

## WRITTEN EVIDENCE SUBMITTED BY CENTRE FOR JUSTICE INNOVATION

### SUMMARY

- The Centre for Justice Innovation seeks to build a justice system which every citizen believes is fair and effective. Since our founding in 2011, we have worked with practitioners and policymakers to build a smarter community justice system that turns people away from crime and ends the cycle of reoffending. We therefore welcome this timely inquiry on women in prison.
- We are concerned that, taken together, a number of the proposals in the Police, Crime, Sentencing and Courts Bill ('the Bill') will unnecessarily incur the negative consequences of increased imprisonment for women. Moreover, we believe that these approaches represent the wrong investment of scarce resources. Instead, we are keen that the Government builds on the positive aspects of its own Female Offender Strategy and its recent White Paper, *A Smarter Approach to Sentencing*, and devotes its resources and energy into maximising the opportunities to reduce the number of vulnerable women who re-offend and who serve short prison sentences.
- By the end of this Parliament, we believe a smarter strategy for female offending would ensure that:
  - Through the implementation of the new out of court disposal framework included in the Bill, **gender responsive pre-court diversion for vulnerable women is available in every police force in England and Wales**;
  - The Government has **commissioned a pilot of a deferred sentence approach**, that diverts vulnerable women into services and away from further involvement in the criminal justice system;
  - Women on community sentences have swift access to high-quality treatment via the **roll out of the Community Sentence Treatment Requirement (CSTR) programme across England and Wales**;
  - The Government has **piloted and evaluated a problem-solving court approach to women at risk of short term custody**.

## CONSULTATION QUESTIONS

**1. 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?**

**2. What has been done to reduce the number of women serving short prison sentences? Do community sentences currently offer a credible alternative to custody? (If no, why not?) What more could be done?**

### Context

The 2008 Corston Review of women in the justice system observed that women who offend have a very distinct set of needs to men. They are more likely to have experienced trauma, are more likely to be primary carers of children and are more likely to have their offending be driven by their relationships.<sup>1</sup> As a result of this, short prison sentences are especially disruptive for women (and their families). The Government's Female Offender Strategy notes that anxiety and self-harm is more prevalent for women than for men in prison.<sup>2</sup>

With that in mind, we are concerned that a number of the measures in the Police, Crime, Sentencing and Courts Bill ('the Bill') will put further pressure on an already stretched prison system over the next ten years and that this may have particular negative consequences for vulnerable women. The Government's own impact assessment suggests Prison Services and the Youth Custody Service will face "increased population and longer times spent in custody for some offenders, which may compound prison instability, self-harm, violence and overcrowding."<sup>3</sup> Furthermore, it is also likely that the impact on people and their families of serving longer periods in custody "may mean family breakdown is more likely, affecting prisoner mental health and subsequent reoffending risk.

We think that these moves are regrettable and are likely to lead to more women going to prison, with all the damaging consequences that has. These anticipated increases in pressures on capacity in women's prisons- combined with the Government's commitment to build 500 new prison places for women - are all in tension with the Government's stated goal of keeping women out of prison.<sup>4</sup> Rather than building more cells, efforts could be better focused on ensuring that the new measures need not translate into increased numbers of women in prison.

We see these measures as a missed opportunity: in our view, they represent the wrong investment of scarce resources. Instead, we argue that it is clear that the Government can avoid the costs and negative consequences of increased imprisonment for women, if it focuses its energy on effective implementation of a smarter community justice strategy that maximises the opportunities to reduce the number of vulnerable women who re-offend and who serve short prison sentences. Indeed, such a strategy, which could apply to men, but which is likely to have a particular impact on women, would simply build on the positive aspects of its own Female Offender Strategy and its White Paper, *A Smarter Approach to Sentencing*. In other words, Government itself has already, in many areas, identified what it needs to do to

<sup>1</sup> Baroness Jean Corston (2008), *The Corston Report: a review of women with particular vulnerabilities in the criminal justice system*. Available: <https://webarchive.nationalarchives.gov.uk/http://www.homeoffice.gov.uk/documents/corston-report/>

<sup>2</sup> Ministry of Justice (2020) *Female Offender Strategy*. Available:

[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>3</sup> Ministry of Justice (2021), *Police, Crime, Sentencing and Courts Bill: Sentencing, Release, Probation and Youth Justice Measures: Impact Assessment*. Available: [https://publications.parliament.uk/pa/bills/cbill/58-01/0268/MOJ\\_Sentencing\\_IA\\_FINAL\\_2021.pdf](https://publications.parliament.uk/pa/bills/cbill/58-01/0268/MOJ_Sentencing_IA_FINAL_2021.pdf)

<sup>4</sup> Ministry of Justice (2021), *Extra funding for organisations that steer women away from crime*. Available: <https://www.gov.uk/government/news/extra-funding-for-organisations-that-steer-women-away-from-crime>

reduce the use of imprisonment while reducing re-offending committed by women.

