

## **Prison Reform Trust response to Sentencing Council consultation on breach guidelines—January 2017**

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.

[www.prisonreformtrust.org.uk](http://www.prisonreformtrust.org.uk)

### **Introduction**

The Prison Reform Trust's *Transforming Lives: Reducing Women's Imprisonment* programme aims to reduce the number of women being sent to prison across the UK. The number of women being recalled to prison for breach has escalated in the last year so we particularly welcome the opportunity to respond to this consultation. We would welcome opportunities for further discussion of how to ensure proportionate responses to those who breach a Community Order, Suspended Sentence Order or Licence Condition.

The Sentencing Council's remit is to work within the statutory framework. However, the Prison Reform Trust believes the Guidelines are a critical and influential aspect of the sentencing regime and more can be done to temper and restrain unnecessary use of imprisonment. Unless and until this happens many prisons will continue to be overcrowded and dangerous places unable to deliver rehabilitative outcomes for those sent there in part for that purpose.

The Government acknowledges the need for recalibration of criminal justice responses. This is particularly true for women and the Secretary of State of Justice, Elizabeth Truss MP, has acknowledged this: "We know...that many female offenders are often vulnerable members of society. There is evidence that a specific approach is most effective in helping women to address the issues that may be underlying their offending and to turn their

lives around.”<sup>1</sup> It is important that community orders, suspended sentence orders and the like are effective alternatives to imprisonment rather than alternative routes into prison, which means both that the conditions and requirements imposed should be appropriate and that the breach regime is flexible and not overly punitive.

By way of context, please find attached to this consultation response the Prison Reform Trust’s [response to the Government’s White Paper on Prison Safety and Reform](#). Also relevant to this consultation is our response to the Sentencing Council’s consultation last year on community and custodial sentencing.<sup>2</sup>

Prison Reform Trust will be responding to questions 1–16, 27–31 and question 52.

### **Section one: Overarching issues and the context of the guideline**

Although supplementary and subsidiary to legislation, Sentencing Council Guidelines form a significant part of the sentencing framework to which courts must have regard, and they do substantially influence sentencing outcomes. We note the Council’s comments about the paucity of statistical data and empirical research on sentencing practice, but the context in which these guidelines are being developed is one in which the total prison population has rapidly increased. Between 1993 and 2015 the prison population in England and Wales has nearly doubled—with an extra 41,000 people behind bars. In the year to June 2016, 89,332 people entered custody.<sup>3</sup>

There has been a shocking rise in the number of people committing suicide in prison, in the year to December 2016, 119 people in prison have been confirmed committed suicide (12 women and 107 men).<sup>4</sup> There has also been a significant increase in the number of individuals recalled to prison for breach of licence conditions. Specifically for women, there was an 81% increase in women being recalled to prison between the first quarter of 2015 (191 women recalled) and the first quarter of 2016 (346 women recalled).<sup>5</sup> On 30 June 2016, women recalled to custody accounted for nearly 8% of the total women’s prison population (288 women).<sup>6</sup>

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<sup>1</sup> Ministry of Justice (2016) Prison safety and reform, London: Ministry of Justice

<sup>2</sup> Prison Reform Trust (2016) Submission to the Sentencing Council draft guidelines on the Imposition of Community and Custodial Sentences, London: Prison Reform Trust

<sup>3</sup> Prison Reform Trust (2016) Bromley Briefings Prison Factfile Autumn 2016, London: Prison Reform Trust

<sup>4</sup> Table 2: Annual Deaths in Prison Custody Summary Statistics, England and Wales, Ministry of Justice (2017) Safety in Custody quarterly: update to December 2016, London: Ministry of Justice

Please note: that these are confirmed numbers from the Ministry of Justice, however, Prison Reform Trust have received information stating that there have been 22 self-inflicted deaths of women in custody.

