

## Written evidence from APPEAL

### About APPEAL's Women's Justice Initiative

1. APPEAL is a non-profit law practice committed to fighting miscarriages of justice and demanding reform. We provide investigation and legal advocacy for victims of unsafe convictions and unfair sentences who cannot afford to pay for a lawyer themselves. We use individual cases as leverage for system-wide criminal justice reform by educating the media, parliament, criminal justice policy makers, the legal profession and the public about how and why miscarriages of justice occur and what needs to change to stop them.
2. APPEAL's Women's Justice Initiative (WJI) uses strategic litigation to appeal sentences and convictions for women experiencing severe disadvantage in the criminal justice system; women who are victims of domestic abuse, whose mental health has been ill considered, and who are given damaging short sentences. We empower women to become advocates for reform and use casework to campaign for changes to the law.
3. The Women's Justice Initiative represents:
  - a. Women imprisoned for minor, non-violent offences when non-custodial options might have been more appropriate
  - b. Women sent to prison in cases where mental health or learning disabilities were not adequately considered in court
  - c. Women who are victims of domestic abuse/coercive control/exploitation, where this was relevant to the offence but not adequately explored at trial
  - d. Innocent women prisoners, especially those whose 'crime' was in fact accidental or the result of natural causes.

### Summary of APPEAL's consultation response

4. The Government's Female Offender Strategy from 2018<sup>1</sup> acknowledges many of the problems with incarcerating women and with short-sentences for low-level offences. APPEAL welcomed its blue print for reform towards community-based models with the overall aim to reduce the female prison population.
5. However, proposals set out by the Ministry of Justice in January 2021 outline plans to build 500 new prison places for women due to a predicted rise in the

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<sup>1</sup> Ministry of Justice. (2018). *Female Offender Strategy*, p3  
([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/719819/female-offender-strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/719819/female-offender-strategy.pdf))

female prison population over the next four years<sup>2</sup>. This is equivalent to a 15% increase in the number of places for female prisoners at a cost of £150m.

6. It is therefore clear that the Female Offender Strategy is failing. The current plans directly contradict the evidence and policy objectives contained within it. APPEAL urges the government to resurrect the 2018 strategy with a sufficient pool of dedicated funding to ensure implementation can be achieved.
7. As part of this, and in addressing questions 1 and 2 of the call to evidence, APPEAL recommends the following:
  - a. Stop the building of 500 new prison places for women
  - b. Support women to address their underlying needs to mitigate criminal behaviour
  - c. Introduce a duty on public authorities to ensure frontline staff are trained to make appropriate enquiries into domestic abuse
  - d. Decriminalise TV Licence fee non-payment and end imprisonment for council tax non-payment
8. In the latter part of this consultation response APPEAL addresses questions 4 and 7 of the call for evidence and makes the following recommendations:
  - a. Implement the clauses to the Police, Crime, Sentencing and Courts Bill recently tabled by the Joint Committee on Human Rights
  - b. Take practical steps to further support women to maintain family ties (as detailed below)

**What progress has been made on commitments to reduce the number of women in custody since the publication of the Female Offender Strategy? What more can be done? (Question 1)**

9. As stated above, in our view the Female Offender Strategy has not achieved its aims. We suggest the following areas for reform to reduce the number of women in custody:

*Stop the 500 new prison places for women*

10. We support the campaign initiated by the charity Women in Prison to stop the creation of 500 additional prison places for women.<sup>3</sup> The proposals display a lack of commitment to curtailing the problems associated with female

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<sup>2</sup> Ministry of Justice, *Prison Population Projections 2020-2026*, Table 4.1  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/938571/Prison\\_Population\\_Projections\\_2020\\_to\\_2026.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/938571/Prison_Population_Projections_2020_to_2026.pdf)

<sup>3</sup> <https://www.womeninprison.org.uk/news/stopthe500>

incarceration. They will serve only to de-stabilise more lives – those of the incarcerated women as well as their children and families and perpetuate “*the intergenerational cycle of offending*”.

