A response to the
The APPG on Women in the Penal System
Inquiry into the sentencing of women

14th May 2018

About Women in Prison
Founded in 1983, Women in Prison (WIP) aims to reduce the number of women in prison and prevent the harm caused to women and their families by imprisonment. Women in Prison’s proposals are based on experience of delivering gender-specialist trauma-informed support services in prison and the community for women affected by the criminal justice system.

For more information see www.womeninprison.org.uk
About Women in Prison (WIP):

Women in Prison (WIP) is a women-only organisation that provides holistic, gender-specialist and trauma-informed support to women affected by the criminal justice system. We work in prisons, in the community and “through the gate”, supporting women leaving prison. We run three women’s centres (in Manchester, Woking and Lambeth, London) which include support for diversion schemes for women at early stages of involvement in the criminal justice system, as well as support for women on community sentences and on release from prison. Our combined services provide women with support around advocacy, complex needs, domestic and sexual violence, physical health, mental health, substance misuse, parenting, training and employment.

We advocate for a significant reduction in the numbers of women being sent to prison and for strengthened community support services.

Our policy and campaigns work is informed by our frontline support services for women, delivered at every stage of a woman’s journey through the criminal justice system. The experience and knowledge of staff working directly with women affected by the criminal justice system enable us to see first-hand how well policy is implemented in practice. We are currently leading the 2020 Ambition to halve the number of women in prison from around 4,000 to 2,020 (or fewer) by 2020.
Aims of Inquiry:

1. To reveal the issues around sentencing that inhibit the use of non-custodial solutions
2. To encourage and enable the magistracy to avoid sending women to prison

Response:

Introduction:

Women in Prison (WIP) advocates for a significant reduction in custodial sentencing in favour of strengthened community support services for women to prevent them entering the criminal justice system in the first place, and to support them in serving sentences in the community when this is necessary. Our aim is to see community support through the women’s centre model working alongside national mainstream support services in the community (to bring an end to the current ‘postcode lottery’ of women’s services). For women who are already in contact with the criminal justice system, we advocate for diversion away from custody and into community support. Where deemed necessary, we support community sentences as an alternative to custody.

We appreciate that this inquiry is concerned with women who come before the courts. Therefore, any work to prevent women from entering the criminal justice system is outside of the scope of this inquiry, as are police diversion schemes where the women in question would bypass the courts altogether. The suggestions below are therefore primarily concerned with the work of the magistrates’ court and the setting in which they operate. However, it should be noted that the value for money that women’s centres and similar services bring is that they provide community support for women at all stages of the criminal justice system, including preventing contact in the first place.

Challenges facing magistrates:

We know from magistrates that, in many cases, sentencing guidelines permitting, community solutions are seen as preferable to custodial sentencing but that, due to a lack of viable community alternatives (or lack of up-to-date knowledge about what is available locally), magistrates often feel they have no choice but to recommend custody. A number of points are relevant here:

1. Availability of court diversion schemes
2. Availability of women’s centres in local area
3. Quality of pre-sentence report writing
4. Knowledge about local services
1. **Availability of court diversion schemes**

There are many examples of successful mental health liaison and diversion schemes. One example is the work undertaken by Together for Mental Health and their work in courts, which includes gender-specific work with women. However, not all magistrates’ courts, police stations, prisons or probation offices have access to these kinds of services. In addition, as argued by the Prison Reform Trust, in order to work effectively, it is important that partnerships are established between liaison and diversion services and local authorities and other local services. They cannot work in isolation from the “whole system”. It is also vital that community mental health and other services are sufficiently secure in terms of commissioning and funding to ensure they remain a permanent and reliable sentencing alternative. Such schemes often take many months to become established and trusted routes for diversion.