<sup>5</sup> Table 2.5: Recall admissions into prison by sentence length at time of recall, age group, and sex, Ministry of Justice (2016) Offender Management Statistics, London: Ministry of Justice

<sup>6</sup> Table 2.5: Recall admissions into prison by sentence length at time of recall, age group, and sex, Ministry of Justice (2016) Offender Management Statistics, London: Ministry of Justice

There has also been a marked reduction in the use of Community Orders and a corresponding increase in the use of Suspended Sentence orders, particularly for women. These are the cumulative and perhaps unintended consequences of individual sentencing decisions and the development of new guidelines provides an opportunity to assess, review and inform sentencing practice. The criminal justice context also includes major changes to the organisation, funding and provision of probation and supervision services which play a key role in ensuring compliance with court orders. A number of Inspectorate reports have commented critically on the impact of these changes on offender management and support in the community.<sup>7</sup>

The research and recommendations in Sentencing of Mothers are pertinent to this consultation, particularly the proposal for an Overarching Principle setting out the court's duty to investigate and take into account a defendant/offender's sole or primary caring responsibilities.<sup>8</sup> We also reiterate points made in previous submissions to the Sentencing Council about the need to ensure the Guidelines are gender-informed in accordance with the UN Bangkok Rules.<sup>9</sup> We welcome the progress on this to date, such as recognition of coercion and exploitation reducing culpability in the recent Theft Offences Guideline, and further emphasis on the need to consider primary caring responsibilities.<sup>10</sup>

## **Section two: Breach of a Community Order by Failing to Comply with Requirements**

- 1. Do you agree with the proposed approach to the assessment of seriousness of breach of a community order? Please state if there are any other factors which you think should be included in the assessment of seriousness.**

Imposing a custodial sentence for breach should be a last resort. We agree that only where non-compliance is 'wilful and persistent' should substitution with a custodial sentence be contemplated, as that would preclude circumstances where the individual faced barriers to compliance, was affected by mental health or domestic violence, or the evidence suggests that the terms of the order were unsuitable, or the quality and extent of supervision and support lacking. Additional guidance on these factors, including relevant gender differences, would improve consistent assessment of 'wilful and persistent'. But we think it would be helpful in ensuring a proportionate and

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<sup>7</sup> HM Inspectorate of Probation (2016) A thematic inspection of the provision and quality of services in the community for women who offend, HMIP: Manchester; HM Inspectorate of Probation and HM Inspectorate of Prisons (2016) An Inspection of Through the Gate Resettlement Services for Short-Term Prisoners, HMIP: Manchester

<sup>8</sup> Proposals for Reform: Overarching Principle—Sentencing Sole or Primary Carers, Prison Reform Trust (2015) Sentencing of Mothers, London: Prison Reform Trust

<sup>9</sup> Penal Reform International (2013) UN Bangkok Rules on Women Offenders and Prisoners, London: Penal Reform International

<sup>10</sup> Sentencing Council (2015) Theft Offences Definitive Guidelines, Sentencing Council: London

effective response to breach if the guideline also specified factors such as the impacts on children of imprisoning a parent, particularly where he or she is a primary carer.<sup>11</sup> It is a distinct obligation of the sentencing court to consider this but one not always properly addressed. The available data on breach is frustratingly limited as the Consultation paper notes and monitoring of the new guideline would be helpful.

The Prison Reform Trust is concerned that the use of Community Orders has reduced substantially over the last five years, and this is especially the case for women. Since 2010, there has been a 33% reduction in all Community Orders given (a 31% decrease for women). Community Orders only account for 9% of all sentences in the year to June 2016, compared with 14% at the same time in 2006.<sup>12</sup> Between 2006 and 2015 the number of women receiving community orders fell from 12,041 to 9,338 per year.<sup>13</sup> It would be helpful to know the reasons for this decline – for example is it because of sentencers’ loss of confidence in community orders, perceived problems with compliance, or the lack of availability of suitable community penalty options or some other reason? It is also worth noting that according to the most recent Ministry of Justice (November 2016) report on Women and the Criminal Justice System 2015 the average length of a community order is shorter for women (12.4 months) than men (15.1 months) and women generally have fewer requirements with which to comply than men, and these are more likely to be ‘rehabilitative’ suggesting greater support needs among women offenders.