*Help women address underlying needs in place of imprisonment*

11. Women in prison are severely and multiply disadvantaged cohort. Many are living with serious needs that are unmet in the community.
12. In a sample of 60 women who wrote to APPEAL seeking assistance with their conviction and/or sentencing appeals, and who agreed to complete a monitoring questionnaire between February 2018 and February 2021:
  - a. 13 had learning difficulties (23%)
  - b. 23 had experienced homelessness (39%)
  - c. 15 had spent time in care (25%)
  - d. 51 had been diagnosed with mental health difficulties (86%)
  - e. 23 had abused drugs or alcohol (39%)
  - f. 21 had a disability (36%)
  - g. 43 had children (72%), and 20% of those women had children under the age of 5
13. These factors are driving forces in the offending of many women in prison and the majority of those with whom we work. The use of custody for these women is ineffective, failing to address the underlying needs that drove them there in the first place. Not only does this mean that recidivism rates are high (more than 70% of women reoffended within a year in 2016<sup>4</sup>) but these women are also not protected from future harm and disadvantage upon release.
14. It is imperative that the government commits to early interventions to reduce initial criminal behaviour and reoffending rates. This can be achieved through sustained investment in support services.
15. We suggest that the government provides additional investment to women’s centres across the country. These centres provide holistic, trauma-responsive services that have proven to be effective. As the APPG on Women in the Penal System stated in a briefing paper in September 2020:

*[W]omen’s centres were key in delivering gender-specific services for women, but provision was a “postcode lottery”. Police forces such as Avon and Somerset, Surrey, Thames Valley and West Yorkshire had developed close links with their local women’s centres and were diverting women there for assessment and support. But, in some areas of the country, there were either*

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<sup>4</sup> Female Offender Strategy 2018 (linked to above)

*no local women's centres or police officers were unaware of the services offered.*<sup>5</sup>

16. The current government funding pledge of £2m for 38 community-based organisations<sup>6</sup> is insufficient. Research shows that additional investment would provide long-term savings to criminal justice agencies.<sup>7</sup>

*Introduce a duty on public authorities to ensure frontline staff are trained to make appropriate enquiries into domestic abuse*

17. A clear majority of women who took part in our survey reported being victims of differing and wide-ranging forms abuse. The data is in line with official statistics that state that approximately 60% of female offenders have experienced domestic abuse.<sup>8</sup> Our results showed the following:

<b>Have you ever experienced abuse?</b>	<b>( n )</b>	<b>%</b>
Domestic abuse	38	63%
Physical abuse	36	60%
Emotional abuse	43	72%
Sexual abuse/exploitation	33	55%
Culturally specific abuse (e.g. honour based violence, forced marriage or FGM)	9	15%
Trafficking	5	8%
Not experienced abuse	6	10%
<b>Total</b>	<b>60</b>	

*Table 1: Frequency of experiences of abuse for women writing to APPEAL seeking help to overturn convictions or sentences. Please note respondents were able to select multiple categories on the questionnaire.*

18. There is increasingly robust evidence showing the links between abuse and pathways into the criminal justice system for women as defendants.<sup>9</sup> The

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<sup>5</sup> All Party Parliamentary Group on Women in the Penal System (APPG), *Briefing*, September 2020 available here:

<https://howardleague.org/news/thousands-of-women-arrested-unnecessarily-in-wasteful-and-inappropriate-use-of-police-resources/>

<sup>6</sup> <https://www.gov.uk/government/news/extra-funding-for-organisations-that-steer-women-away-from-crime>

<sup>7</sup> UK Women's Budget Group, *The Case for Sustainable Funding for Women's Centres*, October 2020 <https://wbg.org.uk/wp-content/uploads/2020/10/WBG-15-Womens-Centres-Report-v4.pdf>

<sup>8</sup> Ministry of Justice. *Female Offender Strategy*, (2018)., p3 ([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/719819/female-offender-strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/719819/female-offender-strategy.pdf))