However, it should be stressed that mental health liaison and diversion schemes are not a preventative measure as they are primarily applied to those who have been charged with an offence. We believe that more investment in mental health support services would help prevent many with mental health needs from entering the criminal justice system in the first place, including preventing a slippage into substance misuse. Examples of such services may include, but not be limited to, early intervention in schools, easier and quicker access to counselling through GP referrals, walk-in clinics, day centres, emergency out-of-hours support, floating support and increased opportunities for supported accommodation for vulnerable adults. For women, there is a desperate need for gender specific services that address their particular needs – including experience of abuse and trauma, and the fact that primary carers are predominantly women and therefore access to services needs to account for this. Agenda has done important work on the gaps in services as part of its Women in Mind campaign and Mapping the Maze.

Currently, secure mental health units exist as an alternative to prison for a small number of women. However, women tend to be transferred to these units during or after a prison sentence, following assessment by a Forensic Medical Examiner under the Mental Health Act 2007. Given the level of mental health needs in prisons compared to the very small number of women transferred to psychiatric settings, this is clearly only an option for the very few. This is rarely used as an alternative to custody but more often a progression thereof and impacts on only a very small number of women with mental health issues. Under Section 136 of the Mental Health Act, psychiatric units, police stations and A & E departments can be used as “places of safety” for individuals suffering from a mental disorder. However, as noted in the Bradley report, detaining someone in a police custody suite can have detrimental effects, including criminalising people for their mental health needs and exacerbating their mental health state. The use of police custody suites is also inappropriate in terms of lack of staff expertise levels and puts women at risk. Sadly, we know that sometimes sentencers are seeing prisons as “places of safety” where they believe that women can access appropriate mental health care. This is not the case and a prison sentences often compounds existing mental ill health and adds additional harm. INQUEST’s recent report on the 94 women who have died in prison over the last 11 years shows how important mental ill health is in the cases of women who have taken their own lives in prison.
2. **Availability of women’s centres in local area**

Women’s centres provide excellent services where they exist and have a proven impact on reoffending rates but there is still far too little provision across the country, with many women unable to access services in their local area. Local services are often restricted in funding criteria to work only with those having a local connection or with particular needs, resulting in a postcode lottery. Across the board, funding is unstable and services do not form part of a cohesive network but tend to be stand-alone. This is something that could be addressed directly and with immediate effect by PCCs and through collaborative local and national commissioning. Women’s centre services differ depending on sources and levels of funding and location but all share the ability to provide services that are significantly less costly than prison – and more effective.

Due to the multiple and complex needs faced by women in the criminal justice system, women tend to require support around various issues such as benefits and debt, housing, domestic violence, parenting, substance misuse and/or health. Women may also need encouragement to attend appointments or advocacy in professionals meetings. In addition to practical advice and support, many women benefit from emotional support and the simple knowledge that there is a professional available to them if they need to reach out for help. One-stop-shop women’s centres are able to provide such holistic services to women in a women-only, safe environment. They are particularly vital for women with complex needs who have lost trust in established statutory services.

Each women’s centre is different and tailored to suit local needs, but women’s centres can be used as important and value for money resources for court and police diversion schemes, as part of a package of measures for community sentences and for the delivery of probation and other programmes. There have been some positive developments in recent years, with women’s centres being used for liaison and diversion schemes. Examples of these include schemes run by Women in Prison in partnership with other criminal justice agencies in Surrey, Lambeth and Manchester. Women’s centres can also focus on early intervention for women at risk of offending.

3. **Quality of Pre-sentence report (PSR) writing**

One issue across the criminal justice system in relation to the sentencing of women and men is the poor quality of information available to sentencers to make good decisions about appropriate sentences. There are many examples of good practice and opportunities for improved partnership work in regards to pre-sentence report writing:

a. **Women’s champions**

All London courts have Women’s champions; these are NPS probation officers based in court who write PSRs for women. This is an example of good practice and recognition of women’s gender-specific needs in the criminal justice system. However, it is important to bear in mind that in order to make the most of their role, women’s champions need to have expert knowledge of women’s specific needs and circumstances and should work closely with women’s organisations in the criminal justice sector. Specialist frontline support organisations such as local women’s centres are happy to support women’s champions with training, clarification and advice as and when needed. Through strong relationships such as these, there can also be an open dialogue between the
women’s champions and the organisations that undertake ongoing work with the women sentenced at court so that feedback on how well individual women are doing on their community sentence or on license can contribute to any future PSRs. We know from sentencers that one way to increase their confidence levels in alternatives to custody is to feedback to them about what a difference these community support services are making.

