

Prison Reform Trust response to the Ministry of Justice consultation on Improving the Victims' Code – May 2020

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

1. Do you think our proposal to restructure the Code into 12 overarching rights is the correct one?

We agree that simplicity and ease of comprehension are vital considerations in any code such as this.

However, it is important to recognise that different groups of victims can have very different needs depending on their circumstances. This includes people in prison who are victims of crime. As we highlighted in our response to the 2019 consultation, this group faces unique and particular difficulties in obtaining access to victims services and having their rights as victims recognised by the authorities.¹

The draft code rightly recognises that the list of rights is not exhaustive. As we outline below, it should go further and make clear that additional rights and entitlements may need to pertain depending on the circumstances of the victim, including those held in custodial settings.

2. Do you agree that the rights we have identified cover the most important needs of victims?

¹ Prison Reform Trust (2019) response to the Ministry of Justice consultation on Proposals for revising the Code of Practice for Victims of Crime, available at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Consultation%20responses/MOJ%20victims%20code%20consultation%20PRT%20response.pdf>

No. We are disappointed that the government's response to the 2019 consultation does not appear to have engaged with any of the substantive points we made in our submission regarding the needs of victims in prison.

As we highlighted in that submission, in theory prisoners are as entitled to access victims services under the code as any other member of the public. However, in practice they are not always given the opportunity to report crimes committed against them whilst in prison or prior to their incarceration and are often unable to access victims' services. Prisoners are also directly discriminated against by some of the provisions of the code. For instance, people with convictions are denied the opportunity to apply for compensation when they are victims of serious violence.

The Prison Reform Trust provides an advice and information service for prisoners which receives around 6,000 contacts a year. We regularly hear from prisoners about the difficulties they experience in reporting crime and accessing victims services. Prisoners report having difficulty accessing the Police Liaison Officer (PLOs) to speak to them about a crime of which they believe they have been a victim. Often these are allegations of theft or assault by other prisoners or staff. The PLOs exercise some judgement about how to proceed and whether to report it to the police—a potential barrier and level of filtering that people in the community do not experience. If the decision is made not to report it, it can be difficult for a prisoner to report it themselves—they might be able to write to a local police station or ask a family to do so for them.

Prison rules contain some guidance and information for prisoners who are victims which it would be helpful for the victims' code to reinforce.

Annex H of the Complaints Policy Framework gives this advice to prisoners:

“You can write to the Chief Officer of the local police force if you have evidence that a criminal offence may have been committed. If this concerns something that has happened in the prison you should consider whether you should raise the matter with a member of staff first. If necessary you can do this by writing to the governor/director using confidential access.”

The framework also contains the following direction:

“The prison must allow a prisoner who is a victim of a crime to report that crime to the police if they wish to do so, even if the prison has decided not to report that crime directly.”

However, how prisons actually manage and make decisions about what crimes to report to the police is not transparent. We are often asked by prisoners for information in prison service instructions (PSIs) about the role and responsibilities of PLOs in reporting crimes. We are also aware that in some situations, where the circumstances of the crime meet certain criteria and the circumstances are sufficiently serious, the prison must report the crime to the police, even without the victims' consent. We are concerned that appropriate safeguarding does not always take place in these situations. It would be particularly useful for victims services to be made available in these cases, as the victim may not feel able to access support from prison staff. Provision of victim services in prisons would support this process, provide advice and advocacy both for prisoners and staff and enable prisoners to access their rights as victims.

3. Do you agree that these rights cover the key stages of a victim's journey in the criminal justice system?

No, the rights do not reflect the experience of people in prison who are victims. For instance, as we highlight above, prisoners can face considerable barriers in getting a crime against them reported to the police. And yet no mention of this is made in relation to the second right (to have the details of the crime recorded without unjust delay) and the obligation this might place on prison and police authorities. In addition, a large number of people in prison who are victims are likely to qualify for enhanced services or meet the criteria for vulnerable or intimidated victims or witnesses. However, no consideration appears to have been given in the draft code to how prisoners can access these services.

4. We have included more practical advice and information in the draft revised Code, do you agree with our proposed approach?

We agree it is important to include practical advice and information on how individuals, including those in prison, are able to access their rights under the code.

5. Is there any important information that you feel we should also include?

Yes. As we outlined in our response to the 2019 consultation, the code should include practical advice and information on how people in prison are able to access their rights under the code.

6. Are you aware of any evidence or sources of information that would help us to understand and assess equality and economic impacts in greater detail? Please supply.

