

Prison Reform Trust submission to the All Party Parliamentary Group for Victims and Witnesses' enquiry into the treatment of vulnerable victims

The Prison Reform Trust is an independent UK charity working to create a just, humane and effective prison 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.

We welcome the opportunity to respond to the All Party Parliamentary Group for victims and witnesses' enquiry into the treatment of vulnerable victims. We would like to see the enquiry encompass the treatment of victims in the justice system serving a community sentence or held in custody. A large number of people in prison are also victims and are at significant risk of violence and intimidation while in custody. Research undertaken by the Prison Reform Trust showed that prisoners with learning disabilities and difficulties were almost twice as likely to be subjected to bullying and 'harm' as were prisoners without such impairments.¹

Ministry of Justice figures show that, while most women in prison are serving short sentences for non-violent offences, very many have been victims of serious crime such as rape, sexual assault and domestic violence.² A comprehensive survey of children in custody *Punishing Disadvantage* produced by ICPR and published by the Prison Reform Trust indicated that high numbers of children and young people in custody had themselves been victims of crime, abuse and neglect.³ The enquiry may also want to turn its attention to the children of prisoners and we would refer it to the Children Left Behind work conducted by Pact and allied charities.⁴

We would like to use the opportunity of the consultation to highlight two concerns relating to the treatment of vulnerable groups in the justice system and to draw attention to the scope for victim-centred restorative measures:

1. People trafficked or coerced into offending

Many people who have been coerced or trafficked into criminal behaviour are in prison either on remand or serving a sentence. We welcome the recent announcement by the Home Secretary Theresa May of the Government's intention to introduce an anti-slavery law which would make the organisation of slavery an aggravated criminal offence.⁵ Too often it is the victims of human trafficking instead of the perpetrators who end up being prosecuted and imprisoned for offences committed under the threat of violence and intimidation.

¹ Talbot, J (2008), Prisoners Voices – Experiences of the criminal justice system by prisoners with learning disabilities and difficulties, London: Prison Reform Trust. Available at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/No%20One%20Knows%20report-2.pdf>

² See Prison Reform Trust submission to the consultation for the second Mayoral strategy on violence against women and girls (2013-17). Available at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/PRT%20Response%20to%20Second%20Mayoral%20Strategy%20on%20VAWG.pdf>

³ Jacobson, J et al. (2010), *Punishing Disadvantage: profile of children in custody*, London: Prison Reform Trust. Available at: <http://www.prisonreformtrust.org.uk/uploads/documents/PunishingDisadvantage.pdf>

⁴ <http://www.prisonadvice.org.uk/our-services/sup-children-fams/left-behind>

⁵ Leppard, D (2013) 'May plans ant-slavery law to fight traffickers', *The Sunday Times*, 25 August 2013

Two reports, one published by the Prison Reform Trust and Hibiscus,⁶ and the other by the University of Cambridge, supported by the Economic and Social Research Council,⁷ 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 researchers did victim disclosures result in a full police investigation in relation to the actions of the perpetrators.

Protection for victims of human trafficking from prosecution relating to offences committed as a result of their being trafficked is enshrined in international agreements and domestic case law. The EU Directive on Trafficking, now in force, specifies that "Victims of trafficking in human beings should, in accordance with the basic principles of the legal systems of the relevant Member States, be protected from prosecution or punishment for criminal activities such as the use of false documents, or offences under legislation on prostitution or immigration, that they have been compelled to commit as a direct consequence of being subject to trafficking."⁸ The UN Protocol to Prevent Trafficking in Persons, Especially Women and Children, requires governments to ensure that trafficked persons are not punished for any offences or activities related to their having been trafficked (eg prostitution, immigration violations).⁹ In addition, the UNOHCHR (2002) Recommended Principles and Guidelines on Human Rights and Human Trafficking: Guideline 2 Paragraph 5, states: "Ensuring that trafficked persons are not prosecuted for violations of immigration laws or for the activities they are involved in as a direct consequence of their situation as trafficked persons."