b. Using the expertise of women’s’ centres

We would urge NPS to, as much as possible, involve the views and experiences of other professionals working with women, including any relevant third sector support agencies, in the writing of PSRs. These should be shared with other agencies in advance, if the time frame allows, but at the very least after sentencing. However, PSRs are not available for women’s centres to view as they are “property of the courts”. We would recommend that the previous practice of more extensive sharing of PSRs is resumed in order to enable support agencies to maximise the impact of their work with women.

c. Views and experiences of women themselves

We would recommend the NPS finds out straight from woman being sentenced what she perceives as her major barriers and how best to overcome them. While asking the defendant for their input may seem like a “soft” approach this is more likely to result in successful outcomes. Unbeknown to the court there may be practicalities associated with a sentencing option that make compliance unlikely; pre-empting this is in the interest of all parties. A particular issue here is women’s communication about childcare needs in relation to community sentences and prison, a vital element of PSRs that is sometimes missing. Please see below for more guidance on children and dependants.

Recommendations regarding content of pre-sentence reports:

Previous offences and patterns of offending

➢ If a woman has a history of offending, we recommend that her past patterns of offending and the circumstances surrounding previous offences are analysed in order to find a proactive solution. This is all about ‘digging’ for the root causes of offending in order that these can be proactively addressed. For example:
  o If a woman has a long history of theft, investigate whether she needs support with benefits claims and budgeting skills
  o If a woman’s offending is related to drug use, arrange for support such as rehab to be put in place as part of a community order

Mental health issues and domestic violence are other root causes that need to be specifically investigated in order to give a complete picture of the circumstances of the offence in the PSR.

➢ If this approach still does not work and the woman reoffends or breaches her order, then look at the extent and nature of support offered and consider if there was enough support available for the woman to engage with her community order in the first place. Consider the possibility that she might have been “set up to fail” due to unrealistic demands or lack of support (including lack of childcare). Evidence shows us that community sentences can result in “false starts” and if prison is to be a genuine “last resort” then sentencers need to have a realistic understanding of the challenges many women face to turn their lives around once they have entered the criminal justice system.
Do not penalise women for poor support structures. There are many examples of women breaching a community order or post-supervision license for reasons that could have been avoided. Before penalising a woman for a repeat pattern of offending, look more closely at the details of the terms of license in her previous sentences and ask the following questions:

- Was there adequate support on offer to accompany the sentence or license conditions?
- Was the woman able to travel to her appointments, taking into account any disabilities, cost of travel, child care arrangements or anxiety issues?
- Did probation offer women-only reporting days? If not, the woman might have been intimidated by a male partner or acquaintance during visits.
- Were there childcare issues that clashed with the community order or license conditions? For example, was the woman asked to attend any kind of work that she could not carry out due to child care responsibilities or did she have appointments scheduled that clashed with picking up children from school? Such practical details can have a determining impact on levels of engagement.

Involve the woman in this discussion and ask her why it didn’t work out and what her suggestions would be for a future community order.

**Trauma-informed practice**

- Recognise women’s past histories of trauma and how this affects behaviour, trust in services and the ability to engage with services offered. For example, if a woman fails to attend appointments and has problems engaging with services look at her history and ask the following questions:
  - Did she grow up in care?
  - Was she abused as a child?
  - Has she been previously failed by social services or other statutory services before entering the criminal justice system?

  The answer to the above questions will have an impact on levels of trust in statutory services and levels of willingness to engage. A woman might benefit from a mentoring scheme or an independent advocate from a voluntary sector agency who can attend appointments with her, help liaise with services and manage professional relationships.

- Recognise how women’s substance abuse often links to trauma and tailor support accordingly, e.g. by investigating any links between DV and alcohol or involvement in abuse through prostitution and problematic substance use. Tailor support accordingly e.g. by offering individual counselling, DV group support or exiting prostitution advice in conjunction with substance misuse support services.

