

## **Prison Reform Trust Submission to HM Government's Domestic Abuse Bill consultation, May 2018**

### **Introduction**

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective prison system. We have a longstanding interest in improving criminal justice outcomes for women and our Transforming Lives programme to reduce the unnecessary imprisonment of women in the UK is supported by the Big Lottery Fund.

About 13,000 women are sent to prison in the UK every year, twice as many as 20 years ago, many on remand or to serve short sentences for non-violent offences, often for a first offence. Thousands of children are separated from their mothers by imprisonment every year. Yet most of the solutions to women's offending lie in the community. PRT works with national and local organisations to promote more effective responses to women in contact with the criminal justice system. One of our objectives is to reduce the numbers of women in prison who are affected by domestic abuse. For further information and a range of publications see: [www.prisonreformtrust.org.uk/women](http://www.prisonreformtrust.org.uk/women)

### **Domestic abuse as a driver to women's offending**

We welcome the chance to respond to this consultation. Our submission focuses primarily on the potential impact of the Domestic Abuse Bill and surrounding policy development for women who offend or are at risk of doing so, who are themselves victims/survivors of domestic abuse. Many of these women will have complex needs including housing problems, mental health needs and problematic substance use.

Any woman who offends and is a victim/survivor of domestic abuse is entitled to have her experience of abuse taken into account at each stage of criminal justice proceedings, from the decision to arrest or charge, to the decision to imprison or to recall to prison following release. However our research has highlighted that too often this information is not taken into account, leading to missed opportunities to divert women from the criminal justice system and offer them much needed support.

In December 2017 we published a briefing, ['There's a reason we're in trouble': Domestic abuse as a driver to women's offending](#). This was informed by desk-based research and meetings with service providers, local authorities and criminal justice agencies across England and Wales, focus groups with women who have personal experience of domestic abuse and offending and case studies provided by Advance and Black Country Women's Aid. It was developed in light of discussion at a high level summit organised by PRT in consultation with AVA (Against Violence and Abuse) and hosted by the Big Lottery Fund in London in October 2017. The summit was chaired by Dame Vera Baird QC and the

speakers included Sarah Newton MP, then Minister for Crime, Safeguarding and Vulnerability.

An [accompanying briefing](#) was produced on behalf of the Criminal Bar Association (CBA) by Paramjit Ahluwalia and Angela Rafferty QC, Chair of the CBA, explaining the need for a review of the criminal law so that women who commit offences as a result of abuse, including reactive violence against a primary aggressor, have an effective defence available to them.

Also of relevance is PRT's 2016 briefing [Leading change: the role of local authorities in supporting women with multiple needs](#) which suggests practical ways in which local authorities in England can prioritise and address the needs of vulnerable women.

We include all these briefings as part of our response to the consultation. In this document, following a brief overview, we answer selected consultation questions with particular relevance to women offenders who are victims/survivors of domestic abuse, including references to relevant recommendations from the PRT report. Our answers are informed by research carried out under PRT's Care not Custody programme concerning people with mental health needs and learning disabilities. We also raise specific concerns regarding proposals to criminalise breach of domestic abuse protection orders and the introduction of a statutory aggravating factor for offences of domestic abuse which involve children.

This submission is also informed by discussion at a thematic consultation event held in London by the Ministry of Justice with support from PRT on Tuesday 15 May 2018. At this meeting, women with experience of domestic abuse and offending joined Dr Phillip Lee MP, Minister for Youth Justice, Victims, Female Offenders and Offender Health, academics, legal experts and representatives of key criminal justice agencies and women's services, to consider the opportunities presented by the Bill and surrounding policy development to achieve better outcomes for the many women who are victims/survivors of domestic abuse and who find themselves on the wrong side of the criminal justice system.

One young woman spoke at the event about her experiences of abuse and offending, having been released from prison a fortnight before. Her comment after the meeting illustrates how welcome it is that this consultation has a clear focus on women who offend or are at risk of doing so, as well as the weight of responsibility to deliver change:

*It's completely changed my thinking, I didn't know that people like that cared about people like us.*

## **Overview**

Many women in prison have been victims of much more serious offences than the ones they are accused of, with a growing body of research indicating that women's exposure to physical, emotional and sexual abuse, including coercive control, is for some a driver of their offending. A key difference between women and men in prison is that family relationships tend to be a protective factor for men whilst, for women, relationships are more often a risk factor. Baroness Corston's study of women in the criminal justice system a decade ago

found that coercion by male partners and relatives is a distinct route into criminality and prison for some women.<sup>1</sup>

Amongst a number of areas of complex need faced by many women who offend or at risk of doing so, are learning disabilities, mental health need, problematic substance use, poverty and debt, homelessness and immigration restrictions. The impact of maternal prosecution and imprisonment may be particularly disruptive and traumatic for both mothers and children, as women are more likely to be primary carers.

The co-existence of victimisation and offending is now better recognised, but the links between them are still not well understood by all agencies. The experience of abuse too often remains outside consideration in decisions by criminal justice agencies and there is a lack of information and support for women victims/survivors of abuse both in prison and in the community. Funding cuts to specialist domestic abuse services including refuges are leaving vulnerable women offenders without support.

The links between domestic abuse and offending by women require more attention in:

- UK and Welsh Government strategies on tackling violence against women and girls, on women offenders, and on victims
- Sentencing guidance
- Frameworks of standards, guidance and training for all criminal justice professionals – police, prosecutors, offender managers, criminal defence lawyers and the judiciary
- Commissioning of specialist, gender specific support and rehabilitation programmes in prison and the community
- Police responses to women offenders who may be affected by domestic abuse, including through problem solving triage and diversion schemes.