### **Gender specific pre-court diversion**

Pre-court diversion offers a swift and meaningful response to offending, while reducing or avoiding harmful criminal justice system involvement. Schemes operate in a variety of different models across the country, though typically involve an individual engaging with a set of rehabilitative interventions, in exchange for a lesser criminal justice disposal than they would have otherwise received. Interventions range from participating in restorative justice, engaging with drug and alcohol services or attending counselling.<sup>5</sup>

Pre-court diversion is a particularly valuable approach to responding to female offending. Women in the justice system are typically vulnerable with a high prevalence of need. As the Ministry of Justice Female Offender Strategy notes, “many experience chaotic lifestyles...that are often the product of a life of abuse and trauma”.<sup>6</sup> The 2008 Corston Report noted that women are more likely to commit acquisitive crime and less likely to commit serious violence, criminal damage and professional crime. Women committing low-level offences are also less likely than men to re-offend.<sup>7</sup> This means that women are more likely to be a good match for diversionary interventions that are appropriate for this type of offending. Moreover, diversion can act as a gateway to support, and offers a route out of the issues often driving the offending behaviour (see case study 1).

In the implementation of the new out of court disposal framework that is included in the Bill, the Government should ensure that gender specific pre-court diversion for vulnerable women is available in every police force in England and Wales. Although the evidence suggests that this approach is effective for women with vulnerabilities, a recent survey shows that while the approach is widespread, it is not universal.<sup>8</sup> The Government should use the implementation of the new framework as an opportunity to support and ultimately achieve full coverage. In implementing pre-court diversion for women, schemes should be set up in a way that reflects the evidence base, and be tailored to the women’s needs and likely circumstances. It should also reflect existing best practice, which shows the importance of supportive, voluntary and family-based interventions, that are integrated into support in the community and are responsive to the complex realities of women’s recovery.<sup>9</sup>

#### **Case Study 1 – New Chance project**

New Chance is a diversion scheme for women, which is funded by the West Midlands Police and Crime Commissioner. Participants are referred by the police into a system of tailored support delivered by non-profit organisations, such as Women’s Aid. Engagement with the scheme allows the individual to avoid receiving a criminal record. An evaluation found the scheme to reduce reoffending rates for

<sup>5</sup> Centre for Justice Innovation (2019), *Pre-court diversion for adults: an evidence briefing*. Available: [https://justiceinnovation.org/sites/default/files/media/documents/2019-06/cji\\_pre-court\\_diversion\\_d.pdf](https://justiceinnovation.org/sites/default/files/media/documents/2019-06/cji_pre-court_diversion_d.pdf)

<sup>6</sup> Ministry of Justice (2018) *Female Offender Strategy*. Available: [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>7</sup> Baroness Jean Corston (2008), *The Corston Report: a review of women with particular vulnerabilities in the criminal justice system*. Available: <https://webarchive.nationalarchives.gov.uk/+/http://www.homeoffice.gov.uk/documents/corston-report/>

<sup>8</sup> Centre for Justice Innovation (2019), *Pre-court diversion for adults: an evidence briefing*. Available: [https://justiceinnovation.org/sites/default/files/media/documents/2019-06/cji\\_pre-court\\_diversion\\_d.pdf](https://justiceinnovation.org/sites/default/files/media/documents/2019-06/cji_pre-court_diversion_d.pdf)

<sup>9</sup> Centre for Justice Innovation (2020) *Pre-court diversion for women*. Available: <https://justiceinnovation.org/publications/pre-court-diversion-women>

participants with substance misuse issues by more than 50%.<sup>10</sup>

## Deferred sentences

There is extensive evidence that many of the women who come into police stations and our criminal courts have complex needs, including substance misuse, mental health illnesses and learning disabilities.<sup>11</sup> Deferred sentences offer courts the opportunity to place people who have committed an offence in a meaningful community programme while retaining the option of an alternative disposal based on their engagement and compliance with that programme.<sup>12</sup>

Yet, in England and Wales, this power is seldom used.<sup>13</sup> However, the Government White Paper signals a new approach, stating that “Where the court has the capacity, we want to encourage them to use existing legislation on deferred sentences, and existing services available to them such as Liaison and Diversion or community advice and support services, to divert vulnerable offenders into services and away from further involvement in the criminal justice system, especially vulnerable women...”.<sup>14</sup> This welcome commitment can build on the successful use of deferred sentencing that is already present in other parts of the UK (see case study 2).

