

Written evidence from JENGBA (Joint Enterprise Not Guilty by Association)

JENGBA (Joint Enterprise Not Guilty by Association) is a grass root campaign launched in 2010, that supports over 1500 men, women and children; all convicted using the now discredited legal doctrine of Joint Enterprise.

JENGBA was instrumental in the landmark Supreme Court case of R v JOGEE (2016). Five Senior Judges acknowledged that Joint Enterprise had taken a wrong turn as far back as 1984. For thirty-two years the law had been misinterpreted.

To date only one case has reached the Substantial Injustice test (set out in the Supreme Court Judgement 2016) and gone on to have the conviction quashed at the Court of Appeal.

Many commentators now refer to Joint Enterprise as a draconian, legal technicality in the Prosecutions favour. It is due to huge support gained from the public that **JENGBA** continues to campaign on the behalf of those convicted using the wrong interpretation of the law, and due to convictions continuing to be gained in a similar vein as those prior to 2016. We campaign because families and communities continue to be ripped apart, sentences continue to increase and all recommendation regarding Joint Enterprise reform continue to be ignored.

Stories of Injustice: The criminalisation of women convicted under Joint Enterprise laws.

<https://jointenterprise.co/docs/StoriesofInjustice161120.pdf>

The Stories of Injustice Report (link above) was published in November 2020. It revealed the experiences of **109 women** who had been convicted in the period 2006 – 2020. The following key findings are central to then understanding the challenges in making sense of the Joint Enterprise sentence and coping with the reality of potential miscarriage of justice.

The area of focus this submission seeks to contribute to are Questions 1, 4, 5, 7 and 8

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.

The majority of the women subject to Joint Enterprise punishments in this research have convictions for serious violent offences, with over three quarters (77%) for murder or manslaughter offences. As a result, most are serving long or indeterminate prison sentences (average prison sentence = 15 years). Almost half the women (47%) are serving life sentences with tariffs of 16 years or more, and 20 women have tariffs of between 21 and 30 years.

The overwhelming majority of women convicted under Joint Enterprise (90%) engaged in no violence in relation to the events related to their JE conviction. In no cases did the women in these cases use a deadly weapon, such as a knife or bottle, the type of implements that were the most common causes of death of the victims in these cases.

Women were often marginal to the violent event, with almost half not present at the scene and almost all never having engaged in any physical violence. Yet in most cases women were criminalised and punished for the most serious offence and given a life sentence.

An intelligent way to reduce women in prison would be to abolish the Substantial Injustice Test and give people the opportunity to have their case heard properly at the Court of Appeal. Or have cases reviewed immediately as all campaigners expected after the Supreme Court Judgement that Joint Enterprise had been misapplied for over three decades. Many of the women in the report have already served over a decade in prison. And most importantly make significant changes to the law by raising the burden of evidence so that women are no longer prosecuted for the crimes of others on the basis of possible foresight or association to the victim or the perpetrator.

4. What has been done to ensure that the welfare of dependent children is taken into account when sentencing decisions are made?

One theme examined as part of the collaborative research project which underpins the report relates to the impact of the Joint Enterprise sentence on women and their children and families. As can be seen in the methodological note in the full report, the women were identified through several different approaches (as the use of JE remains hidden and unreported through official data).

Also due to access to prisons and maintaining contact the women contributed their experiences in different ways. We have developed our understanding of the impact of the JE sentence for women through a variety of ways – gathering their testimonies through detailed qualitative written accounts, adding to these through in-depth interviews with the women and / or their family members and through the calculation of impact (quantitative and qualitative) on their children and wider families.

In cases where we were able to hear from women and understand something of the impact of the JE trial process and subsequent wrongful conviction and prison sentence the impact for many (85%) was deeply traumatic. Struggling with emotions, a strong sense of pain and trauma as a result of the conviction (both trial and prison experience) is most keenly felt by those women with longer prison sentences. Once the sentence tariff exceeds 15 and 20 years.

The accounts from women serving JE sentences further echo long standing critical social research examining evidence of the qualitative different impact of imprisonment of women (*Scruton; Carlen; Seagrave and Carlton*).

Most recently Crewe, Hulley and Wright (2017) report that women experience pains of imprisonment more acutely than men. In this research the challenges facing prisoners subject to long and life sentences for crimes they have not committed are revealed.

They centre on feeling abandoned, lost in a system, trying to find anyone willing or able to listen and address what has happened to them. These are then deeply connected to the pain related to the fragmentation of family and loss of family ties. The common experience of their children being rehomed or put into care. Their powerlessness and silencing during the trial process. The prison experience reproducing pain and trauma, the sense of injustice driving the pain of imprisonment felt by prisoners and their families. The research sought to hear and understand, and in doing so it bears witness to this pain.

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

Women in Custody

Studies have shown it is difficult for prisoners maintaining innocence to participate in courses or understand the legitimacy of their sentences, especially since most joint enterprise women are serving Life sentences. The JENGBA women are often wing representatives, listeners and educators.

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?