- All previous trauma needs to be taken into account in order to give a full picture of the root causes of women’s offending and hence find a solution more likely to work. Judges should be encouraged to use community sentencing to help a woman make positive progress in her life as opposed to custodial sentences, where trauma is increased and intensified.

**Substance misuse**
If a woman has previously been given a Drug Rehabilitation Requirement (DRR) but has failed to comply, the tendency tends to be for courts to not give a second chance but instead recommend custody.

- This practise needs to be replaced with a more realistic approach based on an understanding of the barriers to overcoming addiction. This requires close working with substance misuse agencies and other specialist providers, including those for women.

- Recognise that recovery from drugs and alcohol is a long and difficult process with risk of multiple relapse. Therefore, give women more than one chance to become abstinent and recognise “distance travelled”. PSRs need to be more explicit in identifying “distance travelled” and intervening factors which have led to relapse e.g. a significant anniversaries (of trauma) or other life events.

**Violence, coercion and control**

A majority of women in the criminal justice system have experience of abusive relationships and many women will be in such relationships at the time of committing an offence and/or sentencing. Some offending by women is relational and there are many women who offend to support somebody else’s drug use, sometimes linked to domestic abuse or other coercion or exploitation, including through prostitution. Women may be offending as a result of being in a coercive relationship but may have no means of exiting this relationship.

- Women may therefore need support to find alternative accommodation and associated practical support as well as emotional and psychological support such as group work and counselling.

- Recognise women’s gang affiliations, if existing, as a major negative influence and a method of coercion and control. This is especially the case for young women who are extremely vulnerable in the context of gangs and are often victims of coercion, abuse and sexual exploitation within the context of the gang. One option can be to support women to relocate to another borough or city to start afresh. However, this option is only productive and realistic if in accordance with the woman’s wishes as she might not want to leave family or other support networks. Therefore, such decisions should be made on a case-by-case basis. They also rely on a woman having appropriate support to resettle in her new home, which makes the availability of a strong network of women’s centre services even more important.

**Gender-based violence and trafficking**

Many foreign national women (this can also apply to British women) in the criminal justice system are known to have been coerced or trafficked into offending. Women need to be supported through the process of disclosing traumatic life events such as these but, despite being very difficult to disclose, PSRs at least give an opportunity to outline in some depth, and in advance, relevant background or current life situations without the need for women to speak of them in public.

- Gender based violence should be disclosed and considered in court when sentencing women and any occurrence of gender-based violence and/or trafficking needs to be made clear in PSRs.
Courts need to be aware of and identify trafficking indicators when sentencing women and, where applicable, this needs also to be outlined in a woman’s PSR.

Financial circumstances

As a group, women in the criminal justice system face severe financial hardship and much of their offending is related to poverty and other disadvantages. Because women are more likely to be primary carers than men, women sentenced at courts are more likely to raise issues relating to children and other dependents. Women have disproportionate caring responsibilities in society as a whole. This is a significant factor to bear in mind when looking at the high levels of benefit fraud in the women’s cohort as well as theft, which can be associated with supporting a family.

- Recognise women’s financial circumstances in theft and fraud offences and consider whether women may benefit from help with their finances/debt.
- Avoid imposing fines on women in financial difficulties as this is likely to result in additional financial hardship for women and may cause further spiralling of debt, rent arrears and other financial hardship, all of which is also likely to affect any dependants.

Mental health

Mental health diversion schemes should be available at point of arrest and a variety of mental health options are open to courts in sentencing guidelines including mental health treatment requirements (MHTHR). However, sentencing is contingent on availability of support in the community and due to a lack of community options courts often find themselves unable to recommend community mental health solutions. Women in Prison have various advocacy support services that show the value independent advocacy can bring in helping women to tackle the root causes of offending alongside their mental health issues. In courts such as in Northampton, proactive efforts have been made to link the availability of MHTHR with local women’s services, so that a woman has a range of support to help her meet the requirements of her sentence.

