

Prison Reform Trust response to the Joint Committee on Human Rights inquiry: the right to family life: children whose mothers are in prison – 15 October 2018

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. PRT has a longstanding interest in improving criminal justice outcomes for women and our Transforming Lives programme, supported by the Big Lottery Fund, aims to reduce the unnecessary imprisonment of women in the UK.

Introduction

We welcome this inquiry by the Joint Committee on Human Rights and the opportunity to raise the human rights implications of imprisoning mothers. It is a specific objective of our programme to reduce maternal imprisonment and ensure that the best interests of children affected are considered when a mother is in contact with the criminal justice system.

We welcome the recently published [Female Offender Strategy](#)¹, its endorsement of the case for a gender specific approach to women who offend, and its emphasis on early intervention and diversion and community solutions. The Strategy recognises that “*children of imprisoned mothers may be particularly affected by a custodial sentence*” (p.9).

Parental imprisonment is recognised as an adverse childhood experience (ACE), impacting a child’s long-term wellbeing, health and opportunities in life.² Even a short period of maternal imprisonment can be devastating.³ Research suggests children whose parents are involved in the criminal justice system are twice as likely to suffer mental health problems⁴, and are at higher risk of poverty, poor health and insecure finances and housing.⁵ It can also treble the risk of antisocial behaviour, with the cost to the state of imprisoning mothers for non-violent offences at more than £17million over ten years⁶. However, with the right support, children affected by parental imprisonment can build resilience and develop the skills they need to thrive.⁷

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

² Prison Reform Trust (2018) What about me?, London: PRT

³ Baldwin and Epstein (2017) Short but not sweet: A study of the impact of short custodial sentences of mothers & their children, Leicester: DMU

⁴ Murray, Farrington, Sekol & Olsen (2009) Effects of parental imprisonment on child antisocial behaviour and mental health: a systematic review, The Campbell Collaboration, University of Cambridge

⁵ Smith, Grimshaw, Romeo & Knapp (2007) Poverty and disadvantage among prisoners’ families, London: Joseph Rowntree Foundation

⁶ New Economics Foundation (2008) Unlocking value: How we all benefit from investing in alternatives to prison for women offenders London: New Economics Foundation

⁷ Prison Reform Trust (2018) What about me?, London: PRT

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules⁸), to which the UK government is a signatory, provide that '*Non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate with custodial sentences being considered when the offence is serious or violent or the woman represents a continuing danger, and after taking into account the best interests of the child or children, while ensuring that appropriate provision has been made for the care of such children*'.

It is now over ten years since publication of the Corston Report on Women with Particular Vulnerabilities in the Criminal Justice System⁹, and five years since the Angiolini Commission on Women Offenders (Scotland). These and many other inquiries and reports have all concluded that prison is rarely a necessary, appropriate or proportionate response to women caught up in the criminal justice system¹⁰ and that the consequences for their children must be considered.

We have spoken to many women shocked to have been remanded or sentenced to imprisonment in circumstances where a) they have been advised that prison was the least likely outcome – because for example it was a first or minor offence or the presence of mitigating factors; b) their children (or primary care responsibilities) were not referred to at all in the sentencing process let alone their best interests considered. We have also talked to children and young people themselves about the impact of having a mother imprisoned.

We would be pleased to help facilitate an evidence session for the JCHR involving women who have had experience of being sent to prison without any regard for their children. Meanwhile we have provided a copy to the Committee chair of our recent report '[What about me: the impact on children when mothers are involved in the criminal justice system](#)'¹¹ and our earlier briefing on [Sentencing of Mothers](#).

1. Whether human rights considerations are adequately articulated in current sentencing guidelines and practice?

In October 2015 we convened a judicial roundtable on the Sentencing of Mothers, chaired by Lord Woolf, which informed the recommendations in our [discussion paper](#) on improving the sentencing process and outcomes for women with dependent children. Since then there has been some improvement to Sentencing Guidelines but in our view they still provide inadequate guidance on the human rights of children and how these must be considered and weighed in the sentencing process.

A number of statutory human rights are engaged when a primary carer (usually the mother) is at risk of imprisonment. These include:

- The right to family life - Human Rights Act, Article 8

⁸ Bangkok Rules on Women Offenders and Prisoners (2010) Available at: <https://www.penalreform.org/wpcontent/uploads/2013/07/PRI-Short-Guide-Bangkok-Rules-2013-Web-Final.pdf>

⁹ Women in Prison supported by Barrow Cadbury Trust (2017) The Corston Report 10 years on, London: WIP.

¹⁰ Prison Reform Trust (2018) Response to women and equalities committee inquiry into enforcement of the equality act, London: PRT.