<sup>9</sup> Prison Reform Trust, *"There's a reason we're in trouble" - Domestic abuse as a driver to women's*

Government itself has acknowledged the links between abuse and women's offending in several strategy and policy documents.<sup>10</sup>

19. From our casework, we have seen many women who have been victims of domestic abuse and coercive control being inappropriately criminalised with a wide ranging and catastrophic impact on their lives. As some of the most vulnerable members of society, survivors of abuse should be diverted away from prison and provided with a safe place to live away from their abusive partner while being given support rebuild their lives. This could significantly reduce the female prison population.
20. A practical and relatively simple way of achieving this would be to impose a duty on public authorities to ensure frontline staff are trained to make appropriate enquiries into domestic abuse.<sup>11</sup> This duty would be required at every stage of contact with the criminal justice system, but in particular for the police and prosecution so that they are consistently able to weigh up the public interest when deciding whether to prosecute in cases where women may have been victims of domestic abuse.
21. We provided more details on this and other relevant recommendations in our response to the Violence Against Women and Girls (VAWG) Strategy Consultation Response in February 2021.<sup>12</sup> We suggest that the Justice Select Committee Inquiry works in collaboration with the VAWG consultations to share evidence and synchronise police response recommendations.

## **What has been done to reduce the number of women serving short prison sentences? What more can be done? (Question 2)**

22. More than half of women in prison are convicted of low-level offences and the vast majority for non-violent offences. The Government's Female Offender Strategy 2018<sup>13</sup> acknowledges the problems with short-sentences for low-level

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*offending, 2017*

([http://www.prisonreformtrust.org.uk/Portals/0/Documents/Domestic\\_abuse\\_report\\_final\\_lo.pdf](http://www.prisonreformtrust.org.uk/Portals/0/Documents/Domestic_abuse_report_final_lo.pdf))

<sup>10</sup> See the 2018 Female Offender Strategy (linked above) and the 2019 Transforming the Response to Domestic Abuse Consultation Response and Draft Bill

([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/772247/Transforming\\_the\\_response\\_to\\_domestic\\_abuse\\_-\\_consultation\\_response\\_and\\_draft\\_bill\\_-\\_print.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/772247/Transforming_the_response_to_domestic_abuse_-_consultation_response_and_draft_bill_-_print.pdf))

<sup>11</sup> Agenda, *Ask and Take Action* (August 2019)

<sup>12</sup> Violence Against Women and Girls (VAWG) Strategy, APPEAL's Consultation Response, February 2021

[https://static1.squarespace.com/static/5537d8c5e4b095f8b43098ff/t/602fdec48f933a3afa156a7a/1613749957272/APPEAL\\_VAWG\\_Strategy\\_Response\\_FINAL.pdf](https://static1.squarespace.com/static/5537d8c5e4b095f8b43098ff/t/602fdec48f933a3afa156a7a/1613749957272/APPEAL_VAWG_Strategy_Response_FINAL.pdf)

<sup>13</sup> Ministry of Justice. (2018). *Female Offender Strategy*, p3

([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/719819/female-offender-strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/719819/female-offender-strategy.pdf))

offences. Yet prison remains an option for women who fail to pay a TV Licensing conviction fine as well as non-payment of council tax.

*Decriminalise the offence of TV licence fee non-payment*

23. APPEAL has been investigating the practice and impact of prosecuting TV licence fee non-payment. Our view has been informed by months of court observations. A member of our team has attended and observed TV licensing hearings, spoken to 20 women being prosecuted and numerous friends/family members, magistrates, and prosecutors.
24. The evidence is clear: removing the criminal offence of TV licence fee non-payment would have a marked impact on the number of women entering the criminal justice system. More information on this issue can be found in our government consultation response to this issue in March 2020<sup>14</sup> but the following data is supplied here:
  - a. The offence of TV licence fee non-payment accounted for 30% of all prosecutions against women in 2017 making it the most common crime for which women were prosecuted. We do not have the current statistics but we understand that this figure remains high.
  - b. In 2020, 75% of all prosecutions for TV licence fee non-payment were against women. In a year where a global pandemic saw mass job loss and increasing household debt, over 41,000 women were prosecuted for not paying for a TV licence.
  - c. Although the number of people being sent to prison for not paying the fine associated with a TV Licensing conviction has decreased significantly since 1995, it remains a power used by Magistrates and nearly 350 people have been sent to prison for not paying the fine in the past 10 years.<sup>15</sup>