## **2. Do you have any general comments on the proportionality of the proposed penalties?**

As Lord Justice Thomas said about community orders recently: “There’s an awful lot we can do to avoid sending certain people to prison provided that the orders are properly carried out by the probation and rehabilitation companies.”<sup>14</sup>

In our view this must include avoiding unnecessarily punitive responses to breaches of community orders. We note that the Council states it “has avoided being too prescriptive in specifying penalties” but the proposed scheme does not entirely avoid this. So, while the *terms* of the penalty, i.e. possible additional or different requirements, are not prescriptive the different levels are highly prescriptive about duration. The minimum possible additional activity is specified to be 10–20 hours, rising to 30–40 hours for low level of compliance. Assessment of level of compliance will be

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<sup>11</sup> Prison Reform Trust (2015) *Sentencing of Mothers*, London: Prison Reform Trust; See Epstein, R. (2012) Special Issue – Research Report - Mothers in prison: the sentencing of mothers and the rights of the child *Coventry Law Journal*; see also: PACT - <https://www.prisonadvice.org.uk/>

<sup>12</sup> Table Q5.1b, Ministry of Justice (2016) *Criminal justice statistics quarterly June 2016*, London: Ministry of Justice

<sup>13</sup> Ministry of Justice (2015) *Criminal Justice System Statistics publication: Sentencing: Pivot Table Analytical Tool for England and Wales*

<sup>14</sup> Bowcott, O. (2016) *The Guardian*, ‘Top judge urges tougher community service as alternative to prison’, available at <https://www.theguardian.com/law/2016/nov/22/top-judge-calls-for-tough-community-service-as-alternative-to-prison-lord-chief-justice>

critical but there is little guidance offered on this. It may be appropriate, depending on the nature of the breach and on the evidence, for the court to revise the terms of the order rather than extend its length. Fines are rarely an ideal option.<sup>15</sup>

In the first instance, therefore, informed consideration of the appropriateness of Community Orders should be included in the Guideline. For example, Magistrates' must be made aware of women's centres and gender-specific interventions available in the community to ensure that women are given the best option available to rehabilitate and to seek help to address the drivers to their offending, be it drug or alcohol support, mental health needs, or seeking refuge from an abusive partner. Many women's centres and interventions can demonstrate high levels of Community Order compliance and effective support is key to improved outcomes and reduced reoffending.<sup>16</sup> Understanding that women are often striving to care for their children and other family members, as well as to get themselves back on track, needs to be reflected and accommodated in the terms of Community Order.

One woman's experience with a Community Order was: "My community order worked...everything worked and it was a woman probation officer, strictly for women, so you feel more comfortable going there [a women's centre] as well...My probation basically approached and said 'right, this is where you'll be doing it'. I was devastated at first. After about two weeks of getting into it, I thought 'wow, I love this', like-minded people there."<sup>17</sup>

**3. Do you have any general comments on the additional technical guidance included? Is there any further information which should be included?**

The rationale for omitting aggravating or mitigating factors from the guidelines on penalties for breach is not clear to us. Although the level of compliance determines the seriousness of the breach, factors such as whether the person is the sole or primary carer, support needs such as mental health difficulties or learning disability, family difficulties such as unexpected bereavement which may have impacted compliance—and are standard mitigating factors - should be thoroughly considered when determining the penalty for breach. The risk of 'double counting', given as the reason for exclusion, is not inevitable and is outweighed by the risk of injustice and disproportionality if the guidelines omit reference to aggravating and mitigating factors. It is also anomalous for a Sentencing Guideline not specifically to include such factors.

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<sup>15</sup>Prison Reform Trust (2014) Prison Reform Trust briefing - the relationship between finance and debt and women's offending

<sup>16</sup> Revolving Doors Agency (2011) Counting the Cost, available at: <http://www.anawim.co.uk/documents/rda-counting-the-cost.pdf>

<sup>17</sup> Quote from a Prison Reform Trust and User Voice Women's Council in Birmingham, June 2016

#### **4. Do you have any general comments on the draft guideline for breach of a community order?**

It is worth emphasising that where breach of an order results in an offender being brought back to court there is an opportunity to review its terms. As the Corston review concluded a decade ago, and numerous inquiries, inspections and reports have reiterated since: “community sentences must be designed to take account of women’s particular vulnerabilities and domestic and childcare commitments”.<sup>18</sup> Before making an order more punitive or extending its duration the court should be directed to consider whether the alleged breach arises from inappropriate requirements or terms in or inordinate length of the original community order.