A recent Court of Appeal decision overturning the convictions of three children and one adult woman accepted that there is a heavy onus on police and prosecutors to thoroughly investigate trafficking allegations so that unnecessary prosecutions do not happen, and that courts should stay prosecutions where there is evidence that the defendant may have been trafficked.¹⁰ We would like to see this decision reflected more clearly in guidance and training for police, prosecution authorities and courts. The Criminal Case Review Commission should be encouraged to review the convictions of vulnerable women and children in custody who may have been trafficked into offending. We also note and support the recent calls for improved care and support of children and young people who have been trafficked into offending.¹¹

The Prison Reform Trust and Hibiscus report *No Way Out* made the following recommendations which the Government should take into account as part of its proposals:

⁶ Prison Reform Trust and Hibiscus (2012), *No Way Out: A briefing paper on foreign national women in prison in England and Wales*, London: Prison Reform Trust. Available at

<http://www.prisonreformtrust.org.uk/Portals/0/Documents/NoWayOut.pdf>

⁷ Gelsthorpe, L & Hales, L (2012), *The Criminalisation of Migrant Women*, Institute of Criminology, University of Cambridge. Available at

http://www.crim.cam.ac.uk/people/academic_research/loraine_gelsthorpe/criminalreport29july12.pdf

⁸ DIRECTIVE 2011/36/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, para 14

⁹ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, United Nations, 2000

¹⁰ R v (1) L (2) HVN(3) THN(4) T-and-(1) The Children's Commissioner for England (2) Equality and Human Rights Commission (interveners) Criminal Court of Appeal 201201106B2, 2012004425C1, 201204763B3, 2012 04966B4

¹¹ The Observer, 8 September 2013, p23

- Development of a national strategy on foreign national women in prison – to form a discreet strand of the Government’s strategy on women’s justice
- To ensure accurate and timely identification of potential victims of trafficking – improved guidance, protocols and training for police, Crown Prosecution Service, defence solicitors, judges and magistrates, prison staff. Women must have adequate opportunity to disclose their experiences and proper credence must be given to their accounts.
- Expediting National Referral Mechanism (NRM) decisions where a woman in custody has been identified as a potential victim of trafficking.
- Ensuring that the best interests of any dependent children are fully considered by the police and courts in decisions on prosecution, bail and sentence where the arrested woman is a mother. Contact between children and their mothers while in custody should be facilitated.
- Providing information and legal documentation in a woman’s mother tongue and in accessible formats, interpreters in police stations, courts and prisons, and a review of the blanket ban on legal aid for foreign national prisoners. Communications from the immigration authorities should also be provided in a language and format that the woman understands.
- Parliament should monitor compliance with UK’s obligations under international law, including the EU Directive on Trafficking, now in force and requiring robust protection for victims of trafficking and non-punishment of petty crimes,¹² and the UN Rules for the Treatment of Women Prisoners and Non-custodial measures for Women Offenders (Bangkok Rules), which requires screening of women entering prison for prior experiences of sexual abuse and domestic violence.
- The Sentencing Council should revise Sentencing Guidelines to recognise trafficking, coercion, and exploitation as mitigating factors for offences for which foreign national women are most commonly charged – eg use of false documentation and cannabis production - as they do for drug importation.
- The management and decision making process in asylum claims must take account of the multiple trauma, sexual abuse and disempowering effect of trafficking on its victims. This will involve both procedural and cultural change in the relevant division of the Home Office that is replacing UKBA.
- The creation in the Government’s Crime and Courts Bill of the National Crime Agency (replacing SOCA, CEOP and NPIA) is an opportunity to ensure that the issue of human trafficking/exploitation, its impacts on victims, and the overlap of victim and offender status in these circumstances, is understood at every level of the criminal inquiry process.

2. Vulnerable defendants

High numbers of defendants have particular support needs which, if left unmet, can affect their ability to participate effectively in court proceedings and compromise their right to a fair trial, as protected by Article 6, European Convention on Human Rights.

The Prison Reform Trust report *Fair Access to Justice*¹³ highlights how the current arrangements for special measures to support individuals rendered vulnerable by court proceedings are inequitable. Vulnerable witnesses are, by statute, able to access certain support (special measures), such as an intermediary, whereas vulnerable defendants do not have statutory protection and must rely on the discretion of the individual court and on the common law.

¹² See House of Commons Library paper on UK’s responses to human trafficking www.parliament.uk/briefing-papers/sn04324.pdf

¹³ Talbot, J (2012) *Fair access to justice? Vulnerable defendants in the criminal courts*, London: Prison Reform Trust. Available at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/FairAccessToJustice.pdf>

The Advocacy Training Council (2011) recognises that the handling and questioning of vulnerable people in court, in order to achieve best evidence, is a specialist skill; however, there is a lack of clarity concerning the provision and availability of intermediaries for defendants. While intermediaries appointed to support vulnerable witnesses are registered and subject to a stringent selection, training and accreditation process, and quality assurance, regulation and monitoring procedures, intermediaries for defendants are neither registered nor regulated. The practice of 'registered' and 'non-registered' intermediaries – potentially in the same trial and paid different fees – is anomalous.