### **Title and scope of the Domestic Abuse Bill**

We share the concerns raised by many that restricting the Bill's title to domestic abuse as opposed to including all forms of violence against women and girls is inconsistent with the UK government's [strategy to end violence against women and girls](#) and risks jeopardising efforts to ensure that all forms of violence against women and girls are given the same priority including:

- Domestic abuse
- So-called 'honour' based violence
- Female genital mutilation
- Forced marriage
- Sexual violence

The Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 provides a useful model for a more comprehensive approach. This would echo the government's own recognition that women and girls form the vast majority of victims of these crimes while making clear that where men and boys are victims they are equally entitled to

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<sup>11</sup> Corston, J. (2007) Review of Women with Particular Vulnerabilities in the Criminal Justice System, London: MoJ

protection and support, as is clearly articulated in the ministerial foreword to the UK government strategy to end violence against women and girls:

*We know that these terrible crimes are disproportionately gendered which is why our approach must be framed within a violence against women and girls strategy. However, I recognise that men can also be victims of violence and abuse and the approach set out in this strategy will benefit all victims of these crimes.*

If the Bill title remains as currently proposed, explicit, formal commitments must be given to ensure that this will not lead to the de-prioritising of measures, including funding, to tackle other forms of violence against women and girls.

As in the Wales Act, the Bill should include a duty on public agencies to address violence against women and girls. Consideration should also be given to placing a duty on public facing workers to undergo training and share information about violence against women and girls including domestic abuse, akin to existing statutory requirements for the safeguarding of children.

## **Answers to selected consultation questions**

### **1: Do you agree with the proposed approach to the statutory definition?**

The introduction of a statutory definition of domestic abuse that includes all forms of abuse, including coercive and controlling behaviour and financial abuse, is a welcome step forward in order to embed a more sophisticated understanding on the part of all public facing agencies of the nature of domestic abuse as a pattern of behaviour over time. This understanding is needed as a foundation in order to improve the response of the police and other criminal justice agencies to women offenders whose offending results from their experience as a victim/survivor of domestic abuse, including coercive control.

It is essential for this Bill and surrounding policy work to ensure that the definition of domestic abuse includes trafficking where family members are involved, and the proposed definition may require amendment to reflect this.

### **6: In addition to the changes being made to how relationship education will be taught in schools, what else can be done to help children and young people learn about positive relationships and educate them about abuse?**

Relationship education for children with special needs, especially those with learning disabilities and/or autism, is particularly important for two main reasons. These are: to enable children to understand when sexual behaviour is appropriate and when it is inappropriate, and that saying 'no' is OK; the difference between a loving and mutually supportive relationship and one that is abusive; and that there are places to go to seek help.

## **Reporting domestic abuse to statutory agencies**

### **7: Which statutory agencies or groups do you think the UK Government should focus its efforts on in order to improve the identification of domestic abuse?**

For women who offend it is critical that all criminal justice agencies should be enabled to recognise the signs of domestic abuse and identify where this may be an underlying factor in women's offending. The role of liaison and diversion services is especially important in ensuring that women suspects and defendants are asked in a sensitive manner about any

prior experience of violence and abuse. It is encouraging that all liaison and diversion services will have a specific women's lead, and their role should include an 'investigative enquiry' into possible abuse, relevant reporting to inform criminal justice decision making, and the necessary response/referral into local services.

*PRT Recommendation 1: The Home Office and Ministry of Justice should work closely together, in consultation with the Welsh Government, to ensure the women offenders strategy and victims strategy address the links between domestic abuse and women's offending. Clear expectations must be placed on criminal justice agencies to improve their response to women offenders affected by domestic abuse.*

**8: In addition to improving training programmes and introducing guidance, what more can the government do to improve statutory agencies' understanding of domestic abuse? Please explain your answer.**

For women who offend, close joint work between the police and other frontline criminal justice agencies and domestic abuse specialist organisations is key. This is needed to develop a better understanding of domestic abuse amongst those agencies both as a concept and in relation to the dynamics of individual cases, and to improve criminal justice responses to those women. This is shown for example in successful joint working between Advance domestic abuse services and the Metropolitan Police Service in Hammersmith and Fulham. This work must be informed by service user engagement.

This work could be done by creating a system wide strategy for working with victims of abuse, which could sit with the local Health and Wellbeing Board. The Health and Wellbeing Board could, for example, assure itself that the overall strategy and operational activity involves appropriate partners and, in particular, that the involvement of victims and survivors of abuse is embedded in the work and that their experiences and insights inform service provision. This could be done by, for example, allocating the task to an existing relevant partnership such as the local Community Safety Partnership.

*PRT Recommendation 4: Police guidance and training must include a specific focus on the links between domestic abuse and some women's offending. Police forces should work with the CPS and local domestic abuse specialist services, and where possible enable co-location of domestic abuse specialists in police stations.*

**Improving support services for all victims of domestic abuse and their children**

**10: We are in the process of identifying priority areas for central Government funding on domestic abuse. Which of the following areas do you think the UK Government should prioritise?**

- **Advocacy for victims to enable them to stay safely in their own home (Independent Domestic Violence Advisors or their equivalent)**
- **Therapeutic services to help victims of domestic abuse recover from their experience**
- **Accommodation services**
- **Helpline services for those affected by domestic abuse to call for advice and support**
- **Interventions embedded in health**
- **Perpetrator programmes which aim to change offenders' behaviour and stop reoffending**
- **Rolling out of new multi-agency approaches**

- **Other**

For women who offend and who are victims/survivors of domestic abuse, many of whom will have complex needs, it is critical that the UK Government should invest in problem solving, whole systems approaches, including out of court disposals and community alternatives to custody. This is needed in order to avoid the compound damage that can be caused by criminal proceedings and potential imprisonment for a minor offence and in order to take opportunities to intervene and give women the support they need. There should be a clear expectation that police triage schemes do not automatically exclude women accused of domestic abuse offences.

Provision must be made for the consistent availability of information and support in prison and upon release for women who are affected by domestic abuse, including victim support services. The availability of suitable accommodation, women-specific and supported where necessary, is also key for women who offend or are at risk of doing so, including following release from prison.

The profile of women offenders demonstrates high levels of multiple need, which is often unmet. Many victims and survivors of abuse will also experience trauma. This high level of need, especially poor mental health, learning disability and low educational attainment should be factored into service provision. The role of a 'key worker' is especially important in encouraging and maintaining women's engagement with services – and service engagement with women victims and survivors.