As Prison Reform Trust stated in response to a Ministry of Justice consultation on the purpose of community sentences: “Sentencing requirements should take into consideration the particular abilities and support needs of individual offenders to avoid unreasonable or unrealistic expectations being imposed without appropriate support and other reasonable adjustments also being put in place. Sentencers should require the identification and assessment of defendants with particular support needs in order that appropriate action can be taken during court proceedings. The government should provide better support and training for sentencers and probation staff on the reasons why people breach backed by an evidence-based approach taking into account the views and experiences of offenders.”<sup>19</sup> The Sentencing Council Guidelines on breach are an opportunity to reinforce these points to sentencers.

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<sup>18</sup> Corston, J. (2007) Corston Report, London: Home Office

<sup>19</sup> Prison Reform Trust (2012) Prison Reform Trust response to the Ministry of Justice consultation, Punishment and reform: effective community sentences, available at: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/effective%20community%20sentences.pdf>

### **Section three: breach of a Suspended Sentence Order**

As noted above, since 2010 there has been a year on year rise in the use of Suspended Sentence Orders (SSO) and a considerable decrease in the use of Community Orders. The use of Suspended Sentence Orders has increased by 18% from 48,118 in 2010 to 57,070 in 2015. In 2010 141,575 people received a Community Order, compared to 94,397 in 2015 (a 33% decrease). The rise of Suspended Sentence Orders has been more pronounced for women, with a 27% increase compared to 17% increase for men.<sup>20</sup> This has given rise to concerns about ‘up-tariffing’, as the consequences of breach are inevitably the threat of immediate custody. It is also important to note, especially in the context of the Lammy Review of Black, Asian and Minority Ethnic (BAME) representation in the Criminal Justice System, that women from Black and Minority Ethnic (BAME) backgrounds were more likely to receive a SSO than white women (who are more likely to get a conditional discharge)—19% BME women compared to 16% white women.<sup>21</sup> It is important to ensure as far as possible that the Breach Guideline does not exacerbate the over-representation of BAME people in custody (26% of the prison population are from a minority ethnic group, compared to 14% of the general population).<sup>22</sup>

**5. Do you agree with the proposed approach to the assessment of seriousness of breach of a suspended sentence order by failure to comply with a community requirement? Please state if there are any other factors which you think should be included in the assessment of seriousness.**

Our comments in response to Q1 apply here also.

**6. Do you have any general comments on the proportionality of the proposed penalties?**

As stated in comments above we propose that there should be opportunities to review the terms or duration of the suspension more constructively where there has been a high or medium level of compliance rather than proceeding straight to ‘more onerous requirements’ or an extension of the supervision period etc. The legislation does not oblige the court to activate the custodial sentence for breach nor increase the severity of the suspension and as the consultation paper notes, where the breach is fairly minor “activation may be disproportionate and potentially disruptive to the rehabilitation of the offender” (p.15). The court’s discretion should not be fettered by a relatively severe starting point.

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<sup>20</sup> Ministry of Justice (2015) Criminal Justice System Statistics publication: Sentencing: Pivot Table Analytical Tool for England and Wales

<sup>21</sup> Ministry of Justice (2016) report on Women and the Criminal Justice System 2015, London: Ministry of Justice, p.88

<sup>22</sup> Table 1.4, Ministry of Justice (2016) Offender management statistics quarterly: April to June 2016, London: Ministry of Justice; Table A3.5.2, Equality and Human Rights Commission (2010) How fair is Britain? Equality, Human Rights and Good Relations in 2010, London: Equality and Human Rights Commission

**7. Do you agree with the proposed approach to the assessment of seriousness of breach of a suspended sentence order by the commission of a further offence? Please state if there are any other factors which you think should be included in the assessment of seriousness.**

Many of the comments already made apply here. We welcome the recognition that activation of the custodial sentence for a much less serious offence could be unjust.

**8. Do you agree that the proposed levels of penalty are appropriate?**

Previous comments about levels of penalty apply and in particular the need to consider the rehabilitative purpose of sentencing, as well as the punitive one, needs to be given more prominence. It is important for courts to be reminded about the limited value, indeed the often counter-productive effects, of short custodial sentences. The levels as set out give the courts no discretion to avoid activation where the new offence requires a custodial sentence.

