

## Written evidence from Prisoners' Advice Service

### RESPONSE TO THE JUSTICE SELECT COMMITTEE'S INQUIRY INTO WOMEN IN PRISON

#### Background

Prisoners' Advice Service (PAS) is an independent legal charity founded in 1991. We provide free, expert legal advice and representation to adult serving prisoners in England and Wales about prison law matters, including the application of the Prison Rules. We are the only organisation that provides this service. PAS has had a Women Prisoners' Caseworker post since 2002, to deal with the specific issues facing women prisoners. As is well accepted, women in prison have often experienced trauma throughout their lives, both adverse childhood experiences (ACE) and abuse in adult life. As a result, they have different experiences and needs to men in prison and require specialist assistance. Our Women Prisoners' Caseworker has experience and knowledge of the impact of imprisonment for, and of, women, as she works with them on a daily basis.

PAS has chosen to focus on the questions asked by the Justice Select Committee that relate specifically to women in prison, rather than the criminal justice system as a whole, as this is our particular area of knowledge and expertise.

#### Reducing the number of women in custody

*1. What progress has been made on commitments to reduce the number of women in custody since the publication of the Female Offender Strategy?*

As of Friday 28 May 2021, there were 3,183 women in prison in England and Wales.<sup>i</sup> Taken at face value, it appears that progress has been made to reduce the number of women in custody. However, in January this year the Government announced that 500 new prison places are planned for the female estate.<sup>ii</sup> The building of more prison spaces overtly demonstrates not only a lack of commitment by the Government to the Female Offender Strategy,<sup>iii</sup> but a complete U-turn in its approach to women entering prison, and will inevitably result in more women entering the penal system. As will the employment of over 20,000 new police officers, according to the Government, whose latest projections estimate the female prison population to rise to 4,500 by September 2025.<sup>iv</sup>

Whilst some progress has been in certain areas of the strategy, the Prison Reform Trust's matrix on the implementation of the strategy<sup>v</sup> outlines how much work is still left to do. Changes in policy and guidance, and the delivering of training, do not in themselves result in changes in practice for women. HMPPS may well be working through the deliverables contained in the strategy, but unless those on the ground – the police, Crown Prosecution Service, judiciary, probation and prison service – implement said policies and guidance, and adapt how they work with women, it is unlikely that there will be a significant change in reality for women in the criminal justice system.

*2. What more can be done?*

The Government's proposal to build 500 new prison places for women across the estate flies in the face of a commitment to reduce the number of women in custody and must be reversed immediately as anathema to the Female Offender Strategy. The £150 million that has been

ear marked for the building plans should be redirected into community support services for women to increase third sector services, who women trust, and improve multi-agency working within the criminal justice system. New police recruits should become dedicated diversion officers, present to divert women to appropriate community support rather than criminalise generally minor acts which are often committed as a result of trauma, mental ill-health or poverty.

A considerable amount of positive change lies within the legal process and the criminal courts. There is an overwhelming need for reform in how the courts treat the women that come before them.

- a. The courts need to utilise remand, in particular for a woman's 'own protection', much less, and funding needs to be provided for suitable accommodation for women to live safely and securely whilst on bail. Key workers should also be provided to all women to help them navigate through the legal process.
- b. There should be a presumption against remand and custodial sentences for women with dependent children.
- c. There should also be a presumption of community orders which are focused on support rather than punishment.
- d. The sentencing council need to develop a gender specific sentencing guideline for females.
- e. Magistrates and Judges require training in the realities of a woman being sent to prison, so they can understand the true impact a custodial sentence will have on the woman before them.

There also needs to be wider legal changes implemented.

- a. There must be greater understanding of the impact of domestic abuse, and to reflect this, a statutory defence for women whose alleged offending is driven by their experience of domestic abuse should be incorporated into law, as should an amendment to the current law on self-defence.
- b. Fewer women should be recalled to custody; many are recalled for minor issues that could be managed in the community, with better holistic support.
- c. Legal aid needs to be returned to previous levels and expanded to enable women to seek advice on legal routes available to them when they are involved with the criminal justice system.
- d. Indeterminate Sentences for Public Protection (IPPs) must be abolished retrospectively; women currently serving an IPP should have their sentence converted to a standard determinate sentence, and be subject to normal release and licence provisions.
- e. The existing law of joint enterprise needs to be discontinued, to prevent women from receiving lengthy custodial sentences for offences that they did not actively participate in, and/or may have been coerced into partaking in.
- f. The Home Office should reduce the number of women they seek to detain under immigration powers.
- g. The Government should decriminalise the non-payment of council tax and TV licence fee which disproportionately impacts women and mothers of dependent children.

## **Women in custody**

*5. Since the publication of the Female Offender Strategy, what work has been done to improve conditions for those in custody?*

Whilst some of the deliverables to improve conditions in custody have been met, these predominantly, again, cover policy and guidance rather than those which truly have an impact on daily life in custody. The fundamental aim to reduce female prison places has not only not been met, but is not going to be, with the government having unilaterally adopted a completely contradictory objective to build more prison places.