*PRT Recommendation 3: The UK Government should invest in problem solving, whole systems approaches to support early diversion and effective community solutions for women offenders affected by domestic and sexual abuse, including out of court disposals.*

*PRT Recommendation 5: Police triage and diversion schemes for women involved in low level offending should not automatically exclude women accused of domestic abuse offences.*

*PRT Recommendation 12: HM Prisons and Probation Service and Ministry of Justice should work with women's prison governors, probation services and community agencies to ensure that there are programmes of information and support funded for women offenders affected by domestic abuse, including victim support services, both in prison and on release.*

*PRT Recommendation 13: The Ministry of Justice should work with the [Ministry for Housing, Communities and Local Government], local authorities and the voluntary sector to ensure that women leaving prison are provided with safe accommodation with appropriate support, including specialist refuge accommodation where this is needed.*

## **11: What more can the Government do to encourage and support effective multi-agency working, in order to provide victims with full support and protection?**

The establishment of a Violence Against Women, Domestic Abuse and Sexual Violence Commissioner (see Q59 below) could help to reinforce the expectation for effective multi agency working, and provide a mechanism for holding national and local agencies to account.

Many women who offend, or are at risk of doing so, have complex needs which include experience of abuse as well as other challenges such as mental health need, problematic substance use and homelessness. Effective multi-agency work must include wrap around

services centred upon each woman's needs. PRT's 2016 briefing [Leading change: the role of local authorities in supporting women with multiple needs](#) suggests practical ways in which local authorities in England can prioritise and address the needs of vulnerable women:

*You are relying on people moving on from their old lifestyle and going to another one, and that's a massive void. You need to have someone to hold your hand through that period, so you know that if you are letting go of alcohol, drugs or a bloke, there is going to be something there to replace it.*

Alison Jarvis, Merseyside CRC volunteer and former offender

This could be underpinned by creating a statutory duty for agencies to cooperate (see response to Q8) and a proactive approach to enquiring about possible abuse whenever a woman engages with local services, especially health, social care and housing services.

### **Supporting victims with specific needs**

#### **12: What more can the Government do to better support victims who face multiple barriers to accessing support?**

Given the high proportion of women in prison who are victims/survivors of domestic abuse, we have recommended that frontline criminal justice agencies, in particular the police, probation services and liaison and diversion services should include this as a routine enquiry, supported by training and resources to enable the frontline officer to respond appropriately and direct the woman to support. This must be more than sign-posting; referrals must have traction. Systems must be in place to ensure that referrals are made and accepted, and that women are seen in a timely manner, supported by a key worker where necessary. Participants at the 15 May consultation event went further to suggest that there may in fact be benefit in presuming that women suspects and defendants are victims of domestic abuse unless the available evidence suggests otherwise. Checks of police records and consultation with local women's services and health services may offer sources of background information regarding any abuse, without placing the onus on the woman suspect or defendant to disclose her experiences.

Disclosures may in any event be unlikely in circumstances where there has been a limited opportunity to build trust with the victim/survivor. Participants at the consultation event made clear that this is likely to be challenging for the police, particularly where they conduct a voluntary interview rather than arresting and interviewing in the custody suite. It will also be difficult for many defence lawyers who meet their client at court for a short time before their hearing, as well as for pre-sentence report writers and magistrates and judges. Domestic abuse service providers report that in many cases women do not realise that what they are experiencing is abuse. For disclosure to become a real possibility and to maximise the chances of appropriate, informed decision making at the earliest opportunity, the role of liaison and diversion women specific leads should be reinforced, with women's services being made routinely available for liaison and diversion services to refer into.

Participants at the consultation event emphasised the importance of ensuring that all criminal justice agencies take a [trauma informed approach](#), with frontline practitioners trained to recognise how trauma presents itself and to respond accordingly.

Close joint work with specialist, gender-specific services in the community is key to making this work. This must include sustainable funding to support the availability of specialist service provision for minority groups including Black, Asian and minority ethnic women, foreign national women, LGBT women and women with disabilities.

All these considerations should apply equally young women and girls in youth justice settings.

*PRT Recommendation 2: The police, prosecutors, probation services and the courts should adopt the practice of routine enquiry into women's histories of domestic abuse at each stage of the criminal justice process to ensure informed decision making.*

*PRT Recommendation 11: The National Probation Service and Community Rehabilitation Companies should adopt a practice of routine enquiry about histories of domestic abuse, supported by training about barriers to disclosure and other relevant factors. Pre-sentence reports should always include information about whether or not a woman's offending is linked directly or indirectly to domestic abuse.*

## **Supporting female offenders**

**13: How can we work better with female offenders and vulnerable women at risk of offending to identify their domestic abuse earlier? Please select top 3.**

- **Criminal justice agencies to adopt appropriate enquiries into history of abuse at each stage of the criminal justice process**
- **Dedicated support and/or IDVAs in women's services**
- **Encourage the use of schemes which divert vulnerable women out of the criminal justice system (where appropriate) and into services**
- **Improve availability of support for domestic abuse victims in prisons**
- **Support signposting into appropriate services for women who come into contact with the police**
- **Other**

It is critical that work with women offenders and those at risk of offending is improved to identify domestic abuse earlier, as has been helpfully recognised in this consultation document. Our briefing 'There's a reason we're in trouble' includes stories women told us of their experiences, and of those of women supported by the charities Black Country Women's Aid (BCWA) and Advance. The women had been prosecuted for offences they committed as a direct result of experiencing domestic abuse, including:

- Driving while disqualified, under threat of ex-partner violence
- Handling stolen goods under threat of partner violence
- Taking the blame for possession of a controlled substance belonging to an abusive partner
- Taking the blame for carrying a knife on behalf of an abusive partner
- Theft offences to pay for drugs and alcohol used by themselves and their abusive partner
- Assault against an abusive partner or ex-partner
- Failure to secure school attendance for fear of running into abusive ex-partner

These offences all led to criminal convictions for the women involved, with some serving prison sentences while others undertook community orders. For those who were referred to a domestic abuse service there were usually some positive outcomes, but often this came after the woman had already received a criminal conviction for the offence.