¹¹ Prison Reform Trust (2018) What about me?, London: PRT

- The right to non-discrimination - Article 2 , United Nations Convention on the Rights of the Child (UNCRC)
- The right for their best interests to be a primary consideration in any decision concerning them - Article 3, UNCRC
- The right not to be separated from their family - Article 9, UNCRC
- The right to be heard in any actions concerning them - Article 12, UNCRC
- The right to special assistance from the state if separated from their parents – Article 20, UNCRC

In our focus groups, children and young people talked about the experience of having their mother sent to prison and feeling invisible, unheard and ignored in the sentencing process. Many felt acute grief and stigma. A mother is supposed to be there for her children, her absence is more unusual and therefore difficult to explain to others.¹²

In *R v Petherick*¹³, Lord Justice Hughes noted that: “Almost by definition, imprisonment interferes with, and often severely, the family life not only of the defendant but of those with whom the defendant normally lives and often with others as well. Even without the potentially heart-rending effects on children or other dependents, a family is likely to be deprived of its breadwinner, the family home not infrequently has to go, schools may have to be changed.”

There is both academic and extensive credible anecdotal evidence of inconsistent judicial practice in sentencing primary carers, including failures to enquire about or consider the consequences for dependent children¹⁴. We have recommended that there should always be a pre-sentence report and a child-impact assessment. We have also supported and promoted the powerful films and information resources ‘Addressing the Impact of Maternal Imprisonment’ by Dr Shona Minson (available [here](#)) to improve awareness, practice and outcomes for children.

Women sentenced to custody are almost twice as likely as men to have no previous convictions (22% vs 12%).¹⁵ They are far more likely to be primary carers¹⁶, so the repercussions for children are immense: only 5% of children remain in their family home when a mother goes to prison¹⁷ and it has been estimated that 17,240 children are separated from their mothers by imprisonment each year.¹⁸ As well as a change

¹² Prison Reform Trust (2018) *What about me?*, London: PRT.

¹³ *R (Appellant) v Rosie Lee Petherick (Respondent)*, England and Wales Court of Appeal (2012), paragraph 17

¹⁴ Baldwin and Epstein (2017) *Short but not sweet: A study of the impact of short custodial sentences of mothers & their children*, Leicester: DMU; Hedderman and Gunby (2013) ‘Diverting women from custody: The importance of understanding sentencers’ perspectives’, *Probation Journal*, 60(4), pp.425-438; Stalford, Hollingsworth & Gilmore (Eds.) (2017) *Rewriting children’s rights judgments: From academic vision to new practice*, Bloomsbury Publishing

¹⁵ Table A1.18, Ministry of Justice (2015) *Offender management statistics quarterly: January to March 2015* London: MoJ

¹⁶ Prison Reform Trust (2017) *Why focus on reducing women’s imprisonment?*, London: PRT.

¹⁷ Home Office (2007) *The Corston Report*, London: Home Office, p.20

¹⁸ 5 Wilks-Wiffen, S. (2011) *Voice of a child* London: Howard League for Penal Reform. 54% of all prisoners reported having children under the age of 18. See www.gov.uk/government/uploads/system/uploads/attachment_data/file/162361/prisoners-childhoodfamily-backgrounds.pdf

of home and carer, many children encounter other significant changes such as moving school and being separated from siblings'.¹⁹

PRT has proposed an overarching principle for sentencing sole or primary carers:²⁰

We propose that the Sentencing Council consider issuing a new 'Overarching Principle - Sentencing Sole or Primary Carers' to provide clear guidance to the court at the outset regarding its duty to investigate caring responsibilities of defendants and to take these into account in sentencing decisions. This would set out the duty of the court to:

- determine, as an essential step in the sentencing process, whether the offender has dependent children and whether he or she has sole or primary caring responsibilities.
- specify how the child's rights and best interests are being taken into consideration in the decision on sentence.
- ensure that it has all the information relevant to such a determination, if necessary adjourning the sentencing decision in order to obtain this.

2. Should there be a stronger presumption against custodial sentences for mothers (or other primary carers) with dependent children?

The Prison Reform Trust is advocating for a statutory presumption against prison sentences of less than 12 months, as is being introduced in Scotland. This would particularly benefit women – three-quarters of whom receive sentences of less than 12 months – and their children. Short custodial sentences exacerbate pre-existing problems and have a disproportionately punitive impact on mothers and their children.²¹ We are also advocating for routine consideration of the child's rights at point of sentencing.

Black women are more likely than other women to be remanded or sentenced to custody and they are more likely to be sole parents, so their imprisonment has particular implications for children²². Black, Asian and minority ethnic women account for 11.9% of the women's population in England and Wales but 18% of the women's prison population.²³

¹⁹ Minson, S. (2017) Who Cares? Analysing the place of children in maternal sentencing decisions in England and Wales. DPhil Thesis, University of Oxford

²⁰ Prison Reform Trust (2015) Sentencing of mothers: Improving the sentencing process and outcomes for women with dependent children, London: PRT

²¹ Baldwin and Epstein (2017) Short but not sweet: A study of the impact of short custodial sentences of mothers & their children, Leicester: DMU

²² Prison Reform Trust (2017) Counted out, London: PRT

²³ Table DC2101EW, Office for National Statistics (2012) 2011 Census, London: ONS; Table 1.4, Ministry of Justice (2016) Population bulletin: weekly 31 March 2017, London: Ministry of Justice

3. Whether children whose mothers (or other primary carers) are in prison are protected by the current legislative and guidance framework for safeguarding and promoting the welfare of children?