New approaches to working with women through policy and guidance only matter if those implementing the policy on a day to day basis are on board with the practice, and unfortunately many are not. A top down approach does not work, as it generates little change in reality. PAS frequently handles enquiries from women who do not believe prison policy, such as frameworks and Prison Service Instructions, is being correctly followed; regrettably, this is often the case and can result in legal action. Not only is it unacceptable for prison officers to not be versed in the relevant rules, but such situations can be traumatic for women, who frequently have already experienced trauma in their lives. Those working on the front line require holistic and consistent training in both practical elements of the prison system and procedure, but also on working with vulnerable women who are victims. For many women the physical conditions of confinement are less important than the way they are treated. Prison staff being trauma informed is often not evident.

Covid-19 has had a catastrophic impact on the prison estate. Whilst it has been difficult for many, those in prison have undoubtedly suffered the most. Many women have been confined to their cell for more than 23 hours a day and not seen their loved ones for over a year. The regime has been so restricted by coronavirus that they have not had access to programmes and offender behaviour work, or the support of external services, which for some prisoners will have a direct effect on when they are released from prison. Whilst PAS appreciates that restrictions were needed to protect life, the pandemic has been used in some instances as an excuse to curtail prisoner's rights and justification for poor conditions. In reality, conditions fell below what we should expect from the prison estate before the arrival of Covid-19; the pandemic has not only resulted in no improvement in conditions, but instead they have deteriorated, without direct correlation to the need to manage the estate during the crisis.

*7. How are women supported to maintain family ties in prison? What progress has been made on improving family ties since the Farmer Review? What effect has Covid-19 had on maintaining family ties for women in custody?*

- *What support is available for mothers to maintain contact with dependent children?*

Approximately 60% of women in prison have children under the age of 18 years old, and approximately 17,000 children have mothers in prison.<sup>vi</sup> Maintaining family ties has always been incredibly difficult for women, who are often housed in prisons hundreds of miles from their children, but existing difficulties have been severely exacerbated by the pandemic. Many mothers have had no physical contact with their children for over a year.

Whilst HMPPS responded relatively quickly to adopt virtual 'Purple visits' as an alternative to face to face visits, these were limited to once a month in 2020, and do not meet the needs of a young child who finds it difficult to engage virtually. They are also not suitable for very young children as the technology cannot respond to constant movement, often resulting in the

call being terminated on security grounds because the person cannot be verified by the system. Although PAS appreciates that purple visits can be positive, we are concerned that they might be seen as an alternative to in person visits in the future. A physical visit simply cannot be replicated.

Provisions were put in place during the first wave of the pandemic to allow for the release of pregnant women and those living on mother and baby units, however only approximately one third of eligible women were released. The risk posed by those being released would have been significantly reduced due to the restrictions on movement, yet HMPPS chose not to utilise this scheme to its full capacity; they should have done so, and also extended it to allow those with young children home on temporary release too.

The proposed plan to expand the female estate includes building space in existing prisons for children to visit and stay with their mothers. Although this plan supports maintaining family ties, it does it in an utterly inappropriate, and bordering on harmful, manner. The Release on Temporary Licence framework,<sup>vii</sup> which replaced PSI 13/2015, positively widened the scope of childcare resettlement licence however, prior to Covid-19, and of course during, it was not being utilised in practice; it should be.

Some prisons have family engagement workers. These are frequently provided by the third sector. They play a vital role in assisting a woman to maintain, or regain, contact with her children, but they are limited in the support they can offer due to capacity issues. Prisons should have a department dedicated to maintaining family ties, and all women with children offered the support of a specific family engagement worker. This would also enable better communication between the prison, probation and children services, to ensure that children's best interests are paramount.

Whilst mother and baby units offer a vital service, it is currently only available to the very few. Availability and eligibility issues prevent women from securing a place. Women are often only identified as suitable for an MBU if they are pregnant on reception, however placements are available to those who already have young children under 18 months; this should be promoted by the prison. A new MBU framework is due out later this year; PAS hopes it will provide some real reform, making MBU's more accessible to women coming in to the female estate. The 500 proposed prison places is not the answer to making MBU places more accessible; no additional places should be built in prisons. Instead, current places need to be utilised fully by reforming the restrictive criteria and informing and encouraging eligible women to apply, and additional rooms should be created by adapting existing capacity, in order to facilitate more space for women who enter prison with young children in the community.

Women should be encouraged to access free legal advice on issues surrounding their children whilst in prison. PAS provides this service.

Sending a child's mother to prison is considered to be an adverse childhood experience, and can have a significant impact on that child's life growing up. The criminal courts need to reform their practices and apply the case law and guidance when sentencing mothers. Ultimately, nothing can replace the actual physical relationship between mother and child. The best way to maintain family ties is to not send a mother to prison; this traumatises the child, who is essentially punished, rather than cared for.

