tend to be small or medium sized and the protracted negotiations and financial uncertainty that have accompanied the Transforming Rehabilitation reforms are putting many under great strain. Many of Agenda's members, who are women's voluntary sector organisations, report that reaching contractual agreements with Community Rehabilitation Companies (CRCs) has been particularly demanding with a large degree of risk having to be shouldered by them as small organisations. This is reflected in a recent report published by Clinks, which finds women's services report a lack of confidence in CRC contract management and a greater likelihood of having to subsidise CRC funded services.<sup>25</sup>

We are also concerned that CRCs are not commissioning the services that we know work but instead are modelling services around signposting and group work with CRC staff being used as key workers. Some specialist services are not being contracted at all and others are being offered a reduced payment for their services. There are also concerns about a move away from commissioning specific services for women non-specialist larger providers who are likely to be less effective in working with this group of women.

We are concerned that much of the expertise and goodwill (including with local courts, police and prisons) built up over many years, which is key to effective outcomes for women, is now under threat in many areas. The courts will not refer women to programmes unless they are confident of their durability. Forging relationships with prisons to ensure effective through the gate provision takes time and resource. Sustainability and continuity of these specialist services is vital if we are not to lose the expertise, relationships and goodwill that have been built up over many years and that are necessary for joined-up interventions.

### **New prisons**

There is widespread concern in the voluntary sector about proposals to build new prisons for women. At a time where women's community services are facing significant cuts and challenges, we do not believe that now is the time to be putting limited resources into expensive new prisons. There is also a risk that the building of new prisons will lead to magistrates sending more women to prison. Government should take the opportunity to reinvest money from women's prisons into services in the community which are proven to be effective – committing to a strong national network of women's centres.

## **Recommendations**

1. Further efforts must be made to improve the diversion of vulnerable women away from prison and towards trauma-informed, gender-specific community support to help them address the underlying causes of their offending. This should include exploring a presumption against short custodial sentences, an approach currently being taken in Scotland. We support calls to introduce a presumption against the use of custodial sentences of less than six months. We also believe the use of recall must be reviewed.
2. Full consideration should be given to relationship between women's offending and their experiences of abuse and victimisation, as well as women's role as mothers, when sentencing decisions are made. Prison should never be used as a 'place of safety' in the absence of other support. Details of local women's services should be made available and taken account of in sentencing.
3. Commissioning and funding models must support the provision of women's community services. This should include a national funding pot to support a network of women's centres

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<sup>25</sup> Clinks, *Under represented Under Pressure Under Resourced*, (April 2018)

across the country. There should be consideration of how women's community services will be funded in the future. This should include a review of TR and consideration of the role that the National Probation Service might play. Government leadership and accountability are crucial to realising a sustainable future for these vital services.

4. Community sentencing requirements must recognise women's personal circumstances, in particular childcare responsibilities, to ensure these never present a barrier to engagement.
5. Full pre-sentence reports should be used consistently and include details of women's experiences of abusive relationships, mental health issues and caring responsibilities. Women should be provided with a copy of their pre-sentence report.
6. The impact on women of the extension of probation supervision should be reviewed and consideration given to removing this requirement.
7. The use of remand against women should be reviewed to ensure it is not being overused. Where women are remanded, steps must be taken to ensure responsibilities to children or other relatives can be addressed. Magistrates and judges should clearly explain to women and their legal representatives why they are being remanded.
8. All Liaison and Diversion schemes should have a specialist women's worker who sees all women entering the custody suite or court setting.

### **About Agenda**

Agenda, the alliance for women and girls at risk, is working to build a society where women and girls are able to live their lives free from inequality, poverty and violence. We campaign for women and girls facing abuse, poverty, poor mental health, addiction and homelessness to get the support and protection they need. We work to get systems and services transformed, to raise awareness across sectors and to promote public and political understanding of the lives of women and girls facing multiple disadvantage. [www.weareagenda.org](http://www.weareagenda.org)

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