Research has indicated that offending can be a 'by-product' of experiencing abuse, resulting from the victim's attempts to survive the abuse, and that the criminal justice process itself can be used against victims as a weapon of abuse.<sup>2</sup>

Individual case studies and relevant extracts from [research into the experiences of Muslim women offenders](#) are annexed to this submission.

Rather than selecting a 'top 3' from the list above, we would commend all these proposals for the reasons outlined in our responses above. The medium and longer term cost savings from such improvements in practice would be likely to outweigh the investment required, quite apart from the benefits they would bring to individual women and their families.

We have recommended that all criminal justice agencies should adopt the practice of routine enquiry into histories of domestic abuse, ensuring that frontline officers have sufficient training and support through close joint work and preferably co-location with domestic abuse service providers, in order to respond appropriately and direct women to support. Liaison and diversion services have a key role to play here. Police and Crime Commissioners are also key to ensuring an improved police response.

One possible model is the 'every contact counts' approach (see [Leading Change](#)). By adopting this method, local services can make the most of opportunities to support women with multiple needs. Any contact – whether initiated by the woman herself or as a result of a local service response, such as rent arrears, benefit claims, or contact with liaison and diversion services – can provide opportunities for routine 'investigative enquiry', meaning asking women about a range of factors relevant to their wellbeing. One delegate at a local/regional leaders' seminar conducted as part of the research for [Leading Change](#) said:

*We didn't used to ask about smoking, or how much people drink, but we do now, it's routine, so why not ask about domestic violence? We should be asking, and we should have referral pathways.*

Clear referral pathways can help make the most of women's contact with local services. For example, social workers in Essex can screen clients for depression and, where necessary, refer into primary care and mental health services. For referrals to work, they need to have 'traction'. This requires the person making the referral and the person receiving the referral to ensure that the service user is firmly connected to the opportunity for support. Further help to maintain contact with services can be provided by key workers or link workers, as needed.

As well as the police and probation services, it is key that prosecutors and sentencers should be enabled to recognise the signs of abuse and respond appropriately where this may be an underlying factor in a woman's offending. Liaison and diversion services should include the result of their 'investigative enquiry' in their reports. Police diversion schemes are essential to divert women away from the criminal justice system where possible.

The focus on achieving swift justice, particularly where minor offences are dealt with in the magistrate's court, as well as limitations on legal aid, make it virtually impossible for women defendants who are victims/survivors of domestic abuse to have their experiences appropriately taken into account. Defence lawyers are likely to meet their client at court for only a short time, and will have only a few minutes to present mitigating factors.

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<sup>2</sup> Roberts, J. (2015) 'It was do or die' – How a woman's experience of domestic abuse can influence her involvement in crime: A qualitative investigation of the experiences of community-based female offenders, Unpublished doctoral research findings summary report, University of Leicester

Criminal justice agencies report that in many cases, women may plead guilty upon charge by the police, not realising that their experience of domestic abuse could be a reason for them not to be prosecuted. These cases may reach court unnecessarily, incurring significant expense, before the prosecutor concludes that it is not in the public interest to proceed.

There is often a lack of understanding on the part of the police and CPS of the appropriate application of the public interest test where the woman is a victim/survivor of domestic abuse, even if the abuse is known about. It is not always well understood that it is not necessary to show a causal link between the abuse and the offence. The question is rather whether community diversion is available and appropriate in light of the mitigating factors (including any abuse), balanced against the seriousness of the offence. In many cases the public interest test may be applied inaccurately without taking account of this important information.

There may also be a failure to take the woman's experience of abuse into account in relation to conviction and sentencing. The move away from providing a thorough pre-sentence report (PSR) in favour of swift justice appears to be a false economy, where thousands of pounds may be spent imprisoning a woman for a minor offence, for want of an adjournment and PSR which might cost a few hundred pounds and lead to a more effective community solution. One young woman victim/survivor of abuse who had been imprisoned three times without a PSR explained how she felt after she was sentenced without any account having been taken of her experiences of abuse:

*I lost hope in the system. If that can happen to me, my story isn't that important.*

Investment in holistic women's services is essential in order for decisions to be well informed and for the provision to be available in the community to allow for diversion and community sentencing as an alternative to custody. Probation services need sufficient resources to allow them to spend time with women and build the necessary trust to allow them to inform the court fully, as well as commissioning support from specialist women's services.

Poorer women are known to be more vulnerable to domestic abuse, including financial abuse (see for example the Women's Aid/TUC report '[Unequal, trapped and controlled](#)'). Universal credit poses a particular problem for women victims/survivors, as argued in a recent [briefing paper by the Women's Budget Group](#) which includes the following key points:

- *The default system of paying Universal Credit as a single monthly payment to a couple can give abusive partners further opportunities to exert financial control over their partners.*
- *Having split payments as an 'exception' rather than a rule puts survivors in the position of having to disclose financial abuse and to manage the consequences of the abuser finding out.*
- *Financial abuse entails reducing a partner's access to money and resources, and sabotaging work efforts. It has been estimated to affect as many as one in five adults, making it harder for a survivor to leave an abusive relationship.*

Cross-government co-operation is urgently required to address this unintended consequence of the changes in welfare benefit.

In relation to the penultimate bullet point in this question, '*Support signposting...*', it was strongly felt by many at the consultation event that signposting on its own is insufficient and does not help many women with multiple needs and women offenders, who often have poor

experience of engaging with services, and are frequently underserved by them. Referrals with traction are required, often necessitating support from a key worker. Easy access to, and referral routes into, specialist women's centres is an essential part of the picture.

