

10 June 2020

The Right Honourable The Lord Burnett of Maldon
The Lord Chief Justice of England and Wales
Judicial Office, 11th floor, Thomas More Building
The Royal Courts of Justice
Strand
London WC2A 2LL

Dear Lord Chief Justice,

Judicial decision-making concerning women in the criminal courts in light of the Coronavirus pandemic

In light of the particular difficulties faced by women in prison, and their families, at this time, we write to ask that you ensure that judges and magistrates are fully informed of the current circumstances for women in custody and encourage the judiciary to tailor its approach to remand and sentence decisions accordingly, in line with existing law and guidance.

We welcome the salient reminder to judges and magistrates in *R v Manning*¹ that they should keep in mind that the impact of a custodial sentence is likely to be heavier during the current emergency than it would otherwise be. This is likely to be the case for the foreseeable future.

Even under normal circumstances, as Baroness Corston identified in her seminal report as long ago as 2007, the impact of imprisonment on women, and those they usually care for, is especially onerous. It follows that during the current emergency, women sentenced and remanded to prison experience particular difficulties and challenges. HM Chief Inspector of Prisons' Report on Short Scrutiny Visits to Prisons Holding Women 2020, published on Friday 5th June,² reveals just how acutely women in prison are being affected by the restricted regime currently in place.

The current regime in prisons for women

While the number of women admitted to prison since the lockdown commenced has reduced significantly, the conditions for women in prison have worsened dramatically. The Chief Inspector reported on the conditions in three women's prisons on 5th June 2020. He found that the majority of women are spending 23 hours per day in their cells. These conditions amount to solitary confinement.³ In addition, face-to-face education has been largely suspended, libraries and gyms are closed and no formal exercise classes are being provided. The prevalence of self-injury amongst women, even under normal conditions, is five times that in the male estate.

¹ [2020] EWCA Crim 592 [2020] EWCA Crim 592 at 41.

² <https://www.justiceinspectorates.gov.uk/hmprisons/wp-content/uploads/sites/4/2020/06/Womens-prisons-SSV-2020.pdf>

³ UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules).

Since March, self-injury has increased further. A significant number of women released during the period were released homeless.

Women showing symptoms of Covid-19, and those who are shielding for health reasons, have even more limited regimes, including reduced access to exercise and showers. Although infections have been dramatically reduced by measures to date, the Chief Inspector raised concerns that isolating arrangements were not always effectively implemented and social distancing is difficult to manage in some settings.

As you know, women who are remanded or sentenced to custody tend to have high levels of need, often complex and multiple. Not only do many have pre-existing physical health needs that make them particularly at risk should they contract Covid-19, but many have mental health difficulties that will be exacerbated by solitary confinement and lack of contact with their support networks.⁴

Social and family visiting has been suspended. At the time of inspection, there was no video-calling facility and some women had not seen their children for two months. Whilst the Chief Inspector was informed of plans to pilot video-calling at Bronzefield and Eastwood Park prisons, there were no timeframes for national roll-out of video-calling across women's prisons.

Approximately two thirds of women in prison are mothers to children under the age of 18. For women, separation from their children at this worrying time will be a source of extreme anxiety, and the Chief Inspector noted the 'acute impact' on women of the lack of meaningful family contact. In addition to the immediate welfare risks, as Lord Farmer's second review identified,⁵ maintaining good family relationships is particularly key for women's rehabilitation. For their children, many coping with difficult home circumstances and without formal schooling, the negative impact on them of their mother's imprisonment will be magnified at this time.

In order to avoid these devastating consequences and future Coronavirus outbreaks inside prisons and in the community, we urge that guidance be provided to judicial decision-makers so that they can take into account the vulnerable position of women at this time and utilise all available measures to divert from custody to best effect.

Remand decisions

Prior to the Coronavirus the number of women being remanded into custody was a growing problem. As at 31 December 2019, the number of women held in prison on remand had increased by 21 per cent on the previous year (to 568).⁶ There is also good evidence that remand was being used unnecessarily, with 63 per cent of women remanded into custody in magistrates' courts in 2018 not going on to receive a custodial term, and nine in 10 women on remand being of low to medium risk of serious harm (Female Offender Strategy 2018).⁷

⁴ See relevant information in the Equal Treatment Bench Book, p148 ff, <https://www.judiciary.uk/wp-content/uploads/2018/02/ETBB-February-2018-amended-March-2020.pdf>

⁵ *The Importance of Strengthening Female Offenders' Family and other Relationships to Prevent Reoffending and Reduce Intergenerational Crime*, Lord Farmer, June 2019, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/809467/farmer-review-women.PDF

⁶ MOJ (2020) Offender Managements statistics quarterly: July to September, 30 January 2020.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/719819/female-offender-strategy.pdf

Judges and magistrates should be encouraged to ensure that any decision to remand to custody is subject to anxious scrutiny in light of the virus. Not only is the effect of remand likely to be exacerbated for the reasons described above, but the families of women who are remanded are also particularly vulnerable at this time. Under international law decision-makers are under a duty to consider the rights of children affected by remand decisions, just as by sentencing decisions, and to take into account the impact on any dependent child, and their best interests, in making the decision (Article 3 of the UN Convention on the Rights of the Child, Article 8 European Convention on Human Rights).

In the vast majority of cases remanding women into custody at this time would be a disproportionate response to any risk they may pose. Women should not be remanded into custody unless absolutely necessary and all efforts should be made to take advantage of Bail Information Services, now available in all open magistrates courts and many crown courts, to enable women to remain in the community. In particular remand for 'own protection' (under the Bail Act 1976) is a misnomer at this time and should not be considered.

Sentencing decisions

Judges and magistrates should also be encouraged to avoid imposing custodial sentences on women at all costs at this time. This is especially pressing in the case of pregnant women and mothers. The Sentencing Council's Guidance on 'Sole or primary carer for dependent relatives' within the 'General Guideline: Overarching Principles'⁸ is of particular relevance under Covid-19. The circumstances arising as a result of the Coronavirus will affect whether, for those on the cusp of custody, a prison sentence is a proportionate response to their offending in light of the impact on dependents.

Where custody is unavoidable, the possibility of suspending the sentence, in suitable cases, should be considered. The prospect that immediate custody will result in significant harmful impact to others is a factor indicating that suspension may be appropriate (see Sentencing Council Guideline: Imposition of Community and Custodial Sentences,⁹ also *R v Manning* (at 41)).

We hope this letter is helpful and that you will ensure that your colleagues are made aware of the issues that affect women in the criminal justice system at this time. We would be grateful if you could confirm receipt of this letter and outline any steps that have been taken to disseminate and highlight the information contained within it. We propose to publish this letter online on 16th June 2020.

Yours sincerely
Frances

Frances Crook
Chief Executive

⁸ <https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/general-guideline-overarching-principles/>

⁹ <https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/imposition-of-community-and-custodial-sentences/>