

Prison Reform Trust response to the Ministry of Justice consultation on Proposals for revising the Code of Practice for Victims of Crime – September 2019

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. The Prison Reform Trust provides the secretariat to the All Party Parliamentary Penal Affairs Group and has an advice and information service for people in prison.

The Prison Reform Trust's main objectives are:

- reducing unnecessary imprisonment and promoting community solutions to crime
- improving treatment and conditions for prisoners and their families
- promoting equality and human rights in the criminal justice system

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1. Are there any specific areas/issues that you think we should also focus on in our second consultation?

The second consultation presents an opportunity to review procedures and services for victims of crime in prison. Many people in prison become victims of crime during their time in custody or have previously been victims before their imprisonment. A high proportion are victims of serious crime and are therefore entitled to an advanced service and referral to specialist support. Available statistics on victims in prison are highlighted below.

In theory, victims, regardless of whether they are staff or prisoners, are entitled to services under the Victims' Code. However, in practice, prisoners are not always given the opportunity to report crimes committed against them whilst in prison or prior to their incarceration and are often unable to access victims' services. Prisoners are also directly discriminated against by some of the provisions of the code. For instance, people with convictions are denied the opportunity to apply for compensation when they are victims of serious violence.

The Prison Reform Trust provides an advice and information service for prisoners which receives around 6,000 contacts a year. We regularly hear from prisoners about the difficulties they experience in reporting crime and accessing victims services. Prisoners report having difficulty accessing the Police Liaison Officer (PLOs) to speak to them about a crime of which they believe they have been a victim. Often these are allegations of theft or assault by other prisoners or staff. The PLOs exercise some judgement about how to proceed and whether to report it to the police—a potential barrier and level of filtering that people in the community do not experience. If the decision is made not to report it, it can be difficult for a prisoner to report it themselves – they might be able to write to a local police station or ask a family to do so for them.

Annex H of the Complaints Policy Framework gives this advice to prisoners:

“You can write to the Chief Officer of the local police force if you have evidence that a criminal offence may have been committed. If this concerns something that has happened in the prison you should consider whether you should raise the matter with a member of staff first. If necessary you can do this by writing to the governor/director using confidential access.”

The framework also contains the following direction:

“The prison must allow a prisoner who is a victim of a crime to report that crime to the police if they wish to do so, even if the prison has decided not to report that crime directly.”

However, how prisons actually manage and make decisions about what crimes to report to the police is not transparent. We are often asked by prisoners for information in prison service instructions (PSIs) about the role and responsibilities of PLOs in reporting crimes. We are also aware that in some situations, where the circumstances of the crime meet certain criteria and the circumstances are sufficiently serious, the prison must report the crime to the police, even without the victims' consent. We are concerned that appropriate safeguarding does not always take place in these situations. It would be particularly useful for victims services to be made available in these cases, as the victim may not feel able to access support from prison staff. Provision of victim services in prisons would support this process, provide advice and advocacy both for prisoners and staff and enable prisoners to access their rights as victims.

The prison service, the police and CPS have duties to comply with their responsibilities as set out in the Code of Practice for Victims of Crime. The implementation and operation of these duties in prison need greater oversight. The process should be monitored and data around the numbers of victims receiving services in prison should be publicly available. Prisoners' rights under the code and their entitlements as set out in prison service instructions need to be more closely aligned.

Statistics and information on victims of serious crime in prison

Serious violence, physical and sexual abuse

The latest Ministry of Justice safety in custody statistics¹ reveal that:

- In the 12 months to March 2019, there were 3,949 serious assault incidents, up 1% from the previous year. Serious prisoner-on prisoner assaults decreased by 2% to 3,017 in the 12 months to March 2019, whereas serious assaults on staff increased by 12% to 1,002.
- There was a record high of 34,425 assault incidents in the 12 months to March 2019, up 11% from the previous year. In the most recent quarter, assaults increased by 4% to 8,445 incidents.
- There were 10,311 assaults on staff in the 12 months to March 2019, up 15% from the previous year, and a record high figure. In the latest quarter the number of assaults on staff increased by 4% to 2,525 incidents.

¹ [Ministry of Justice \(2019\) Safety in custody quarterly update to March 2019, London: Ministry of Justice](#)

The Ministry of Justice 2012 study Prisoners' childhood and family backgrounds Results from the Surveying Prisoner Crime Reduction (SPCR) longitudinal cohort study of prisoners² reveals that:

- Twenty-nine per cent of SPCR prisoners stated that they had experienced emotional, physical or sexual abuse as a child. Women (53%) were more likely to report having experienced some sort of abuse than men (27%), as were prisoners from a non-BAME background (31%), compared with prisoners from a BAME background (20%).
- Those serving short-term sentences were more likely to state that they had experienced abuse as a child than those on longer-term sentences (29% compared with 24%).
- Female prisoners who had experienced abuse as a child were more likely to report suffering sexual abuse (67%) than male prisoners who had experienced abuse (24%).
- Forty-one per cent of SPCR prisoners said that they had observed violence at home as a child. Women were more likely (50%) to report having observed violence at home than men (40%).