People with protected characteristics are significantly over-represented in the prison system:

- Over a quarter (27%) of the prison population, 22,619 people, are from a minority ethnic group.²
- Over a third of people (34%) were identified as having a learning disability or difficulty following assessment on entry to prison in 2017–18.³
- 67% of women and 43% of men surveyed by inspectors in prison reported having mental health problems.⁴
- 36% of people in prison are estimated to have a physical or mental disability. This compares with 19% of the general population.⁵

² Table 1.4, Ministry of Justice (2019) Offender management statistics quarterly: April to June 2019, London: Ministry of Justice

³ Skills Funding Agency (2018) OLASS English and maths assessments by ethnicity and learners with learning difficulties or disabilities: participation 2014/15 to 2017/18, London: SFA

⁴ Ministry of Justice (2018) A review of self-inflicted deaths in prison custody in 2016, London: Ministry of Justice

⁵ Ministry of Justice (2012) Estimating the prevalence of disability amongst prisoners: results from the Surveying Prisoner Crime Reduction (SPCR) survey, London: Ministry of Justice

Furthermore, as our response to the 2019 consultation highlighted, people in prison are at significant risk of being or having been a victim of crime.

The latest Ministry of Justice safety in custody statistics⁶ show that:

- There were 32,669 assault incidents in the 12 months to December 2019, down 4% from the 12 months to December 2018. In the most recent quarter, assaults decreased by 7% to 7,611 incidents.
- In the 12 months to December 2019, there were 3,813 serious assault incidents, a decrease of 3% from the previous 12 months. Serious prisoner-on-prisoner assaults decreased by 2% to 2,921 in the 12 months to December 2019. Similarly, serious assaults on staff decreased by 4% to 952.

The Ministry of Justice 2012 study Prisoners' childhood and family backgrounds Results from the Surveying Prisoner Crime Reduction (SPCR) longitudinal cohort study of prisoners⁷ reveals that:

- Twenty-nine per cent of SPCR prisoners stated that they had experienced emotional, physical or sexual abuse as a child. Women (53%) were more likely to report having experienced some sort of abuse than men (27%), as were prisoners from a non-BAME background (31%), compared with prisoners from a BAME background (20%).
- Those serving short-term sentences were more likely to state that they had experienced abuse as a child than those on longer-term sentences (29% compared with 24%).
- Female prisoners who had experienced abuse as a child were more likely to report suffering sexual abuse (67%) than male prisoners who had experienced abuse (24%).
- Forty-one per cent of SPCR prisoners said that they had observed violence at home as a child. Women were more likely (50%) to report having observed violence at home than men (40%).

A number of contacts from prisoners to PRT's advice and information service suggest that people who have reported physical or sexual assault have struggled to get support afterwards, either from prison-based healthcare service or from external specialist sources.

Women – domestic violence and sexual abuse

There are just under 4,000 women in prison in England and Wales making up around 5% of the total prison population, a large proportion of whom have been victims of domestic violence and sexual abuse:

⁶ Ministry of Justice (2020) Safety in custody statistics: quarterly update to December 2019, London: Ministry of Justice

⁷ Williams, K., et al. (2012) Prisoners' childhood and family backgrounds Results from the Surveying Prisoner Crime Reduction (SPCR) longitudinal cohort study of prisoners, London: Ministry of Justice

- 57% of women report having been victims of domestic violence as adults.⁸ Because many women fear disclosing abuse, this figure is likely to be an underestimate.⁹
- Women's offences are more likely than men's to be prompted by their relationships with 48% of women, compared to only 22% of men, saying that they had committed offences to support someone else's drug use.¹⁰
- Research by The Disabilities Trust found that of 173 women screened at HMP Drake Hall, 64% reported a history indicative of brain injury and for most this was caused by domestic violence. ([The Disabilities Trust \(2019\) Making the link: Female offending and brain injury, London: The Disabilities Trust](#))
- In research by Muslim Hands with Muslim women in prison, 71% of interview participants reported experience of domestic abuse.¹¹
- Women with learning disabilities are particularly vulnerable to domestic abuse.¹²
- Women with children can be reluctant to disclose their exposure to domestic violence, but the impact of prosecution and imprisonment may be particularly disruptive and traumatic for both mothers and children.¹³

In recent research we found there is limited support for women in prison affected by domestic abuse, particularly those serving short sentences, and that the patchy availability of support on release from prison, including suitable housing, health and social care services and welfare benefits, leaves women even more vulnerable to abuse and offending.¹⁴

Trafficking

We do not know how many people in prison have been trafficked. People who have been the victims of abuse may be reluctant to talk about their experiences to police, courts or prison staff. People who have acted under pressure, with threats made against their family are unlikely to provide information from a prison cell. At the moment, the legal system is not good at recognising when people have been coerced into committing crimes. Too often it is the victims of human trafficking, instead of the person responsible for the trafficking, who end up being prosecuted and imprisoned. We need to recognise that people commit offences because they have been intimidated or threatened with violence. Not only is protection a human right for victims but enforcement processes against traffickers are less effective without the evidence and participation of victims. This will only happen in a system that victims trust and that offers adequate support.