Children with a mother in prison are invisible within systems that should protect the and face countless barriers to support.²⁴ The Human Rights Act 1998 and the United Nations Convention on the Rights of the Child (UNCRC) 1989 require that the best interests of children with a parent in the criminal justice system are considered at all times.²⁵ Yet children are rarely given opportunities to be listened to or have their rights respected in adult criminal court proceeding. It is a specific goal of the Children and Young People's Commissioner for Scotland to give the UNCRC more force by incorporating it into Scottish law'.²⁶

PRT has proposed "*a national framework for identifying and safeguarding children affected by maternal imprisonment, including improved data collection and tackling barriers to disclosure.*"²⁷

4. What are the most appropriate non-custodial sentencing options for mothers?

The emphasis in the Bangkok rules is on alternatives to custody²⁸ that enable women to stay with their children, but community sentences for women have halved in a decade.²⁹ Research shows that outcomes for women given custodial sentences are measurably worse than for those sentenced to community orders. For example, 55.8% of women released from prison reoffend within a year, compared to 26% of those commencing a community order.³⁰ Community sentences need to accommodate women's caring responsibilities and be linked to support that enables them to address underlying problems and drivers to their offending. This can include histories of trauma and abuse, abusive and coercive relationships, debt and financial hardship, unmet mental health needs and substance misuse. The wraparound support provided by women's centres and specialist women's services play a key role in this regard.

In Sentencing of Mothers, we noted that non-custodial sentences should not be seen as a 'soft option', enabling women to deal with the offending behavior effectively³¹ whilst reducing the chances of recidivism by maintaining the family unit.³²

It's about dealing with your reoffending and what the problem is, instead of just getting sentenced and doing your sentence and being released. This is trying to get to the root of the problem... going to prison isn't the answer. You're meeting all kinds of people in there... I was mixing with people that were serving life and it just made

²⁴ Prison Reform Trust (2018) What about me?, London: PRT

²⁵ Although ratified by the UK, the UNCRC has not been incorporated into domestic law.

²⁶ Prison Reform Trust (2018) What about me? London: PRT

²⁷ *ibid*

²⁸ Prison Reform Trust (2015) Sentencing of mothers, London: PRT

²⁹ Prison Reform Trust (2018) Prison: the facts Bromley Briefings Summer 2018, London: PRT

³⁰ Hedderman, C. & Jolliffe, D. (2015) 'The impact of prison for women on the edge: paying the price for wrong decisions', *Victims and Offenders: An international journal of evidence-based research, policy and practice* DOI.

³¹ Prison Reform Trust/Soroptimist UKPAC (2014) Transforming lives: reducing women's imprisonment London: PRT

³² Prison Reform Trust (2015) Sentencing of mothers, London: PRT (p.17)

me learn about other things. I went in for shoplifting and came out one of the best fraudsters going. Jenny, mother to two girls aged 18 and 14, sentenced to a probation order with a requirement to attend a particular women's centre

There should also be a presumption in favour of deferring sentence in cases involving women with sole or primary caring responsibilities to give them the opportunity to work with probation services to demonstrate their capacity to comply with community requirements the court may be considering.

If the offence is so serious that only a custodial sentence can be justified, there should be a presumption where the offender is a sole carer that custody will be deferred to allow arrangements to be made for the children. This would reduce the trauma commonly experienced by both mother and children.

I was given the opportunity to make arrangements. There was four weeks between sentencing and going to prison. I sorted it out myself. Lesley, mother to two children aged three and five, sentenced to imprisonment

There should be a presumption that custodial sentences of less than 24 months will be suspended to enable a parent with responsibilities to dependent children to care for them.³³

5. How data about this group should be collected and shared.

Data on mothers in prison is not routinely collected or published, and estimates vary. The Ministry of Justice 'estimate 24-31% of female offenders have dependent children' but other estimates put it at closer to two-thirds. The prisoner surveys in women's prisons more usually report between 55% and 65% - eg recent HMIP reports on HMP Styal and HMP Peterborough.³⁴

We have made a number of recommendations about data collection in What About me, recognising that there are major barriers to disclosure with data for women who fear punitive reactions and their children being removed from their custody.

In recent London user councils facilitated by User Voice and PRT, the women echoed this fear: *"That's been my problem all along [social services] ...even with my mental health, anything...as soon as they mention social services...if I lost my daughter, she is my everything, no – it's not worth the risk for me."* Another woman added *"I don't think you should feel that you are too scared to ask for help because you are scared you will be punished for it."*

Sentencers should: Be proactive in seeking information about whether an offender has caring responsibilities. Prison services (HMPPS, SPS, and NIPS) should: Collect accurate data on the children of women in prison, and ensure it is sensitively used to support children affected, in accordance with Rule 7 of the 2015 UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) and the UN Bangkok Rules.³⁵

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³³ As per Section 68, Legal Aid, Sentencing and Punishment of Offenders Act 2012

³⁴ HM Chief Inspector of Prisons (2017) Report on an unannounced inspection of HMP & YOI Peterborough (Women), London: HMIP

³⁵ Prison Reform Trust (2018) What about me?, London: PRT