*PRT Recommendations 1-5 and 11 (see above)*

*PRT Recommendation 6: As part of their commitment to tackle violence against women and girls, Police and Crime Commissioners should ensure they place clear expectations on the police to improve their response to women offenders affected by domestic abuse, including through out of court disposals, and should monitor performance.*

*PRT Recommendation 7: The Crown Prosecution Service should work with specialist domestic abuse agencies to develop guidance, training and monitoring to ensure that women whose alleged offending may be driven by domestic abuse are identified. The public interest may be better served by their diversion into support services.*

*PRT Recommendation 9: The Sentencing Council should consider how best to ensure sentencers take account of the particular vulnerabilities of women affected by domestic abuse and the impact of imprisonment on them and their families.*

*PRT Recommendation 10: The Judicial College should review the availability and effectiveness of information and training for the judiciary in this area, including judicial directions regarding the treatment of women defendants affected by domestic abuse.*

**14: How can we make greater use of women-specific services to deliver interventions in safe, women-only environments? Please select top 3.**

- **Availability of a GP at women-only services**
- **Availability of a nurse at women-only services**
- **Child contact sessions so that women who are not living with their child can have supervised access to their child**
- **Delivery of health interventions such as mental health and substance misuse treatment at women-only services**
- **IDVAs located or linked to women-only services**
- **Improving access to benefits, finance and accommodation advisors at women-only services**
- **Provision of employer interventions at women-only services to help individuals become work ready, including offering work experience and/or mentoring**
- **Other**

For women who are victims/survivors of domestic abuse and who offend or are at risk of doing so, it will be key to have access to holistic women-specific services in the community and in prison which can address their circumstances in the round, including but not limited to the abuse itself. Many will have complex needs and trauma.

All the areas listed above are important. The priority areas will vary for each woman and in many cases a number of areas will need to be addressed simultaneously. Positive outcomes are most likely to be achieved through the provision of flexible, wrap around support delivered by a dedicated case worker whose role is to ensure a woman-centred approach, supporting women practically and emotionally to solve a range of problems, access therapeutic support and, where appropriate, navigate the criminal justice process.

Women-specific services can play a key role in offering effective programmes for women through out of court disposals, community sentences and support after release from prison. This can helpfully include co-location of probation workers in safe, women-only environments.

### **Those with no recourse to public funds**

#### **15: In addition to reviewing who may be eligible for the Destitute Domestic Violence Concession, what other considerations could the Government make in respect of protecting domestic abuse victims with no recourse to public funds?**

Provide practical support for victims to make an application for indefinite leave to remain, and access to public funds for the duration it takes to confirm the person's immigration status.

Foreign national women offenders who are victims/survivors of domestic abuse are particularly vulnerable due to potentially insecure immigration status and the possibility of having a limited support network and communication barriers due to both language and cultural differences. This includes, but is not limited to, domestic abuse victims/survivors with no recourse to public funds.

More broadly, limited access to legal aid is problematic for foreign national women offenders who may be simultaneously engaged in criminal justice proceedings, immigration proceedings and family proceedings relating to children. Experiencing language and cultural barriers and the increased likelihood of being a victim of trafficking or modern slavery also make this a particularly vulnerable group.

Support from specialist women's services such as [Hibiscus Initiatives](#), who have many years of experience in working with foreign national women in the criminal justice system, can be a life line. This is illustrated in the case study below (Justina's story), which was provided by Hibiscus and will be included in a forthcoming PRT report, produced in partnership with Hibiscus, about the experiences of foreign national women in the criminal justice system in England and Wales.

Justina's story illustrates how support from a specialist service can transform outcomes for women and their children. Justina's offending resulted directly from her experiences of domestic abuse and she served a significant prison sentence for assaulting her abusive partner. Concerted, specialist support from Hibiscus enabled her to gain supported, refuge accommodation after her release from prison, *pro bono* legal representation to challenge her detention post-sentence and deportation proceedings, and help with family proceedings. As a result Justina was reunited with her child, found work and is now living freely and without fear in the UK.

Achieving equal outcomes for foreign national women offenders who are victims/survivors of domestic abuse requires specialist services like Hibiscus to be made more widely available both in prison and in the community, and for criminal justice agencies to work in close partnership with those services both in developing a strategic approach to their treatment of foreign national women and in their day to day work, preferably through co-location. A number of other specialist women's services, providing equally vital support, are listed at the end of this report. Yet services like these are too scarce and those that exist struggle to sustain themselves based on a patchwork of relatively short-term funding streams.

Sustained investment in a network of specialist women's community services throughout the country would enable many more women like Justina to achieve positive outcomes for

themselves and their children, as well as ensuring women are diverted away from the criminal justice system and from custody where appropriate, through the effective use of community disposals.

### **Justina's story<sup>3</sup>**

Justina is an EU citizen with limited English. Her ex-partner is also an EU citizen and they have a two year old child. Prior to her arrest, Justina was the main carer of their child.

Justina's ex-partner was physically abusive to her during their relationship. She was badly beaten several times and the police became involved. She obtained a restraining order but then allowed her ex-partner to return to the property when she discovered he was homeless. The violence continued; on one occasion Justina's ex-partner came home drunk and started hitting her. She was scared but unable to escape. She grabbed a knife to defend herself and stabbed her ex-partner in the chest. Justina was arrested and detained on remand. She did not remember the incident and was distressed whenever she tried to recall it. Her ex-partner escaped serious injury. Justina was initially charged with grievous bodily harm, but was convicted on the lesser charge of unlawful wounding and sentenced to twenty one months in prison.

Upon arrest Justina agreed for her child to be taken into care as she did not want her child to stay with her ex-partner. Hibiscus offered practical and emotional support, helping Justina with financial, criminal, family and immigration matters and providing language support and advocacy. While in prison, Justina struggled to cope with the consequences of her domestic abuse. She was detained by the Home Office post-sentence and served with a deportation order. Hibiscus arranged a *pro bono* barrister to represent Justina at her immigration hearing and worked closely with them. The charity approached an immigration solicitor for help in applying for immigration bail and finding suitable accommodation. Justina was entitled to legal aid for her immigration bail hearing and her solicitor obtained exceptional case funding for the deportation proceedings.