**9. Do you have any general comments on the section relating to the unjust test? Please state if there are other factors which you consider are relevant to the assessment of whether activation would be unjust.**

We consider it would be relevant and helpful to specify under ‘any strong personal mitigation’ the need to consider any mental health or learning difficulties or disability that affected the offender’s behaviour. In relation to ‘whether immediate custody will result in significant impact on others’ we propose that specific reference to dependent children or other family members for whose care the offender is significantly, primarily or solely responsible should be included. Short prison sentences are less effective than community sentences at reducing reoffending. Despite this, nearly half (47%) of all people entering prison under sentence in the year to June 2016 are serving a sentence of six months or less. Prison has a poor record for reducing reoffending—46% of adults are reconvicted within one year of release. For those serving sentences of less than 12 months this increases to 60%.<sup>23</sup>

**10. Do you have any comments on the structure and presentation of information in the guideline?**

It would be helpful for all the guidelines to start with the lowest penalty at the top of the table as this is the more natural order, rather than starting with maximum as it that makes it clearer what the starting point is.

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<sup>23</sup> Tables C1a and C2a, Ministry of Justice (2016) Proven reoffending statistics quarterly: January to December 2014, London: Ministry of Justice

**11. Do you consider that the penalty imposed in case study A is appropriate? If you do not agree, please tell us what penalty should be imposed and why.**

The penalty—activating the custodial sentence albeit with a reduction for completed unpaid work - is arguably disproportionate in all the circumstances and particularly in light of the impact on his partner and child. The original SSO was for the maximum duration which on the facts seems harsh, and was certainly very onerous. He was initially highly compliant and hasn't committed a new offence. The case suggests that the lengthy duration of the SSO should be considered as a factor making activation unjust, as well as his personal circumstances and responsibilities. Possibly a fine could be appropriate, or an additional RAR. Committing him to prison would result in unemployment for him and hardship and stress on his dependents.

**12. What penalty do you think is appropriate in case study B, and why?**

Again, the penalty of imprisonment seems disproportionate, unimaginative and harsh. In this case the question arises whether the original sentencing court were apprised of Z's childcare responsibilities, or took them sufficiently into account, as her non-compliance with the terms of the SSO are said to be linked to these. The new offence is less serious than the original which shows progress. This is a case where the Pre-Sentence Report should propose an effective sentence plan that is likely to prevent Z reoffending. This will require identifying and addressing the drivers to her offending and associated needs. The Court should have a range of interventions and programmes at its disposal to deliver the requirements it imposes on an offender. Z would probably benefit from supervision and support in a local women's centre. If the UN Bangkok Rules were applied to this case, imprisonment would be avoided and the Guidelines should reflect this.

**13. Do you have any general comments on the draft breach of suspended sentence order guideline?**

Developing the guideline is an opportunity to reflect on the purpose, use and impact of the Suspended Sentence Order. If there is evidence that its use—and responses to breach—have helped to drive up the prison population in unintended and unsustainable ways, the guideline can offer a corrective steer.

**Section four: Breach of Post Sentence Supervision**

It is important to be clear that we believe that the Post Sentence Supervision should not have been made mandatory and therefore subject to breach in the first place. This dynamic undermines the intention of the Offender Rehabilitation Act 2014 that “the purpose of the supervision period is the rehabilitation of the offender” by instead putting the emphasis on compliance. It can also mean that limited staffing resources become preoccupied with enforcement for those not engaging rather than being effectively used to offer support and rehabilitative services to those who are.

The extension of statutory supervision to short sentence offenders has also driven up the prisoner population. Recent MOJ data reveals that the number of recalls for those serving less than 12 months has increased dramatically. The number of women recalled to custody whilst under supervision following their release has increased by over four-fifths (82%) since the end of 2014. 1,379 women were recalled in the year to June 2016.<sup>24</sup>

However, given the current legislation and scope of this consultation, it is important to ensure that the consequences when a person does breach their supervision are proportionate and constructive. Doing so requires decision makers to have a good understanding both of the full impact of the penalties available and the purpose of the supervision set out in the first place.

**14. Do you agree with the proposed approach to the assessment of seriousness of breach of Post Sentence Supervision?**

The assessment of seriousness of breach of Post Sentence Supervision refers to the 'impact of any completed or partially completed requirements' but fails to mention the specific rehabilitative focus of the supervision, as set out by the Offender Rehabilitation Act. If this purpose is at the centre of this form of supervision then the impact of any compliance or non-compliance on rehabilitation should be explicit in the assessment of seriousness.