⁸ Data Extracted from OASYS, In Thinking differently about female offenders. Transforming rehabilitation, Guidance Document. MOJ/NOMS 2014

⁹ Gelsthorpe, L., Sharpe, G., and Roberts, J. (2007) Provision for Women offenders in the community London: Fawcett Society

¹⁰ Light, M., Grant, E. and Hopkins, K. (2013) Gender differences in substance misuse and mental health amongst prisoners, London: MOJ

¹¹ Muslim Hands (2018) (In)visibility: Female. Muslim. Imprisoned, London: Muslim Hands

¹² Prison Reform Trust (2019) Out of the Shadows: Women with learning disabilities in contact with or on the edges of the criminal justice system, London: PRT

¹³ Beresford, S. (2018) What About Me? The impact on children when mothers are involved in the criminal justice system, London: PRT

¹⁴ Prison Reform Trust (2017) 'There's a reason we're in trouble': Domestic abuse as a driver to women's offending, London: PRT

There is no comprehensive data on the number of people in prison who have been trafficked. However, available information suggests that children and young people are disproportionately likely to be victims of trafficking. For instance, referrals to the National Referral Mechanism in 2018 for minors increased 48% on 2017 totals. This was due, in the majority, to a continued increase in the recorded NRM referrals related to the county lines criminal business model of exploiting vulnerable individuals and other forms of criminal labour exploitation.¹⁵

Foreign nationals in prison are another group who may be disproportionately likely to be victims of trafficking. Two reports, one published in 2018 by the Prison Reform Trust and Hibiscus Initiatives, and the other in 2012 by the University of Cambridge, have underlined the lack of support available to foreign national women in custody in England and Wales who have been trafficked into offending.¹⁶

The latter by Professor Loraine Gelsthorpe and Dr Liz Hales examines the case management of migrant women in the criminal justice and immigration systems, including the identification of trafficked women. It found violence, intimidation and rape were common experiences of the women, but evidence of their suffering was often overlooked and they did not receive the protection guaranteed to them as victims of human trafficking under international law. In only one of the 43 cases of human trafficking identified by the researchers did victim disclosures result in a full police investigation in relation to the actions of the perpetrators.

Evidence from Hibiscus Initiatives contained in the 2018 PRT report and confirmed in recent inspection 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. Of the 585 foreign national women prisoners Hibiscus assisted between February 2013 to March 2017, 45 women were identified as victims or potential victims of trafficking, all of whom had disclosed information about their exploitation.

6a. If you are aware, what do you believe would be the effect of this evidence/ information on our proposals?

Under the public sector equality duties, having due regard to the need to **advance equality of opportunity** involves considering the need to:

- Remove or minimise disadvantages suffered by people due to their protected characteristics;
- Meet the needs of people with protected characteristics; and
- Encourage people with protected characteristics to participate in public life or in other activities where their participation is low.

We have presented evidence of the disproportionate number of people in prison with a protected characteristic. Furthermore, we have highlighted the high level of victimisation among the prison population, including among those with protected

¹⁵ National Crime Agency (2019) National Referral Mechanism Statistics – End of Year Summary 2018, London: NCA

¹⁶ Prison Reform Trust (2018) Still No Way Out, London: PRT; Hales, L. and Gelsthorpe, L. (2012), The Criminalisation of Migrant Women, available with commentary on subsequent developments by Dr Liz Hales at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3082873

characteristics. For instance, the evidence presented shows that a disproportionate number of women in prison have been subject to domestic violence and abuse.

Therefore, it would be consistent with the government's obligations under the public sector equality duties for it to give consideration to how the rights enshrined in the victims code could be made more accessible to people in prison. The government's failure to respond to any of the substantive points we made in our submission to the 2019 consultation, and the lack of any reference in the draft code to the circumstances of people in prison, suggests that no such consideration has taken place.

We strongly encourage the government to engage with the arguments and evidence we have presented and work to enable people in prison to gain access to the services to which they are entitled. The prison service, the police and CPS have duties to comply with their responsibilities as set out in the Code of Practice for Victims of Crime. The implementation and operation of these duties in prison need greater oversight. The process should be monitored and data around the numbers of victims receiving services in prison should be publicly available. Prisoners' rights under the code and their entitlements as set out in prison service instructions need to be more closely aligned, and backed by appropriate information and guidance to prisoners, prison staff, statutory bodies and service providers.