Justina applied for immigration bail but had no suitable address. Two applications for Section 4 support were refused. Due to her history of domestic abuse, she was offered a refuge space. The court approved Justina's release on immigration bail after six months of immigration detention. Hibiscus gave her financial support for essential expenses and she received specialist support at the safe house.

Justina's priority was to be reunited with her child. While she was in prison, social services could not conduct a parental assessment as had been requested by the family court in order to decide on future child custody arrangements. Since Justina's release, she has been in regular contact with the Hibiscus project worker who has supported her with her family and immigration proceedings, providing travel expenses for Justina to attend court hearings. The project worker accompanied Justina to the family court, where she was granted a residential order for her child.

While in the safe house Justina completed courses for victims of domestic violence and ESOL level 2. She won her appeal against deportation and is now in work. She has moved with her child into her own accommodation, where she feels safe.

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<sup>3</sup> Justina's story (not her real name) is taken from Hibiscus' 2016-17 case records.

## Creating a new Domestic Abuse Protection Order

### 24: Do you agree that breach of the proposed order should be a criminal offence?

We are concerned by the proposal that breach of the new Domestic Abuse Protection Order should be considered as a criminal offence in all circumstances, particularly when the proposal is for an order to be imposed across a variety of jurisdictions, including family and civil courts, with a high degree of flexibility attached to the conditions of an order and their duration. As the consultation document itself acknowledges: *“domestic abuse is complex and ... some victims could have concerns reporting the breach of an order if it could lead to the abuser being prosecuted. There is therefore a risk that criminalising breach could deter people from applying for the proposed order, or where an order has been made, reporting a breach.”*

The existing Domestic Violence Protection Order may be used where there is insufficient evidence to convict, but to allow the alleged victim/survivor breathing space. The proposal for breaches of the new order to be a criminal offence is problematic. While we appreciate the challenges in obtaining convictions in domestic abuse cases, we oppose in principle a policy under which civil orders are imposed on a balance of probabilities which, if breached, can then lead to a criminal conviction or even imprisonment without a criminal process in relation to the original, alleged offending behaviour. If such a measure is to be introduced, we would urge that consideration be given to introducing a criminal standard of proof for the giving of the order.

In any event, we would oppose the criminalisation of breach in relation to positive conditions of an order, for instance a failure to attend a particular programme. There may be legitimate reasons why a positive order may be breached, for instance illness or child care responsibilities or a failure to provide suitably adapted programmes for people with learning disabilities or mental health needs. In these circumstances, prosecution would be disproportionate and counterproductive and could have negative consequences for both victim and perpetrator.

We do not believe that making provision for certain breaches to be dealt with as a contempt of court is a sufficient safeguard, as contempt of court is still a serious offence and can be punishable by up to two years in prison or an unlimited fine. We would like to see greater discretion built into the system so that only a limited number of negative orders are liable for criminal prosecution for breach, for instance those designed specifically to protect the victim from coming into contact with the perpetrator. We do not believe that the breach of positive orders should be subject to criminal prosecution, but instead provision should be made to review the conditions of the order and provide an opportunity for the offender to comply before further proceedings are considered.

We note from the impact assessment that the majority of the costs associated with the introduction of the provisions in this consultation relate to the proposal to criminalise breach. The estimated agency impacts of criminalising breach are summarised as follows:

- HMCTS (crime): £0.9 million per year associated with 1,400 additional breach proceedings.
- CPS: £0.3 million per year associated with the pre-charge advice and contest rates for an additional 1,400 breach proceedings.
- LAA (crime): £0.7 million per year (applying the relevant internal unit costs<sup>28</sup> to an estimated 740 additional breach proceedings with LAA criminal representation)
- HMPPS: £3.7 million per year (including 30 additional prison places, pre-assessments by the NPS and supervision of 700 offenders by the NPS and CRCs)

All of these agencies fall under the responsibility of the Ministry for Justice, a department whose budget has experienced a “real-terms cumulative decrease” of 40% since 2010/11. Furthermore, in the coming years, the department faces some of the deepest cuts of any government department. Official figures show that its budget will have been cut from £9.3bn in current prices in 2010/11 to £5.6bn by 2019/20. We question therefore how these plans can be afforded in light of the severe financial pressures that are likely to be placed upon the agencies involved. We also question the rationale for allocating any monies that might be available to the criminalisation of breach, when it could be better invested in funding for programmes to aimed at changing the behaviour of male perpetrators of domestic abuse.

*PRT Recommendation 14: HM Prisons and Probation Service must ensure that safe and effective, accredited programmes aimed at changing the behaviour of male perpetrators of domestic abuse and preventing further abuse are available in all suitable cases, in prison and in the community, and monitor take-up and outcomes.*

### **Improving the police response**

#### **37: How can we continue to encourage and support improvements in the policing response to domestic abuse across all forces and improve outcomes for victims?**

We refer to PRT Recommendations 2-6 quoted above.

### **Special measures in criminal proceedings**

#### **38: Do you think creating a legislative assumption that all domestic abuse victims are to be treated as eligible for assistance on the grounds of fear and distress (if the victim wants such assistance), will support more victims to give evidence?**

Yes. Most victims will be experiencing trauma, which can have a negative impact on their ability to participate effectively in proceedings; for example, they may be unduly anxious and depressed, find it hard to concentrate, and experience ‘flash backs’. Trauma is known to have a direct impact on the person's ability to communicate, and a registered intermediary (as a special measure) should always be considered.

#### **39: Is there more this government could do to explain the range and remit of existing measures for victims to help support them in the criminal justice process?**

This information should be made available in an accessible format, such as ‘easy read’, and disseminated widely across women's centres, health and social care services, housing and benefit offices, and at police stations; every woman brought into police custody, as a victim or suspect, should be given this information. Liaison and diversion services should, through their assessment procedure, ensure that women receive and understand the information and make referrals where necessary. Victims should be offered a ‘key worker’ from the point they report the incident, through to and for the duration of the court hearing. If the victim refuses such support, regular follow up calls should be made (a friendly enquiry), and support offered until the case goes to trial and for the duration of the trial. The key worker could help to coordinate support, and explain court procedures, including any special measures. Evidence shows that having a single point of contact, such as a key worker, can help to build trust in ‘the system’ and build confidence in the person concerned.

