

## **Prison Reform Trust response to the Home Affairs Committee inquiry into the effectiveness of the Modern Slavery Act: Trafficked women in prison – September 2018**

### **About the Prison Reform Trust**

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We have a longstanding interest in improving criminal justice outcomes for women. Our Transforming Lives strategy to reduce the unnecessary imprisonment of women, supported by the Big Lottery Fund, includes a specific objective to reduce the disproportionate imprisonment of foreign national women and trafficked women. For further information about the Transforming Lives programme see [www.prisonreformtrust.org.uk/women](http://www.prisonreformtrust.org.uk/women)

Six years ago we published [No Way Out](#), a briefing which highlighted the over representation of foreign national women in prison in England and Wales, their particular vulnerabilities and the barriers to justice that many face. This includes the fact that for a significant number their offending may have been linked directly or indirectly to having been trafficked and coerced. That same year the report Criminalisation of Migrant Women (Hales & Gelsthorpe, Cambridge Institute of Criminology) highlighted failures to identify and support trafficked women in prison.

Together with Hibiscus Initiatives (see below) we will shortly be publishing an updated report on these issues that we would like to submit to the Committee's inquiry. Meanwhile we are submitting some of the key findings and recommendations most relevant to your inquiry and would be pleased to provide further evidence if that would be helpful.

### **About Hibiscus Initiatives**

Established in 1986, Hibiscus Initiatives (Hibiscus) is a leading specialist charity, committed to supporting foreign national people involved in the immigration and criminal justice systems. Thirty years on, their expertise and depth of experience is widely valued. While women remain the main focus of Hibiscus' work, the organisation assists some men in similar circumstances. The identification and support of victims of human trafficking is embedded in all areas of Hibiscus' work. For more information see: [www.hibiscusinitiatives.org.uk](http://www.hibiscusinitiatives.org.uk)

### **Some of the findings from our (embargoed, forthcoming) report (Still No Way Out – Foreign national and trafficked women in the criminal justice system)**

Foreign national women are more likely than British women to have been victims of trafficking. Prosecutions for trafficking are increasing year on year, but official estimates of the extent of trafficking vastly outstrip these figures. Women and girls account for over half the victims referred to the National Referral Mechanism (NRM). In some cases, women's exploitation includes direct coercion to commit offences

such as cannabis production, prostitution related offences, begging and theft. In other cases their adverse experiences may have left them vulnerable to offending even some time after they have escaped, for example where traffickers have stolen their identity documents or given them false papers. These women are likely to have been vulnerable before they were trafficked, as a result of poverty, domestic abuse or other circumstances.

The UK government's resolve to improve the response to human trafficking and modern slavery offences included appointing an anti-slavery commissioner in 2015. His resignation in May 2018, when he raised concerns about the lack of progress, is concerning. A statutory defence is in place for victims of human trafficking and modern slavery who are coerced or compelled to commit offences. Yet evidence from Hibiscus, confirmed in recent police and Crown Prosecution Service (CPS) inspectorate reports, suggests a continuing failure to ensure victims are identified, protected and supported in a timely fashion. Little information is available about the impact of reforms to the NRM announced in October 2017.

The most common offences for which foreign national women were in prison were fraud (18%), theft (18%) and false document offences (10%). These are all indicator offences for trafficking and coercion. This is Hibiscus client data rather than Ministry of Justice data which is not available.

The Modern Slavery Act 2015 introduced a defence for victims of modern slavery compelled to commit a criminal offence. Yet evidence we have collected confirms that victims of modern slavery continue to be prosecuted for crimes they were forced to commit.

Hibiscus identified 45 women in prison as victims or potential victims of trafficking from February 2013 to March 2017, all of whom had disclosed information about their exploitation. They were in prison for between one and three months to up to three years, with four remaining in prison at the time of completing the data analysis.

### **There is a continuing failure to identify and avoid prosecuting victims of trafficking and modern slavery.**

There are no official data on the number or experiences of victims of trafficking who are wrongly prosecuted for offences carried out due to exploitation. This constrains any meaningful assessment of the extent to which criminal justice agencies are discharging their legal responsibilities towards victims of trafficking who present as offenders.

Evidence collated by Hibiscus and from inspectorate reports suggests that, despite police and prosecution guidance, there is a disturbing failure to identify, protect and support victims of trafficking at an early stage and avoid prosecuting them for offences committed as a consequence of their exploitation by traffickers.