*Imprisonment should not be an enforcement power to collect unpaid council tax*

25. Since 2018, England has been the only country in Britain to imprison people for failure to pay council tax. The law is contained at Regulation 47 of the

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<sup>14</sup> Decriminalising TV License Non-Payment, APPEAL's consultation response, March 2020  
[https://static1.squarespace.com/static/5537d8c5e4b095f8b43098ff/t/5e837385b3225608b872d70d/1585673094610/2020\\_03\\_31+TVL+Consultation+Response+%28final%29+.pdf](https://static1.squarespace.com/static/5537d8c5e4b095f8b43098ff/t/5e837385b3225608b872d70d/1585673094610/2020_03_31+TVL+Consultation+Response+%28final%29+.pdf)

<sup>15</sup> Parliamentary Question Television: Licensing: Written question – 26808, 9 March 2020  
<https://questions-statements.parliament.uk/written-questions/detail/2020-03-09/26808>

Council Tax (Administration and Enforcement) Regulations 1992.<sup>16</sup> Debtors can be admitted to prison for a maximum of three months.

26. Between 2010 and 2017, nearly 700 people were imprisoned for non-payment of council tax. The law states that prison should be reserved only for those who have failed to pay their tax due to “*culpable neglect or wilful refusal*” – rather than because they cannot afford to pay. The reality is that many of those given jail terms have not defaulted on their debt voluntarily and are simply unable to pay.

27. In January 2018, the High Court in Cardiff found that individual errors in council tax non-payment cases may mean that between 9.5 and 18 percent of committals to prison for debt are unlawfully handed down each year.<sup>17</sup>

28. In June 2018, the Welsh government removed the possibility of custody for council tax debt. In doing so the Welsh Finance Minister stated:

*“it is right that those who are less able to contribute are treated fairly and with dignity. The sanction of imprisonment is an outdated and disproportionate response to a civil debt issue.”*

29. We believe it is draconian, unreasonable and cruel to use imprisonment for civil debt enforcement. It criminalises poverty and it is well known that the harm caused by short sentences disproportionately affect women, particularly those with caring responsibilities. We recommend the Ministry of Justice to urge the Secretary of State for Housing, Communities and Local Government to urgently remove Regulation 47 of the 1992 Regulations.

#### **What has been done to ensure that the welfare of dependent children is taken into account when sentencing decisions are made? (Question 4)**

30. On the issue of sentencing, APPEAL supports the clauses to the Police, Crime, Sentencing and Courts Bill recently tabled by the Joint Committee on Human Rights.<sup>18</sup> The interests of dependent children are already accepted as a consideration in the sentencing guidelines but the principle should be strengthened and enshrined in legislation.

#### **How are women supported to maintain family ties in prison? What effect has Covid-19 had on maintaining family ties for women in custody? (Question 7)**

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<sup>16</sup> Legislation is available here: <https://www.legislation.gov.uk/ukxi/1992/613/regulation/47/made>

<sup>17</sup> *Woolcock v SSCLG*, 2018 EWHC 17 (Admin) – available at [https://www.blackstonechambers.com/documents/Woolcock\\_v\\_SSCLG\\_2018\\_EWHC\\_17\\_Admin.pdf](https://www.blackstonechambers.com/documents/Woolcock_v_SSCLG_2018_EWHC_17_Admin.pdf)

<sup>18</sup> Available at <https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/155167/judges-must-consider-interests-of-child-when-sentencing-mother-urges-committee/>