**15. Do you have any general comments on the proportionality of the proposed penalties?**

Prison Reform Trust maintains that prison should always be a last resort, and this is particularly relevant for breaches of post sentence supervision. A penalty of up to 14 days in custody has very little rehabilitative value. During this time access to any meaningful support will be unlikely, as it is with the majority of short sentences. Instead it is likely to cause further disruption to any constructive contact with community based services, and lead to further difficulties with benefits, housing and employment. This penalty should therefore be used sparingly and with full understanding of its potential impact on the individual, their families and communities.

**16. Is there any other information or guidance which should be included within the breach of PSS guideline?**

We are not clear on the rationale for omitting mitigating factors from the guidelines for breaches of Post Sentence Supervision. Although the level of compliance determines the seriousness of the breach, factors such as whether the person is the sole or primary care, support needs such as mental health difficulties or learning disability, family difficulties such as unexpected bereavement which may have impacted compliance should be acknowledged when determining the penalty. Genuine misunderstanding of requirements should also be considered, particularly as this part of the supervision is still

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<sup>24</sup> Table 5.2, Ministry of Justice (2016) Offender management statistics quarterly: April to June 2016, London: Ministry of Justice and Offender management statistics quarterly: October to December 2015

relatively new and can be difficult to explain and understand even for prison and probation staff.

### **Section seven: Breach of a Criminal Behaviour Order**

The enforcement of Criminal Behaviour Orders, which replace Antisocial Behaviour Orders, risks further criminalising vulnerable people, especially if imprisonment is imposed. Women in the sex industry are not infrequently criminalised by the use of these orders. Criminalisation can make it harder for women to access help, either to exit prostitution or with their other needs, for example around mental health, addiction, or homelessness. Women report that they are prevented from accessing support services, as those services are often located in 'red light' areas, which they are banned from entering by the terms of their ASBO.<sup>25</sup> There is evidence that some localities rely on the use of ASBOs to police prostitution, Women at the Well spoke of a client who was released from prison homeless as her ASBO prevented from being in her borough of connection.<sup>26</sup>

Criminal sanctions, such as 'Prostitutes cautions', ASBOs, CRASBOs and fines often serve to exacerbate the barriers to exiting and can entrench marginalisation and social exclusion. Criminal records and fines can trap women within a cycle of prostitution and offending and block personal progress and autonomy. Prison sentences for breaches of Criminal Anti-Social Behaviour Orders (CRASBOs) can result in the loss of both stable and temporary housing, leading to homelessness and the potential for drug and alcohol misuse to cope; all structurally coercive 'push' factors to 'partnering' with an exploitative or abusive 'companion' and/or engaging in prostitution.<sup>27</sup>

Our response to the [Home Affairs Select Committee Inquiry into Prostitution can be read here.](#)

We are not engaging in detail on the questions around Criminal Behaviour Orders, as our comments made earlier apply to this section.

**Q27 Do you agree with the proposed approach to the assessment of culpability?**

**Q28. Do you agree with the proposed approach to the assessment of harm?**

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<sup>25</sup> Agenda (Alliance for Women and Girls at Risk) submission to the Home Affairs Select Committee Inquiry into Prostitution, February 2016. Available at:

<https://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/inquiries/parliament-2015/prostitution/publications/>

<sup>26</sup> Women at the Well submission to the Home Affairs Select Committee Inquiry into Prostitution, February 2016. Available at:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/prostitution/written/29188.pdf>

<sup>27</sup> Kairos Women Working Together submission to the Home Affairs Select Committee Inquiry into Prostitution, February 2016. Available at:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/prostitution/written/29188.pdf>

**Q29. Do you have any general comments on the sentence ranges and starting points?**

**Q30. Are there any aggravating or mitigating factors that should be added or removed?**

**Q31. Do you have any other general comments on the draft guideline for breach of a criminal behaviour order?**

### **Section thirteen: Orders not included**

**53. Are there any equality and diversity issues that the guideline does not take into account?**

Prison Reform Trust welcome the Sentencing Council's consultations, and have responded to the [Theft Offences Guidelines](#) consultation in June 2014. Prison Reform Trust would like to reiterate the importance of gender-specific sentencing and the importance of taking into account when sentencing children of offenders.