A number of contacts from prisoners to PRT's advice and information service suggest that people who have reported physical or sexual assault have struggled to get support afterwards, either from prison-based healthcare service or from external specialist sources.

Women – domestic violence and sexual abuse

There are just under 4,000 women in prison in England and Wales making up around 5% of the total prison population, a large proportion of whom have been victims of domestic violence and sexual abuse:

- 57% of women report having been victims of domestic violence as adults.³ Because many women fear disclosing abuse, this figure is likely to be an underestimate.⁴
- Women's offences are more likely than men's to be prompted by their relationships with 48% of women, compared to only 22% of men, saying that they had committed offences to support someone else's drug use.⁵
- Research by The Disabilities Trust found that of 173 women screened at HMP Drake Hall, 64% reported a history indicative of brain injury and for most this was caused by domestic violence.⁶
- In research by Muslim Hands with Muslim women in prison, 71% of interview participants reported experience of domestic abuse.⁷
- Women with learning disabilities are particularly vulnerable to domestic abuse.⁸

² [Williams, K., et al. \(2012\) Prisoners' childhood and family backgrounds Results from the Surveying Prisoner Crime Reduction \(SPCR\) longitudinal cohort study of prisoners, London: Ministry of Justice](#)

³ Data Extracted from OASYS, published in Ministry of Justice (2014) Thinking differently about female offenders. Transforming Rehabilitation, Guidance Document, London: MoJ/NOMS

⁴ Gelsthorpe, L., Sharpe, G., and Roberts, J. (2007) Provision for Women offenders in the community London: Fawcett Society

⁵ [Light, M., Grant, E. and Hopkins, K. \(2013\) Gender differences in substance misuse and mental health amongst prisoners, London: Ministry of Justice](#)

⁶ [The Disabilities Trust \(2019\) Making the link: Female offending and brain injury, London: The Disabilities Trust](#)

⁷ [Muslim Hands \(2018\) \(In\)visibility: Female. Muslim. Imprisoned, London: Muslim Hands](#)

- Women with children can be reluctant to disclose their exposure to domestic violence, but the impact of prosecution and imprisonment may be particularly disruptive and traumatic for both mothers and children.⁹

In recent research we found there is limited support for women in prison affected by domestic abuse, particularly those serving short sentences, and that the patchy availability of support on release from prison, including suitable housing, health and social care services and welfare benefits, leaves women even more vulnerable to abuse and offending.¹⁰

Trafficking

We do not know how many people in prison have been trafficked. People who have been the victims of abuse may be reluctant to talk about their experiences to police, courts or prison staff. People who have acted under pressure, with threats made against their family are unlikely to provide information from a prison cell. At the moment, the legal system is not good at recognising when people have been coerced into committing crimes. Too often it is the victims of human trafficking, instead of the person responsible for the trafficking, who end up being prosecuted and imprisoned. We need to recognise that people commit offences because they have been intimidated or threatened with violence. Not only is protection a human right for victims but enforcement processes against traffickers are less effective without the evidence and participation of victims. This will only happen in a system that victims trust and that offers adequate support.

There is no comprehensive data on the number of people in prison who have been trafficked. However, available information suggests that children and young people are disproportionately likely to be victims of trafficking. For instance, referrals to the National Referral Mechanism in 2018 for minors increased 48% on 2017 totals. This was due, in the majority, to a continued increase in the recorded NRM referrals related to the county lines criminal business model of exploiting vulnerable individuals and other forms of criminal labour exploitation.¹¹

Foreign nationals in prison are another group who may be disproportionately likely to be victims of trafficking. Two reports, one published in 2018 by the Prison Reform Trust and Hibiscus Initiatives,¹² and the other in 2012 by the University of Cambridge, supported by the Economic and Social Research Council,¹³ have underlined the lack of support available to foreign national women in custody in England and Wales who have been trafficked into offending. The latter by Professor Loraine Gelsthorpe and Dr Liz Hales examines the case management of migrant women in the criminal justice and immigration systems, including the identification of trafficked women. It found violence, intimidation and rape were common experiences of the women, but evidence of their suffering was often overlooked and they did not receive the protection guaranteed to them as victims of human trafficking under international law. In only one of the 43 cases of human trafficking identified by the

⁸ [Prison Reform Trust \(2019\) Out of the Shadows: Women with learning disabilities in contact with or on the edges of the criminal justice system, London: PRT](#)

⁹ [Beresford, S. \(2018\) What About Me? The impact on children when mothers are involved in the criminal justice system, London: PRT](#)

¹⁰ [Prison Reform Trust \(2017\) 'There's a reason we're in trouble': Domestic abuse as a driver to women's offending, London: PRT](#)

¹¹ [National Crime Agency \(2019\) National Referral Mechanism Statistics—End of Year Summary 2018, London: NCA](#)

¹² [Prison Reform Trust \(2017\) Still No Way Out, London: PRT](#)

¹³ Hales, L. and Gelsthorpe, L. (2012), The Criminalisation of Migrant Women, available with commentary on subsequent developments by Dr Liz Hales at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3082873

researchers did victim disclosures result in a full police investigation in relation to the actions of the perpetrators.