## Improving provisions

**42: Do you have suggestions for how we can better support prosecutions through to conclusion, including providing better support for witnesses who currently disengage from the process?**

Please see our response to question 39 above.

## Aggravating factors in sentencing

**46: Do you think the current approach of using sentencing guidelines, as per guidelines issued in February 2018 is effective in ensuring sentences imposed reflect the seriousness of domestic abuse when it involves children?**

Yes. We believe that the current approach is the most effective and appropriate way of reflecting the seriousness of domestic abuse when it involves children. Sentencing guidelines have to be followed by judges, but also crucially provide an element of discretion when the particular circumstances of a case may mean that a rigid adherence to the guidelines would be “contrary to the interests of justice”. The sentencing guidelines adopted in February 2018 were subject to extensive consultation and provide a comprehensive framework for the consideration of specific aggravating and mitigating factors which may have particular relevance to offences committed in a domestic abuse context, including those that involve children. As the consultation document states:

*As part of a list of suggested aggravating factors, the guideline refers to factors such as abuse of trust or where the perpetrator takes steps to prevent the victim reporting an incident or obtaining assistance. The guidelines also highlight the need to consider the impact of the offence on children (by direct or indirect exposure to domestic abuse) or where contact arrangements with children as used to instigate an offence.*

**47: Is a statutory aggravating factor needed in order for the court to reflect the seriousness of offences involving domestic abuse and children in sentencing?**

As outlined above, we believe that the current approach of using sentencing guidelines is the most appropriate and effective way of reflecting the seriousness of domestic abuse when it involves children. We do not believe a statutory aggravating factor is necessary and this could have a number of negative and unintended consequences. There is no clear evidence to justify the introduction of a statutory aggravating factor nor evidence of its potential impact on sentencing behaviour. We note from the impact assessment that there is only “*limited data available on factors influencing sentencing behaviour.*” Furthermore, “*there is no data to inform how the application of various factors could influence the judiciary to change a sentencing decision from one disposal type to another.*”

There are, however, clear risks associated with the proposal which could have negative consequences for victims of domestic abuse. For instance, a statutory aggravating factor would require the domestic abuse aggravation to be established beyond reasonable doubt. As the consultation document highlights, this “*risks placing additional evidential burdens on the police and Crown Prosecution Service (where the factual circumstances are disputed) and increases the potential for more defendants to plead not guilty to the charges.*” It would also remove discretion from judges by giving force in statute to one particular aggravating factor over other potential aggravating and mitigating factors. When applied to the circumstances of individual cases, this could lead to injustice.



For instance, we are particularly concerned about the potential impact of a statutory aggravating factor in cases involving women with dependent children who are accused of domestic abuse offences, and who, in the context of a controlling relationship, may be using reactive violence against a primary aggressor. In such instances, a statutory aggravating factor would deny sentencers the necessary discretion required to take into account all the circumstances of the case. This could lead to unjust outcomes, including the imposition of prison sentences in cases which would not otherwise have merited this.

Given these concerns, we strongly urge the government not to proceed with the introduction of a statutory aggravating factor. It is neither necessary nor desirable and carries clear and unjustified risks.

### **Working with perpetrators to change their behaviour**

#### **56: What more could be done to work with perpetrators in prisons, particularly offenders who receive a sentence of less than 12 months and do not have sufficient time to complete a domestic abuse programme in custody?**

We refer to PRT Recommendation 14, quoted above, and to [PRT's response](#) to the Sentencing Council's 2017 Intimidatory Offences and Domestic Abuse Guidelines consultation.

### **Improving performance using data**

#### **58: Please select which of the following you believe should be priorities for improving data collection. Please choose up to 3.**

- **Improving the collection and reporting of data on when domestic abuse is a feature of a case/ intervention**
- **Improving collection and reporting of data relating to the gender and relationship of the perpetrator and victim**
- **Improving data to enable better tracking of outcomes in domestic abuse cases/ intervention**
- **Linking data to enable better tracking of interventions and reoffending**
- **Linking data to enable better understanding of the interactions/relationships between domestic abuse and other types of offending**
- **None of the above**
- **Other - please explain**

It is essential for improvements to be made in collecting data as to the prevalence of domestic abuse experiences on the part of women who offend. This would go some way to ensuring that informed decisions are made in individual cases at each stage of the criminal justice process, as well as informing the development of policy and interventions aimed at improving outcomes for women and reducing reoffending.

### **Establishing a Domestic Abuse Commissioner in law**

#### **59: Do you agree with the proposed model for a Domestic Abuse Commissioner outlined above? Please give reasons.**

We welcome the proposal to establish this role. For the reasons expressed above in relation to the title and scope of the Bill, we would welcome an explicit commitment for the Commissioner's remit to include all forms of violence against women and girls, as well as

acknowledging that a minority of victims are men and boys, who are equally entitled to protection and support. The title of the Wales Act offers a useful model.