### *Women with children*

31. Statistics clearly show the importance of women maintaining family ties while in prison. A majority are primary carers of dependent children yet they are also imprisoned further from home than men and receive fewer visits. Prisoners who receive visits from family members are also 39% less likely to reoffend than those who do not.<sup>19</sup> One of our clients told us:

*“Women who are not seeing their children lose the will to do anything. I think it’s the key to a crime-free life. The [women] with family that don’t bother with them are those that don’t bother with themselves.”*

32. APPEAL spoke to some of the women we work with to collect views on how well they have been supported to maintain family ties while in prison and what effect Covid-19 has had on this.
33. It is more difficult for women with young children and those without a supportive family network to sustain relationships with children. It was suggested by one client that these women should be supported in having more visits with their children in a more relaxed and informal environment than the normal visiting rooms in prisons where young children can feel overwhelmed.
34. Release On Temporary License (ROTL) was described as a key part of re-integration into family life and *“re-building the maternal bond”*.

### *Channels of communication*

35. All of the women agreed that the introduction of private phones into their rooms was a much-needed reform and it is now the main method of communication for most. Despite this, a lack of privacy remained a problem for those who share a room. One client at HMP Foston Hall told us:

*“Since in-person visits were cancelled [because of Covid-19] I’ve kept a lot of stuff to myself because there’s always someone listening: our rooms are shared and so small there’s no way of having a private conversation... I have nothing to hide but it’s being able to talk about things without other people listening.”*

36. A woman at HMP Low Newton had concerns about privacy with regards to mail. Although it may be necessary for security officers to screen mail, she informed us that wing officers also open their post and read private letters,

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<sup>19</sup> Prison Reform Trust, *Fact Sheet*, August 2019

<http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women/Why Women England and Wales 2018 data.pdf>

sometimes making jokes about what's inside. She witnessed this happening to other women and has experienced it herself:

*“I had an email which was sent two days before and I hadn't received it yet. I went into the office and the [wing officers] said I had an email. It was out of the envelope sitting on their table. It was from my partner who is studying law and about to go to university - they had read her letter and said “who does she think she is – fucking Shakespeare?”. She's working hard and trying to better herself and it wasn't nice.”*

37. A lack of privacy caused these women to feel inhibited in their contact with loved ones. Where it is not possible for women to have single rooms, a private space should be made available so they can share information about their case and personal life without fear of being listened to.
38. Prison officers should be reminded of their duty to create a safe space for women to live with dignity, without fear of having their privacy invaded or being humiliated by those in positions of power. Prison rules regarding mail must be enforced.
39. Most women have welcomed the introduction of video links or “purple visits” since the start of Covid-19. However, two reported technical and connection problems that have made them impossible and another reported a lack of privacy when headphones are not available. One woman with a large family found that she was not permitted to speak to them all at once (as the rules state maximum four people can attend). She would welcome a relaxation of these rules to allow a virtual family gathering.
40. All of the women stated the importance of ‘family days’ and have profoundly felt their lack during the pandemic. Now that they may be re-introduced, one woman told us that every effort should be made by prisons to ensure that places on family days should not be limited.
41. Most of the women we spoke to are pleased to see in-person visits beginning again but two found the social distancing rules prohibitively difficult. They have decided not to arrange visits with their families as it is too painful not to be able to touch or hug them or remove masks. Social distancing rules should be relaxed as soon as possible. The duration of in-person visits should also be extended to 1.5 hours – some are as short as 45 minutes which is not long enough.

## **Conclusion**

42. There is ample evidence demonstrating the complex realities that lead women to enter the criminal justice system. The data should form the basis of recommendations by the Justice Select Committee to the Ministry of Justice on how to reduce the number of women entering in the first place. This should include strengthening early-intervention services, taking active steps to curtail the criminalisation of women with histories of abuse, removing the possibility of imprisonment for civil debt and decriminalising TV licence fee non-payment. It should also include sending fewer women with dependent children to prison. When women are incarcerated, each prison must be encouraged to take practical steps to support private communications with family. We recommend that policies should be defined in consultation with the women themselves, legal professionals and front-line community organisations.

**June 2021**