College of Policing guidance is clear that where an individual raises the section 45 defence<sup>55</sup> before a police interview, he or she should be offered a separate interview about their experience of trafficking and a NRM referral should be made. However the guidance fails to specify that where this is raised during a police interview the same steps should be taken.

Defence lawyers often do not ask the right questions in order to establish whether their client may be a victim of trafficking and some fail to advise women where appropriate about the section 45 defence.

It can be difficult for defence lawyers to apply successfully for proceedings to be moved to a different court in order to safeguard defendants going through the NRM process. Difficulties in obtaining suitable bail accommodation can lead to such defendants being remanded in custody.

Some training is available for judges and magistrates in relation to trafficking and in relation to women's caring responsibilities but more is needed. The Equal Treatment Bench Book, which includes new sections on Modern Slavery, Intercultural communication for those speaking English as a second language and Effective Use of Interpreters, is a welcome resource.

The National Probation Service (NPS), HM Prisons and Probation Service (HMPPS) and Community Rehabilitation Companies (CRCs) are not 'first responders', although they do have a 'duty to notify' where individuals give their consent for a NRM referral. The government advises that further information and training on this will be provided later in 2018. The NPS is starting to raise awareness of human trafficking and modern day slavery.

Interpreting services are widely viewed as inadequate. Not enough time is allocated to interpreters, especially where there is a history of trauma. Existing protocols do not include a requirement to provide a suitably qualified female interpreter if requested. This may inhibit disclosure of abuse, trafficking or mitigating factors surrounding an alleged offence. Hibiscus case workers have experience of women who have been trafficked or sexually exploited being interviewed by male police officers and without a female interpreter:

*"We have traumatised women who can actually hardly speak about their experience and having only men is another barrier – sensitivity, shame etc and women having to describe intimate exploitation..."*

Hibiscus service manager

**In our report we will be recommending measures to ensure that trafficked women are not prosecuted, including:**

- victims of trafficking are identified at the first point of contact with the criminal justice system or as soon as possible after that point;
- detention is only used where there is no reasonable alternative;
- the principle of non-prosecution of victims of trafficking is consistently upheld; and
- the NRM process is adequately resourced to operate efficiently and fairly for women who do face prosecution, including provision of suitable safe accommodation.
- The Lord Advocate in Scotland's guidance on the non-prosecution of victims of human trafficking and exploitation offers a model of good practice and transparency. The Director of Public Prosecutions should consider whether aspects of the model or other appropriate measures should be adopted in

England and Wales in order to achieve greater consistency in prosecutors' non-prosecution decisions.

- HM Inspectorate of Constabulary and Fire and Rescue Services should audit implementation of their 2017 recommendations for improving police identification of victims of trafficking, and application of the section 45 defence for those who are coerced into offending. Similarly, HM Inspectorate of the CPS should review compliance with its guidance on non-prosecution.
- Where the indicators of human trafficking set out by the United Nations Office on Drugs and Crime are present, a woman should be immediately referred for a voluntary interview with a specialist agency in a safe, independent space, to establish whether she may have been trafficked. Strong safeguards must be in place, with access to legal advice, to ensure she understands that the interview is not mandatory.
- The Home Office should implement measures to strengthen and increase awareness of the section 45 defence.
- College of Policing guidance should be amended to make clear that where section 45 is raised during a police interview, the interview should stop and the individual should be offered a separate interview and NRM referral.
- We endorse the Equality and Human Rights Commission's recommendation for a requirement on public authorities, including health authorities, schools, prisons, probation services, competent authorities and voluntary organisations performing a public function, to record and report suspected victims of trafficking, and their recommendations for improvements in the treatment of victims of trafficking.
- The cross-government work to improve accommodation provision for women offenders and those at risk of offending must respond to the specific needs of trafficked women, including those with dependent children. This must include supported safe house accommodation where needed, to reduce remands into custody.
- Where an individual facing prosecution is referred to the NRM, the prosecution should be adjourned to allow a 'conclusive grounds' decision to be made. Support and protection must be provided to the individual, including suitable bail accommodation for the duration. There should be an expectation on prosecutors and defence lawyers to make enquiries regarding progress in reaching a conclusive grounds decision.
- HM Courts and Tribunal Service (HMCTS) should consider how it can be made easier for proceedings to be moved to a different court where necessary in order to safeguard defendants going through the NRM process.