Recommendation number 37 of the Corston report states that “Sentencers must be able to access timely psychiatric reports and fail to remand in custody/sentence if not available”. However, as we outline in our report Corston + 10, although NPS writes PSRs, only appropriately qualified psychiatrists or psychologists can write psychiatric reports. In most cases, the probation service will simply describe any mental health issues in the pre-sentence report and solicitors will address these in mitigation before sentence. Women’s centres or other gender-specific practitioners are not involved in writing pre-sentence reports. Given that mental health services in the community are overstretched, it is very common for someone who appears before the courts not to have been in contact with mental health services or to have received support in the community. Judges or magistrates are likely to remand someone who is in the community and at risk of further offending due to their mental health issues, particularly if there is no apparent support available for that person.

Obtaining psychiatric reports is a complicated, lengthy and costly process. Defence solicitors will often (but not always) identify mental health issues, but these are frequently irrelevant to a criminal trial. In order to instruct an expert, the legal team must obtain prior authority from the Legal Aid
Agency, so that funds are in place to pay the expert. However, if the mental health problem is not deemed relevant to the offence, no report can be obtained prior to a conviction or guilty plea.

If an expert report is required after conviction, the defence solicitor will need to identify a likely expert, and either get legal aid or go before the court and ask the judge to order the report. This will require the case to be adjourned – and if a person is seriously mentally unwell, the remand is likely to be to custody. The person could in theory be transferred to a secure hospital if extremely unwell, but prison is by far the most frequent outcome.

It is common for the report not to be available when the case comes back to court, so that a further remand is requested. This can go on for months in some cases, particularly where the court would be asked to consider making a hospital order under section 37 of the Mental Health Act, as, for this order to be made, two reports from appropriately qualified doctors are required.

As a result of the complicated and costly process outlined above, sentencers are rarely able to access timely psychiatric reports but sadly this does not prevent women being remanded or sentenced to custody. A number of actions need to be taken to address these issues:

- Recognise the key role played by mental health on women’s offending and arrange for community support for women as a sentencing alternative wherever possible.
- Invest locally in stronger links between mental health services and specialist provision for women including advocates.
- Implement the recommendation from the Corston report in regards to psychiatric reports.

Learning has come from a number of Inquests into the deaths of women in custody that applies to court sentencing and remand decisions, as well as learning for the prison system. One example is the tragic death of Sarah Reed in HMP Holloway in 2016, but other examples are given in the report from INQUEST on deaths of women in custody.

Housing

Homelessness, insecure housing and inappropriate housing are major barriers to resettlement, rehabilitation and desistance. For more information on housing and women in the criminal justice system, please see our report “Home Truths”, produced jointly with PRT, which provides more detail on these key issues:

- Need to recognise that women need to be appropriately housed in order to comply with any sentence order and to not offend.
- All PSRs should include details of a woman’s housing situation as well as the details of the impact different sentencing options will have on her housing. For example, if a woman is sentenced to prison she is likely to lose her housing and become homeless on release from prison.

Children and dependants

If a woman is a primary carer of children, any sentence imposed on her will also affect her children, not just emotionally and psychologically but also in a practical sense. For example, when a primary carer of children who has housing in place is sent to prison, her children may need to leave their home to go into care or live with relatives. Research suggests that this is the case in 9 out of 10 cases.
where a woman sentenced to prison has children. If a woman in imprisoned and her children have to leave their homes they may also face other disruption such as having to change schools.

Custodial sentencing often has far-reaching consequences and can have unfair and disproportionate effects on individuals, including children, who are not involved in the criminal justice system. Sentencing guidelines state that “for offenders on the cusp of custody, imprisonment should not be imposed where there would be an impact on dependants which would make a custodial sentence disproportionate to achieving the aims of sentencing”12. This needs to be reiterated in all relevant PSRs.

- Ensure that all details of impact on children are taken into account in pre-sentence reports, particularly where the woman is the primary carer. This must include the practical impact on housing, schooling (including exams or other results), and finances as well as details of the children’s needs and circumstances including factors such as their health and emotional well-being which will suffer greatly from the trauma of their mother’s imprisonment.