Intermediaries should be introduced into the statutory provision of special measures for vulnerable defendants. These special measures, together with other reasonable adjustments, should be made available, according to personal need, to enhance the capacity of the vulnerable defendant to participate effectively in court proceedings, to assist in their preparation for the trial process and to help ensure fitness to plead. In turn, this will help to ensure access to justice for both the victim and the defendant.

The report *Fair Access to Justice?* makes the following recommendations:

Support for vulnerable defendants:

- Special measures available to vulnerable witnesses and vulnerable defendants should be equitable in law (see also The Bradley Report, Department of Health, 2009:61); in particular, child defendants and vulnerable adult defendants should have access to Registered Intermediaries (or their equivalent) to prepare for and during court proceedings, according to personal need.
- Responsibility for ensuring that special measures and other reasonable adjustments are made for vulnerable defendants, according to personal need, should be clarified; the particular role of the judiciary, court staff and defence lawyers in fulfilling that responsibility should be specified.
- An integral part of liaison and diversion services/criminal justice liaison services should be to facilitate special measures and other reasonable adjustments for vulnerable defendants, according to personal need, and to provide guidance to members of the judiciary and criminal justice staff on how particular impairments and disabilities can manifest themselves in court proceedings.
- The use of special measures and other reasonable adjustments for vulnerable defendants should be monitored, reviewed and reported on. For England, this should be an integral part of the reporting arrangements for the National Liaison and Diversion Development Network; for Wales, this should be an integral part of the forthcoming Policy Implementation Guidance.

Intermediaries:

- All intermediaries should be registered and subject to the same stringent recruitment, training, quality assurance, professional standards and monitoring procedures. There should be one register of intermediaries for all vulnerable people – witnesses, victims and defendants – in the criminal justice system.

Information and training:

- Routine and systematic procedures should be in place to ensure that liaison and diversion services/criminal justice liaison services provide the courts with relevant information concerning an individual defendant's particular impairments and support needs; this should include when an Appropriate Adult has been called to support a vulnerable adult or 17 year old at the police station.
- Information on how particular impairments and disabilities can manifest themselves during court proceedings, and ways in which special measures and other reasonable adjustments can help ensure the defendant is able to participate effectively in court proceedings, should be routinely available for members of the judiciary, court staff and defence and prosecution lawyers.
- Legal professionals and practitioners who undertake criminal work, members of the judiciary and liaison and diversion staff should be required to participate in awareness training in mental health problems, learning disabilities and other learning, developmental and behavioural disorders such as autism, attention deficit hyperactive disorder, communication difficulties and dyslexia.
- See also the Advocacy Training Council recommendation concerning training which states:
 - The time has come for the Bar to draw upon expertise available from medical, psychiatric, psychological and other disciplines. The key elements of training should be three-fold:
 - how to identify witnesses and defendants who may be vulnerable
 - how to consider and obtain measures in terms of procedure
 - how to make adjustments in practice (Advocacy Training Council, 2011).

Appropriate adults:

- There should be statutory provision of Appropriate Adults for vulnerable adult suspects and timely access to such support.

3. Victims' right to restorative justice

Where a vulnerable victim would like to tell the perpetrator of a crime about the impact and consequences of their offending, they should have the opportunity to be considered for restorative justice. This process should be managed with skill and care and should always be victim-centred. Victim Support conducted a survey which indicated that while many victims would welcome a restorative or reparative approach only 1% were offered this opportunity.

Ensuring the safety of all victims accessing restorative services is vital. The Restorative Justice Council believes that this can be achieved through setting rigorous quality standards. Victims should expect all restorative practitioners to be accredited and work in line with the RJC's Best Practice Guidance. Central to providing safe restorative services is undertaking a thorough risk assessment and assessing for vulnerability. Providers and practitioners being able to evidence these skills are a key part of the accreditation process. The six restorative national standards and Restorative Service Quality Mark, being launched later this year, are intended to promote a safe process for victims, providing them with confidence in the restorative process.