### Case study 2 – the use of deferred sentences in Aberdeen

In Aberdeen, deferred sentences are being used for women at risk of a short custodial sentence. In the pilot scheme, participants have their sentence deferred while they engage with service providers for a specified period of time, usually for six months. Every four weeks, a decision will be made to continue or end involvement in the scheme, or to impose an alternative sentence (which is usually custodial). This decision is based on the participant’s compliance with the plan and any evidence of re-offending. A process review by Ipsos Mori Scotland found that over half of the participants were not in custody by the end of their involvement with the scheme, and that participants reported a positive impact on their lives.<sup>15</sup>

To fulfil the commitment in the White Paper, we urge the Government to commit to creating five new pilots of deferred sentencing approaches, which divert vulnerable women who have committed an offence into services and away from further involvement in the criminal justice system. These pilots would provide an opportunity to properly trial this alternative approach to short prison sentences in England Wales, and develop good practice from an evidence base, in addition to where it has been a success in

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<sup>10</sup> Centre for Justice Innovation (2021) *New Chance Project*. Available: <https://justiceinnovation.org/project/new-chance-project>

<sup>11</sup> Baroness Jean Corston (2008), *The Corston Report: a review of women with particular vulnerabilities in the criminal justice system*. Available: <https://webarchive.nationalarchives.gov.uk/+/http://www.homeoffice.gov.uk/documents/corston-report/>

<sup>12</sup> Centre for Justice Innovation (2021), *Delivering a smarter approach: Deferred sentences*. Available: <https://justiceinnovation.org/sites/default/files/media/document/2021/Deferred%20sentencing.pdf>

<sup>13</sup> Centre for Justice Innovation (2021), *Delivering a smarter approach: Deferred sentences*. Available: <https://justiceinnovation.org/sites/default/files/media/document/2021/Deferred%20sentencing.pdf>

<sup>14</sup> Ministry of Justice (2021), *Police, Crime, Sentencing and Courts Bill: Sentencing, Release, Probation and Youth Justice Measures: Impact Assessment*. Available: [https://publications.parliament.uk/pa/bills/cbill/58-01/0268/MOJ\\_Sentencing\\_IA\\_FINAL\\_2021.pdf](https://publications.parliament.uk/pa/bills/cbill/58-01/0268/MOJ_Sentencing_IA_FINAL_2021.pdf)

<sup>15</sup> Centre for Justice Innovation (2019), *Aberdeen Problem Solving Approach*. Available: <https://justiceinnovation.org/project/aberdeen-problem-solving-approach>

other jurisdictions.

### **Access to high quality treatment on community sentences**

Community sentences provide a proportionate punishment for crime, as well as repairing harms caused by and addressing the underlying factors that led to the offense. The use of community sentences for female offending is particularly compelling due to the fact that, in general, women commit less serious offences than men.<sup>16</sup> Given the higher prevalence of needs (such as mental health problems, trauma and substance misuse) among women who commit offences, community sentences provide a particularly important opportunity to address criminal behaviour.<sup>17</sup>

There is extensive evidence that swift access to high quality treatment for substance misuse is particularly effective in reducing re-offending and in promoting wellbeing. However, lack of availability and access to high quality treatment for people on community sentences means we are not maximising the opportunities we have to reduce female re-offending. The latest available statistics show that alcohol treatment, drug treatment and mental health treatment requirements were part of only 3%, 4% and 0.5% of orders respectively. This low level of use has been driven by a number of factors, perhaps most notably the lack of treatment.<sup>18</sup>

In response to this, the Government has run a number of Community Sentence Treatment Requirements (CSTRs) test beds—pilots aimed to increase the use of the treatment requirements (Mental Health Treatment Requirements (MHTR), Drug Rehabilitation Requirements (DRR) and Alcohol Treatment Requirements (ATR)) that can be part of a community sentence. The pilots have reported a range of positive findings, including in take up of treatment and an increase in sentencing options. The White Paper committed to an expansion of the CSTR programme, achieving “50% coverage of mental health provision by 2023/24”, and to going “further with drug and alcohol treatment too”.<sup>19</sup>

However, with a forthcoming spending review and the anticipated second and final report of Dame Carol Black’s review of drugs policy, we think the time is ripe to go further. The mental health and substance misuse needs of the population in contact with the justice system are well evidenced, as are the opportunities for timely treatment to reduce reoffending and help people get their lives back on track. In addition, the effect of limited treatment capacity on the ability of sentencers to make use of CSTRs is stark. The compelling reasons that exist for extending the CSTR programme to cover 50% of the country also apply to extending it to the other 50%. In calling for national rollout by the end of this Parliament, we are joined by the Independent Advisory Panel on Deaths in Custody and the Magistrates Association, who have called for a national rollout of CSTRs in a recent report.<sup>20</sup> The Government should commit to making CSTRs, and the treatment provision required, available across every court in England and Wales by 2023/24.