8. *What factors contribute to the high levels of self-harm in the female estate?*

- *What is being done to address the high levels of self-harm in the female estate?*
- *What more could be done?*

It is accepted that there are high levels of self-harm in the female estate, much greater than in the male estate, and this has only increased since the pandemic began. Many women in prison are victims of crime themselves and have experienced significant trauma in their lives. Being sent to prison can retraumatise them, or be a trauma in itself, particularly when they are not treated like a victim, only a perpetrator. Being away from their children and family can make it worse, as they don't have the support they are normally used to. Women need to be treated sensitively, however PAS often hears from women who have been treated in an opposite manner. Women are often placed on an ACCT or constant watch, which can make them feel like they are being punished for the act of self-harm rather than supported. Prisons sometimes describe an act of self-harm, astonishingly, as a conscious means of 'manipulation' or 'seeking attention', and is consequently responded to as a discipline and control issue. This is unacceptable. Every act of self-harm should be treated seriously, and requires appropriate treatment and care. A response to self-harm should also address the root cause of the harm, which it currently does not.

Mental health and other support services are hard to access in prison with ever growing waiting lists becoming longer due to coronavirus. Prisons should train specialist key workers - trauma coordinators – who can offer a holistic package of support for those who self-harm. Whilst staff in female prisons should already be trained in 'being trauma informed', often this approach is not adopted in practice, and a failure to work with women in this way often generates negative feelings and responses. It is therefore imperative that all staff are trained more proficiently in working with women who self-harm and are frequently observed to ensure that they are responding appropriately to vulnerable women's needs.

9. *Does the custodial estate offer a trauma-informed environment for females? (a trauma informed environment, being that which is about putting experience, behaviours and needs first, and creating a safer, healing environment that aims to reduce and prevent trauma and retraumatising an individual)*

- *Could more be done? If so, what?*

There are five core values of a trauma informed environment:

- Safety: eye contact, consistency, explanations, and following procedure to report abuse
- Trustworthiness: following through; model trust; maintaining appropriate boundaries; Peer support
- Choice: emphasising the individual's choice and control; providing informed consent
- Collaboration: allowing the individual to have solicited input in their rehabilitation and recovery journey
- Empowerment: teaching skills and providing tasks where individuals can succeed.

It is impossible for the custodial estate to offer a trauma-informed environment for females as these are not the core values of a prison setting. Prisons are run along the model for managing [violent] men: on discipline, order and control. Women have no autonomy over their own

lives. Women entering the prison estate will often have experienced ACE or other forms of trauma, and simply going to prison can retraumatise them, or be a trauma in itself. This is often before they have to endure the invasive and infantilising nature of the prison regime.

Little can be done to change this; it is the fundamental nature of the prison system. Prisons can only seek to mitigate any further damage they cause.

Diverting women away from prison is the only plausible option to ensure that those entering the criminal justice system are worked with in a trauma informed environment.

## **Conclusion**

The Female Offender Strategy adopted by the Government in 2018 promised positive systematic and long-lasting change to meet the needs of women in, or at risk of entering, the criminal justice system, however it is yet to deliver, to any level of satisfaction, on its fundamental aims to see fewer women coming into the criminal justice system; fewer women in custody; and better conditions for those in custody.

There are three dominant areas that the Government can focus on to meet their objectives under the strategy to see fewer women in prison, and in better conditions:

- a. Reverse the proposal to build 500 new prison places for women;
- b. Reduce the number of women entering custody through reform to the use of remand for women, custodial sentences and recall, and adopting a presumption against imprisonment for mothers, through all stages of criminal proceedings; and
- c. Provision of long-term financial support for services for women, both for those in custody and for Women's Centres.

## **Kate Lill**

### **Women Prisoners' Caseworker**

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<sup>i</sup> Ministry of Justice, *Prison Population Figures 2021*, <https://www.gov.uk/government/statistics/prison-population-figures-2021>

<sup>ii</sup> Ministry of Justice, *Press release: Extra funding for organisations that steer women away from crime*, 23 January 2021, <https://www.gov.uk/government/news/extra-funding-for-organisations-that-steer-women-away-from-crime>

<sup>iii</sup> Ministry of Justice, *Female Offender Strategy (2018)*, <https://www.gov.uk/government/publications/female-offender-strategy>

<sup>iv</sup> Ministry of Justice, *Prison Population Projections: 2020 to 2026*, <https://www.gov.uk/government/statistics/prison-population-projections-2020-to-2026>

<sup>v</sup> Prison Reform Trust, *Female Offender Strategy Matrix*, <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women/Female%20Offender%20Strategy%20PRT%20Matrix%20140421.pdf>

<sup>vi</sup> Prison Reform Trust, *Why focus on reducing women's imprisonment?*, <http://www.prisonreformtrust.org.uk/Portals/0/Why%20Women%20England%20and%20Wales.pdf>

<sup>vii</sup> Ministry of Justice, *Release on Temporary Licence policy framework*, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/984884/rotl-pf.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/984884/rotl-pf.pdf)