Gender-specific sentencing:

The UN Rules for the Treatment of Women Prisoners and Non-custodial Measure for Women Offenders (the Bangkok Rules) provide a framework for gender sensitive sentencing guidelines. The report of the UN Special Rapporteur on violence against women following her official visit to the UK, which included visits to women's prisons, included this finding: "it is crucial to develop gender-specific sentencing alternatives and to recognize women's histories of victimization when making decisions about incarceration. Most women in prison do not present a threat to society and the consequences of their incarceration includes enormous personal, economic and social costs. Creativity in sentencing could lead to more orders of a non-custodial nature."<sup>28</sup> We recommend the Sentencing Council include a reference to the Bangkok Rules in its new guideline, noting the UK's obligation to provide "gender-specific options for...sentencing alternatives".<sup>29</sup> Therefore, Prison Reform Trust recommends that Sentencers should understand the detrimental impact of imposing custodial sentences to women that breach their sentence, and that reasons for this could be related to their duties as care-givers, relationships, or because of the chaotic lives that many women lead.

Children of offenders:

The Bangkok Rules state that "women offenders shall not be separated from their families and communities without due consideration being given to their backgrounds and family ties",<sup>30</sup> whilst the Court of Appeal,<sup>31</sup> and, more

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<sup>28</sup> UN Special Rapporteur on Violence Against Women, Ms Rashida Manjoo, London, 15 April 2014. Her full report was be considered by the UN Human Rights Council in June 2015.

<sup>29</sup> [www.ohchr.org/Documents/ProfessionalInterest/BangkokRules.pdf](http://www.ohchr.org/Documents/ProfessionalInterest/BangkokRules.pdf)

<sup>30</sup> Ibid.

recently court of appeal judges in R v. Petherwick,<sup>32</sup> have ruled that, when sentencing a mother with a dependent child, the child's rights to respect for a private and family life<sup>33</sup> are engaged and a balancing exercise should be undertaken. Following the Court of Appeal decision in R v Mills<sup>34</sup> the Guidelines do recognise sole or primary care responsibilities at mitigation, however there is evidence to suggest courts do not always undertake this balancing exercise when sentencing a mother with dependent children.<sup>35</sup> The case of Melanie Beswick, sentenced initially to nine months in prison for a first offence, despite having two dependent children, is a tragic case in point.<sup>36</sup> More children are affected every year by the imprisonment of a parent than by divorce,<sup>37</sup> making it incumbent on courts to ensure that a custodial sentence is only imposed on a primary carer where there is no suitable alternative. We recommend the Sentencing Council provide stronger guidance to the court on its duty to investigate an offender's sole or primary caring duties and to take these into account at sentencing and if breach of sentence comes into factor, particularly the consequences for the children should s/he be imprisoned. The fact that a mother is likely to be imprisoned further from her home due to there being fewer women's prisons should also be considered.<sup>38</sup>

We welcome that dependent children are taken into account, but we recommend more training to Sentencers to ensure that breach of sentence isn't detrimental to the whole family.

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<sup>31</sup> R (on the application of P and Q) v Secretary of State for the Home Department – [2001] EWCA Civ 1151) at para 79.

<sup>32</sup> R v Petherwick – [2012] EWCA Crim 2214

<sup>33</sup> Under the European Convention on Human Rights and the UN Convention on the Rights of the Child

<sup>34</sup> R v Mills [2002] EWCA Crim 26

<sup>35</sup> See Epstein, R. (2012) Special Issue – Research Report - Mothers in prison: the sentencing of mothers and the rights of the child Coventry Law Journal and Minson, S. (2014) Mitigating motherhood – a study of the impact of motherhood on sentencing decision in England and Wales London: Howard League

<sup>36</sup> <http://www.inquest.org.uk/press-releases/press-releases-2013/inquest-into-the-death-of-melanie-beswickhmp-sent-begins-11-april>

<sup>37</sup> See Ministry of Justice (2012) Prisoners' childhood and family backgrounds London: Ministry of Justice and Office for National Statistics (2011) Divorces in England and Wales 2009 Fareham: ONS

<sup>38</sup> A point made by Lord Woolf, then LCJ, in R v Mills