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<sup>16</sup> Ministry of Justice (2018) *Female Offender Strategy*. Available:

[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>17</sup> Ministry of Justice (2013) *Gender differences in substance misuse and mental health amongst prisoners*. Available:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/220060/gender-substance-misuse-mental-health-prisoners.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/220060/gender-substance-misuse-mental-health-prisoners.pdf)

<sup>18</sup> Centre for Justice Innovation (2021), *Delivering a Smarter Approach: Community Sentence Treatment Requirements (CSTRs)*. Available:

<https://justiceinnovation.org/sites/default/files/media/document/2021/cstr.pdf>

<sup>19</sup> Ministry of Justice (2020), *A Smarter Approach to Sentencing*. Available: <https://www.gov.uk/government/publications/a-smarter-approach-to-sentencing>

<sup>20</sup> The Independent Advisory Panel on Deaths in Custody and Magistrates Association (2019), *Effective community sentences and the role treatment requirements can play in preventing deaths in custody*. Available: <https://www.magistrates-association.org.uk/Portals/0/MA-IAP-survey-final-270619.pdf>

## Piloting problem-solving court approaches

The distinctive challenges faced by specific cohorts of women in the justice system highlights the potential of specialised court approaches to reduce the number of women in custody. A leading approach in this vein is presented by problem solving courts.

Problem solving courts already play a role in trying to prevent unnecessary imprisonment of women. There are currently three women’s problem-solving court approaches in the UK: Manchester and Salford Magistrates’ Court, Stockport Magistrates’ Court and Aberdeen Sherriff Court. These courts deploy a specialised approach to women at risk of custody, including supervision, enhanced access into services and regular court reviews in front of a judge to review progress.<sup>21</sup> Their specialised focus on addressing underlying needs makes these problem-solving courts uniquely well placed to prevent further offending - and therefore ultimately reduce the number of women in prison.

### Case study 3 – Problem-solving courts in Greater Manchester

The project at Manchester and Salford Magistrates’ Court is focused on women at risk of custody or a high-level community order, and who have four or more criminogenic needs. The women are placed on community orders, with sentence plans drawn up at multi-agency meetings, and are brought back before the court for regular reviews to discuss progress and set goals for addressing criminogenic needs, which might include actions like beginning job readiness training or engaging with drug treatment. Most attend a women’s community service as a requirement of their order.

Greater Manchester, the area covering these problem-solving court approach for women, has a lower annual average reoffending rate for females compared to similar urban areas, and England and Wales overall (15% compared to 23% for the April 2017 to March 2018 cohort).<sup>22</sup>

We therefore welcome the Government’s announcement that it intends to pilot five new problem-solving courts, including one for women at a magistrates’ court.<sup>23</sup> To make the most of this opportunity, the pilot for women should be informed by the evidence and existing practice in this area, and should be targeted at women with complex needs and multiple previous convictions, who are at risk of short custodial sentences.

We also strongly suggest that, as the Government takes forward these pilots (which, in addition to one for women specifically, is likely to include three Crown Court substance misuse pilots and one domestic violence court pilot), it is particularly crucial that all these new problem-solving court approaches are well evaluated, so we can finally gather the evidence about whether they help reduce re-offending and avoid the use of custody. Moreover, we encourage the Government to work with Mayors, Police and Crime Commissioners and others to identify the key agencies and individuals in each locality that have the enthusiasm and drive to implement the five problem-solving court pilots, as this is the key to future sustainability.

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<sup>21</sup> Centre for Justice Innovation (2021), *Delivering a Smarter Approach: Piloting problem-solving courts*. Available: [https://justiceinnovation.org/sites/default/files/media/document/2020/cji\\_psc\\_2020.pdf](https://justiceinnovation.org/sites/default/files/media/document/2020/cji_psc_2020.pdf)

<sup>22</sup> Centre for Justice Innovation (2021), *Delivering a Smarter Approach: Piloting problem-solving courts*. Available: [https://justiceinnovation.org/sites/default/files/media/document/2020/cji\\_psc\\_2020.pdf](https://justiceinnovation.org/sites/default/files/media/document/2020/cji_psc_2020.pdf)

<sup>23</sup> Ministry of Justice (2021). *Police, Crime, Sentencing and Courts Bill: Sentencing, Release, Probation and Youth Justice Measures: Impact Assessment*. Available: [https://publications.parliament.uk/pa/bills/cbill/58-01/0268/MOJ\\_Sentencing\\_IA\\_FINAL\\_2021.pdf](https://publications.parliament.uk/pa/bills/cbill/58-01/0268/MOJ_Sentencing_IA_FINAL_2021.pdf)