- Ensure that all details of impact on other adults are taken into account. For example, we know of adult children whose mother’s imprisonment has led to them becoming homeless.

**BAME and Foreign National women**

The recent Lammy Report and report from Agenda and WIP “Double Disadvantage”13 identifies how discrimination and unconscious bias can impact on sentencing decisions. The following actions are necessary as part of implementing the Lammy recommendations:

- Recognise cultural backgrounds and ties to local community, especially for BAME and foreign national women who often face a disproportionate stigma.

- Recognise that BAME women face a disproportionate disadvantage and involvement in the criminal justice system.

- Recognise that foreign national women with primary caring responsibilities may face particular challenges with child care if they have few support networks – and the impact of imprisonment on their children may be particularly profound.

Training for sentencers is vital in identifying unconscious bias and attitudes which result in difference treatment of individuals on the grounds of race.

**Opportunities for change – Education, Training and Employment (ETE)**

Education, training and employment can be important routes out of offending and a prison sentence can have a permanent and devastating impact on future education and employment. As part of the sentencing process it is important that the following action is taken:

- Investigate whether the woman shows an interest in education and/or employment opportunities. Can this be offered to her as part of a community order?
- A woman might benefit from some advice and guidance as well as ongoing support from a specialist agency to increase her employability chances, become financially self-sufficient, increase her self-esteem and ultimately reduce her risk of re-offending.
This is another reason why women’s centres and similar services are so vital at all stages of sentencing. Many provide routes to work experience and local employers.

4. Knowledge about local services

A focus on diversion needs to be a crucial part of any changes to sentencing for women. However, a crucial point here is that for problem-solving justice interventions such as diversionary schemes to work, women not only need to be diverted away from custody but also need diverting toward support in the community. More investment in, and funding for, women’s centres and other services is therefore vital if diversion and other community options are to become serious criminal and social justice solutions. The situation in many local areas in terms of community alternatives to custody is often desperate. Many alternatives that do exist do so on uncertain funding resources that do not create the stability and longevity that sentencers and individuals need.

Moreover, it is not enough for women’s centres to simply exist; courts need to also be aware of their existence. This requires pre-sentence report writers (i.e. probation) to have local knowledge of viable alternatives to custody. Partnership work and collaborative working with the voluntary sector is key here.

AVA and Agenda’s excellent project ‘Mapping the maze’ provides a map of support services for women facing multiple disadvantage.

There is also scope here for technology to support probation, pre-sentence report writers and related agencies in using dedicated apps to access up to date information on services. Such apps are being developed in a range of areas. The following are a few examples:

- Streetlink’s app helps connect rough sleepers to services
- The Inside connections app provides a peer support group for family members of UK prisoners to assist them with the difficulties of a family member being in prison.
- The Socrates app is currently being rolled out across 39 prisons in England and Wales. The app is still in development but already covers help with education, employment, health and wellbeing as well as being a means for communication between offenders and their supervising probation officers.

We are not aware of a dedicated app for women’s centres although Women in Prison is in the early stages of developing such a tool in partnership with other women’s services. We hope this can be a collaborative effort between the women’s sector and the criminal justice sector and will be of benefit to probation in writing pre-sentence reports for magistrates.
Further Information

This consultation response was prepared by Sofia Gullberg, Policy and Information Coordinator at Women in Prison.

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1 http://www.together-uk.org/our-mental-health-services/criminal-justice-mental-health/liaison-and-diversion/
9 http://www.womeninprison.org.uk/perch/resources/corston-report-10-years-on.pdf
10 The Legal Service Commission was replaced by the Legal Aid Agency, an executive agency of the Ministry of Justice, on 1 April 2013
14 https://www.mappingthemaze.org.uk/
15 https://play.google.com/store/apps/details?id=co.uk.precedent.streetlink
17 http://www.russellwebster.com/new-app-provides-comprehensive-support-for-released-prisoners/