

Prison Reform Trust response to the Home Office consultation on PACE Codes C and H – October 2018

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. The Prison Reform Trust provides the secretariat to the All Party Parliamentary Penal Affairs Group and has an advice and information service for people in prison.

The Prison Reform Trust's main objectives are:

- reducing unnecessary imprisonment and promoting community solutions to crime
- improving treatment and conditions for prisoners and their families
- promote equality and human rights in the criminal justice system.

www.prisonreformtrust.org.uk

Introduction

The current paucity of arrangements for women in police detention who are menstruating has been raised with us by women with experience of the criminal justice system. One woman recently told us:

I was arrested, they took me to the police cell and kept me in there for nearly 24 hours, I came on my period. They refused to let me wash or anything like that and I was literally covered in blood, and they hadn't offered me any sanitary towels.

The proposed changes to Codes C and H of PACE represent progress towards compliance with domestic and international legal requirements for the treatment of women and girls in contact with the criminal justice system and will help to maintain the wellbeing, dignity and privacy of women and girls in police detention. Their implementation must be informed by the government's female offender strategy and accompanying guidance, as well as international and domestic legal requirements and the current body of research supporting the whole system approach to women in contact with the criminal justice system.

Female offender strategy and police guidance

The proposed changes to PACE Codes C and H may be seen in the context of the government's female offender strategy, published in June 2018, which lays out the case for taking a gender specific approach to women who offend or are at risk of offending and for using community solutions to tackle minor offending by women.¹ The strategy makes detailed commitments to improve the treatment of women in

¹ Ministry of Justice (2018) Female Offender Strategy, London: MoJ

contact with the criminal justice system. It was published alongside new police guidance on working with vulnerable women² and is set in the context of the government's commitment to developing an evidence-based whole system approach for women offenders on which guidance is also provided.³

Women in prison have often been victims of much more serious offences than the ones they are accused of committing. More than half (53%) report having experienced emotional, physical or sexual abuse as a child compared to 27% of men.⁴ 57% of women report having been victims of domestic violence.⁵ Because many women fear disclosing abuse, both figures are likely to be an underestimate.⁶ Women can become trapped in a vicious cycle of victimisation and criminal activity. Their situation is often worsened by poverty, substance dependency or poor mental health.⁷

For a full range of publications setting out the evidence on the specific needs of women in contact with the criminal justice system, please go to our website: www.prisonreformtrust.org.uk/women.

The Female Offender Strategy and accompanying documents acknowledge this context and set out proposals for improving the criminal justice response to vulnerable women. These strategic documents should inform the development and implementation of the new provisions in Codes C and H, including training for police officers. Implementation must be trauma-informed and take account of the particular needs of minority groups, as detailed below.

Why treat women differently?

Treating women and men equally does not mean that everyone should be treated the same. Where the circumstances and needs of women and men are different, distinct approaches may be required to achieve equitable outcomes and the Equality Act 2010 allows women only or women-specific services.⁸ The public sector equality duty requires public services such as the police to assess and meet the different needs of women and men.⁹ However, the Justice Select Committee concluded in 2014 that "the duty does not appear to have had the desired impact on the provision of gender specific services, or on broader policy initiatives."¹⁰

The UK is a signatory to the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules) which require that the distinctive needs of women be recognised. The rules stress the importance of providing physical and psychological safety for women, as well as

² Ministry of Justice (2018) *Managing Vulnerability: Women – Fact pack*, London: MoJ

³ Ministry of Justice (2018) *A Whole System Approach for Female Offenders – Emerging evidence*, London: MoJ

⁴ Ministry of Justice (2012) *Prisoners' childhood and family backgrounds*, London: MoJ

⁵ Data Extracted from OASYS, In *Thinking differently about female offenders. Transforming rehabilitation*, Guidance Document. MOJ/NOMS 2014

⁶ Gelsthorpe, L., Sharpe, G., and Roberts, J. (2007) *Provision for Women offenders in the community* London: Fawcett Society

⁷ Janet Loveless (2010) *Domestic Violence, Coercion and Duress*, *Criminal Law Review*, pp. 1-3

⁸ Whitfield, L & Glynn, D.P., (June 2016), *How legislation protected women only spaces and services: an overview*. Available at: <http://thewomensresourcecentre.org.uk/wp-content/uploads/how-legislation-protects-women-only-spaces-and-services-an-overview-june-2016-1.pdf>

⁹ Ministry of Justice/NOMS (2012) *A distinct approach: A guide to working with women offenders* London: MoJ

¹⁰ House of Commons Justice Committee (2013) *Women offenders: after the Corston Report*, London: TSO

mandating the provision of diversionary measures as an alternative to detention and prosecution, “taking account of the history of victimisation of many women offenders and their caretaking responsibilities.”¹¹

The UN Special Rapporteur on Violence Against Women visited the UK in 2014 and raised concerns over the disproportionate number of black and minority ethnic women in custody, the number of women who have been subjected to violence prior to their imprisonment, and the number of young women who are incarcerated. She called for recognition of “women’s histories of victimisation when making decisions about incarceration.”¹²

The United Nations Committee for the Elimination of Discrimination Against Women has raised concerns about the levels of incarceration of women in the UK for minor offences and recommended the adoption of ‘alternative...custodial strategies, including community interventions and services’ for women accused of minor offences.¹³

Minority groups

David Lammy MP’s review of racial bias in the criminal justice system highlighted disparities in police treatment of women and girls from ethnic minorities.¹⁴ Recent reports by the Prison Reform Trust, Agenda and Women in Prison encourage a focus on the intersectional discrimination experienced by Black, Asian and minority ethnic women and girls in the criminal justice system.¹⁵ It must be ensured through local consultation and monitoring that implementation of the new measures takes account of the distinct needs of women from different minority ethnic groups. It is also essential that it should be trauma-informed given the high levels of experience of abuse amongst women in contact with the criminal justice system (see above).¹⁶

As highlighted in recent research by the Prison Reform Trust and Hibiscus Initiatives¹⁷, foreign national women and trafficked women also have distinct needs which may require a particular approach, including the use of foreign language information and female interpreters. Finally, it must be ensured that police officers are able to identify when a woman or girl in detention may have a learning disability and that information about the new measures is provided in an accessible and appropriate way.

¹¹ UN General Assembly (2010) UN Resolution 65/229 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), New York: UN General Assembly

¹² <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14514&LangID=E>

¹³ CEDAW C/GBR/CO/7: Committee on the Elimination of Discrimination Against Women - Concluding observation on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, 30 July 2013

¹⁴ Lammy, D. (2017) The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the criminal justice system, London: MoJ

¹⁵ Prison Reform Trust (2018) Counted Out: Black, Asian and Minority Ethnic Women in the Criminal Justice System, London: PRT; Agenda and Women in Prison (2016) Double Disadvantage: The experiences of Black, Asian and Minority Ethnic Women in the Criminal Justice System, London: Agenda and Women in Prison

¹⁶ Prison Reform Trust (2018) There’s a reason we’re in trouble – Domestic abuse as a driver to women’s offending, London: PRT

¹⁷ Prison Reform Trust (2018) Still No Way Out: Foreign national women and trafficked women in the criminal justice system, London: PRT