Fracturing of family (n=57)

Of the 73 women we know have children or not, 70% of them are mothers. Most commonly, they have two children (31% of the mothers) with nine women having four or more children. In total across these 73 women there are 117 children impacted by their mother's Joint Enterprise conviction. Some of these will be adult children, but many are not. It is recognised that the imprisonment of mothers impacts children disproportionately (*Minson, 2019*).

The women reveal how their convictions have often led to the fragmentation of family, meaning many of these children were taken into local authority care.

Of those women 70% reported that due to their connectedness to family the long JE sentences were having an impact on the togetherness of their family and wider relationships.

Concerns about fracturing of family are experienced by majority of women across all age groups, but the data suggests most keenly felt by women in 26–35-year-old age group and women over 51 years old.

Concerns about fracturing of family are not only there for women with children, as over half (56%) of women without children share these concerns. Yet this intensified (to include 76% of women) when they had children, they left behind entering prison.

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?

Below are what JENGBA frequently hears from the women and girls we support, many of the things we are told are very distressing. It is our contact and support as volunteers that give them a sense of hope that they often need. The JENGBA Inside Campaigners, as we call them, support each other in times of need and focus on playing their part as campaigners on the inside.

There really is nothing the Prison Estate can do for women serving mandatory life sentences for murder who did not plan, foresee or commit murder, other than to listen to their voices and play a significant role in giving them the justice they rightly deserve.

Being convicted of a crime you didn't commit

Being given a life sentence for murder knowing the justice system knows you are not a murderer.

Reading newspaper reports about your case and the shocking way you are described coupled with inaccuracies, then having to face other prisoners and staff who will only believe the media version.

Carrying shame and what should be someone else's feelings of remorse daily is a terrible burden.

Having all hope or opportunity snatched when successive Governments and MP's refuse to acknowledge your plight or do anything to rectify the abhorrent injustice.

Knowing your children will face bullying and abuse because you are in prison.

Having a loved one die or knowing your parents will be dead before you reach the end of your minimum tariff.

Watching others self-harm and considering the reasoning must be some form of relief for the trauma of prison, and then trying it yourself.

Genuinely wanting to die rather than continue the living nightmare of prison.

Having no hope of ever having a future.

Having flashbacks of the trial and remembering the unfairness and wishing if you knew the things you know now about the law and the trial process. Constantly telling yourself how you would fight differently to clear your name rather than just trust the system to do the right thing.

Waking up in the morning and for a few seconds thinking you are at home in your own bed to then feel the gut wrenching shock when you realise you are in prison.

Fear of other prisoners as well as prison staff.

Knowing you will never be a mother because by the time your sentence is up you will be too old to have children.

Children being rehomed / into care (n=59)

Given the high proportion of women in this study who are mothers, often of multiple children and some of them young, it's unsurprising that for 70% of the women the sentence will mean their children being rehomed. For the majority this would mean children either living with grandparents or entering the care system. Only a small handful of women indicated that children would remain at home with their other parent or older sibling.

These concerns are felt to a much greater extent by the women aged 31 and older (three quarters to all women in these older age groups) compared to young adults under 25 (only one woman; 14%) and women in later 20's (8 women, 53%).

Pain and trauma of process and sentence (n=48)

In cases where we were able to hear from women and understand something of the impact of the JE trial process and subsequent wrongful conviction and prison sentence the impact for many (85%) was deeply traumatic.

Struggling with emotions, strong sense of pain and trauma as a result of the conviction (both trial and prison experience) is most keenly felt by those women with longer prison sentences. In particular once sentence tariff over 15 and 20 years.

Dear JENGBA family

Am writing a message and sending you pictures for you to use hopefully. Being away from my kids is heartbreaking and it's even worse now as seeing my dad and kids and get my hugs and kisses help take away the pain for just a few hours until they have to go home without me, my dad give the best hugs he nearly breaks my ribs and I kiss the faces of my kids, since this lockdown its been hell not getting my hugs and kisses or seeing how much more my kids have changed as on a visit I can't help but stare at them taking every last detail in just to keep me strong till my next visit. In here am one of the lucky ones as am on a house with 15 other girls which is madness any way as for boredom reasons there is always drama. Who needs a TV with 7 channels when I could people watch all day. This prison has gave us £5 a week phone credit only told that's stopping and any phone credit us women have saved the prison is taking back. But I will say that without my JENGBA family still fighting on for us innocent lost prisoners because at this horrible time I have faith that we will win this fight for justice and all us that are stuck in this nightmare right now we all to get fighting head on and write to anyone and everyone and we will be heard. I think you could call me a Boris and a Keir Storker [sic] as I write to them every week and will carry on doing until someone listens. I've even wrote to the Queen; Pope and I'd say about 500 MPs and Lords. And even though a lot of them haven't wrote back am telling them how bad joint enterprise is and I've even mentioned saving the tax payers money and letting us innocent JE members in prison and spend the money on saving people's jobs and giving the NHS a payrises. Still talking about saving the government money hasn't worked but at least they will know about joint enterprise and think about me the stalker haha. Sending my love to all my JENGBA family and my lovely dad Kevo, Kyle Kane Kallum and Nunu and can't wait for y bigs hugs and kisses. Miss my family so much its killing me but on a positive side of this nightmare I have more time to write to people. *Yours truthfully Kelly Smith HMP Styal*