**60: Of the proposed powers and resources, which do you consider to be the most important for a Domestic Abuse Commissioner?**

We welcome the proposed powers and resources set out in the consultation document and impact statement, and do not propose to rank them in order of priority. We would make the following additional points, many of which were raised during the 15 May consultation event:

- (a) At the heart of the Commissioner's role should be a requirement to find out the views of victims/survivors and to ensure that these are heard by decision makers, including in Parliament.
- (b) The Commissioner's remit must include specific responsibility to act on behalf of women with complex needs, specifically including women who offend or are at risk of offending. This should include examining the quality of the criminal justice response to such women as potential suspects or defendants as well as victims/survivors, identifying gaps in service provision for women in prison and in the community (including following release from prison), making recommendations and monitoring progress.
- (c) An important aspect of the Commissioner's work will be to bring together government departments to address barriers to progress, in order to avoid 'silos' at the highest level.
- (d) There should be a direct relationship between the Commissioner and local commissioners of women's services. The Commissioner should set minimum standards for the commissioning of women's services and should be enabled to hold local commissioners to account if they fail to meet them.
- (e) The Commissioner's powers should include the ability to conduct inquiries in relevant areas, requiring any public agency to provide data, as well as the capacity to analyse the data and make policy recommendations. Relevant agencies must be placed under a duty to co-operate with the Commissioner, along the lines of the duties imposed on selected public agencies in relation to the Independent Anti-Slavery Commissioner, the Children's Commissioner for England and the Equality and Human Rights Commission. This must include the police, CPS, courts, HM Prisons and Probation Service and both public and private sector providers of prison and probation services and health and social care services.
- (f) The Commissioner's recommendations must have 'teeth', including at least the requirement for the government and public agencies to respond formally to recommendations made.
- (g) Domestic abuse can hinder women from complying with licence conditions and community orders. Strong links should be established between the Commissioner and probation services and the parole board, in order to inform decision making about recall to prison and breach of community orders in these circumstances.
- (h) The Commissioner should have the power to intervene in legal proceedings where this may further the aims of the role.

- (i) There should be an expectation that the Commissioner will use available resources so as to avoid any unnecessary duplication with relevant inspectorates.
- (j) The role of the Commissioner should be clearly defined in relation to devolved areas of policy in Wales.

## **ANNEX - Case studies**

The following case studies illustrate how domestic abuse drives women's offending and the impact of criminal justice responses to women.

### **Kerry's story<sup>4</sup> - Criminal conviction results from coerced offending (first offence)**

Kerry was referred to the BCWA Mariposa service as part of a community sentence, following a conviction for handling stolen goods. She had already been engaged with BCWA's domestic abuse support service for about three years. Incidents she had reported to them included verbal abuse and physical assaults, including one where Kerry was stabbed with a screw driver.

Kerry had never been in trouble with the police before. She reported that her partner had threatened her with violence if she did not take the stolen goods to someone's home. She took this threat very seriously based on her past experience with this partner. On the way to the address she was caught by the police with the goods and arrested. She believed her partner had deliberately informed the police of her actions.

While attending Mariposa, Kerry completed the Changes Programme and the Healthy Relationships Programme. She did not have time to complete any further courses as her court order came to an end.

### **Anna's story – Multiple convictions prior to domestic abuse disclosure and positive intervention**

Anna was prosecuted for failure to secure the school attendance of her teenage daughter, Louise. She came to the Mariposa service as part of a community order. Anna had previous convictions for the same offence and was in the process of being prosecuted again when she attended the service. Anna had not engaged with school support and meetings, and Louise's school attendance had been consistently very poor. Punitive action by the courts had left Anna and her daughter distressed and afraid of the real possibility of Anna going to prison, added to which Louise continued to miss out on education.

On attending the service for the first time, Anna disclosed historic domestic violence which had been witnessed by her daughter. They had never called the police or informed the authorities for fear of repercussions. Louise had stopped attending school after an incident where she was followed home by the perpetrator of the abuse. What had been perceived by the school and local authority as obstruction and refusal to engage was in fact a response by Anna and Louise to their abuse and an attempt to protect themselves.

Anna and Louise were identified as being at high risk and immediate support was put in place. With the support provided to Louise through the MARAC, she disclosed that she had

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<sup>4</sup> Kerry, Anna and Victoria's stories are summaries of case studies provided by Black Country Women's Aid. All names have been changed.

herself been abused by the same perpetrator. The perpetrator is now in prison for offences committed against Louise, who is attending college.

### **Victoria's story** – *Positive impact of police diversion to specialist services*

Victoria was referred to New Chance following a domestic incident. She had called the Police during an altercation with her partner, and whilst she was on the telephone he claimed that Victoria had attacked him with a kitchen knife. The Police attended; Victoria was arrested and given a Simple Caution. She was referred to New Chance as a voluntary client and her charge was NFA'd (No Further Action). Victoria attended her New Chance appointment and was identified as being a victim of sporadic domestic violence living in a very complex situation in a relationship that is not conducive to her emotional health or wellbeing but in which she is trapped, with two children one of whom is not her partner's. Additionally, she has no recourse to public funds and is an over stayer in the UK. Following Victoria's arrest, Social Services were alerted by the Police and the children were placed on a Child in Need Plan. Victoria received support from Women's Aid Independent Sexual Violence Advisor (ISVA) and counselling services, and New Chance is offering practical and emotional support. Numerous positive changes have emerged since Victoria's engagement with services including her partner having to address his negative behaviour.

### **Muslim women in prison** – *Domestic abuse as a driver to offending, including retaliatory violence*

Some of the findings of the recent publication by Muslim Hands [\(In\)visibility: Female. Muslim. Imprisoned](#) are summarised below:

- *We found that domestic violence and abuse is prominent in people's lives prior to prison as well as continuing whilst in custody*
- *71% of interview participants reported experience of historic or ongoing domestic violence and abuse. This included physical and sexual violence, controlling behaviours, isolation and financial abuse; with different perpetrators such as husbands, partners, parents, in-laws and relatives*
- *"If I had to go to work, I had to get permission from him [husband]...I had been in charge of my own money, I lost that. You know, I lost so much and I didn't realise, because I thought that that's the way married life had to be." [Participant 3]*
- *Participant 10 explained how she had talked to her abusive partner while she was in prison about moving out of their house when she was released: "...he was like, 'you're not going anywhere...'"*
- *Retaliation against an abusive partner was reported by some interview participants. At least five of the 60 participants (8%) were charged with the murder or attempted murder of abusive husbands.*
- *Women who have survived years of domestic violence and abuse, combined with isolation, cultural 'normalisation' (at worst) or 'ignorance' (at best), and silencing, face sentences of up to 30 years. In addition, the lack of knowledge about, and prior involvement with the Criminal Justice System or police, meant that the extent of DVA was reportedly not taken into account in court.*