Evidence from Hibiscus Initiatives contained in the 2018 PRT report and confirmed in recent inspection reports suggests that despite police and prosecution guidance there is a disturbing failure to identify, protect and support victims of trafficking at an early stage and avoid prosecuting them for offences committed as a consequence of their exploitation by traffickers. Of the 585 foreign national women prisoners Hibiscus assisted between February 2013 to March 2017, 45 women were identified as victims or potential victims of trafficking, all of whom had disclosed information about their exploitation.

Information and Communication

4. How else could we improve the accessibility of the Code?

Prison staff need greater awareness of the rights prisoners can access under the Victims' Code. This would ensure they assist prisoners to report incidents to the police when the victim has requested to do this. The paucity of provision of information and communication technology in prisons and restrictions of prisoners' access to the internet require that print copies of the code will need to be made available. At the very least, we would recommend that a print copy is sent to each prison library in all establishments in England and Wales.

Victims' Voice

9. Are there any additional comments you wish to make on changes to the Victim Personal Statement process?

In relation to the role of victim personal statements in the parole process, we note paragraph 2.3 of the consultation:

"We have already committed within the Victims Strategy to working with the National Probation Service to strengthen victim entitlements on how their original Victim Personal Statement, if one was available at sentencing, can be considered during the Parole Board process, including how to update it or make a new statement if one was not made during the original trial."

We are concerned about the dangers of raising the expectation of victims regarding their 'entitlements' in the parole process and the role a victim personal statement can play in that process specifically. This role is necessarily circumscribed by the legal framework and body of case law which determine parole board decision-making. As the Parole Board highlights in its guidance,¹⁴ victim personal statements

"...can provide useful context and information for the panel about: the original impact of the offence when it was committed; the lasting impact of the offence since it was committed; and the impact that the prisoner's release would have on them, their family, their community, or those with close ties to them or their family. The VPS does not directly link to the panel's decision whether to direct the prisoner's release on licence or whether to recommend a transfer to an open prison. This is because the panel's focus is on assessment of the prisoner's risk of serious harm to the public, which is not the focus of the VPS. The panel ultimately makes decisions based on the prisoner's current risk."

¹⁴ [Parole Board \(2019\) How is a Victim Personal Statement used, London: Parole Board](#)

Therefore, while a victim's personal statement may indirectly inform a parole board's decision-making, it cannot alter the basis of that decision or provide grounds for altering the punitive element of the sentence passed for the offence. Furthermore, it appears now to be an orthodox interpretation of the science of predicting serious harm that expressions of remorse or victim empathy are not predictive of future risk. Therefore, any information a victim may provide in an updated victim personal statement relating to the (lack of) remorse of the prisoner would not feed in any straightforward manner into a parole board decision-making process based solely on an assessment of risk. The government's wish to appear sympathetic to the situation that victims face risks raising expectations that cannot possibly be met. In any event, any enhanced or additional 'entitlements' of victims in the parole process are unlikely to compensate for the impact of an under-resourced system for keeping victims informed and supported throughout the sentence.

Support

11. Do you agree that the right to access practical and emotional support for victims should be made clearer in the revised Code, for those victims:

a) who do not report incidents to the police?

Yes. As highlighted above, many people in prison are themselves victims of serious crime or have backgrounds of significant abuse and neglect. Although the links between victimisation and offending are now better recognised, the experience of abuse and trauma by many prisoners, who would otherwise benefit from specialised intervention and support, is too often disregarded in decisions by criminal justice agencies. Making it clear in the revised code that victims who have not reported incidents to the police non the less have a right to access practical and emotional support would send an important message to people in prison who are victims that they can get the help and support they need. However, this will need to be backed by sufficient resources to ensure that the necessary provisions are available. As highlighted above, it will also require better training and information for prison staff so that they are clear about prisoners' entitlements under the code and how they can access support.

Accountability

15. Do you agree that PCCs should work with their local criminal justice partners to adapt the victim guidance to explain the local offer for victims? Please give reasons for your response

Given that PCCs now have responsibility for the commissioning of victims' services, it makes sense that they are responsible for working with their local criminal justice partners to adapt the victim and practitioner guidance to set out how overarching victims' rights will be delivered locally. The intention is to allow local criminal justice partnerships to ensure they are clear not only to victims but also to agencies about who does what at a local level. Prisons should be explicitly included as one of the criminal justice partners who PCCs are required to work with. Partnership agreements between PCCs and prisons in the PPC area should specify how prisoners will be informed of their rights under the code, how they will be enabled to access those rights and how services will be adapted to ensure that prisoners can benefit from them.