



Prison Reform Trust submission to the Sentencing Council’s Intimidatory Offences and Domestic Abuse Guidelines consultation

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Introduction

The Prison Reform Trust is an independent UK charity working to create a just, humane and effective prison system. We have a longstanding interest in improving criminal justice outcomes for women and are currently pursuing a three year strategy, supported by the Big Lottery, to reduce the unnecessary imprisonment of women in the UK. This work has at its heart the concern that women may be disproportionately punished for minor offences and that failures to take a gender specific approach in sentencing can lead to unjust results.

We welcome the chance to respond to this consultation. We have not answered the consultation questions directly but we hope the information presented here will be helpful to

the Sentencing Council's deliberations. We have included extracts from our own recent focus groups with women offenders who are victims/survivors of domestic abuse. We hope these will provide helpful insights into the experience of women who are prosecuted for using reactive violence against a primary aggressor, as well as the impact for women victims/survivors who are subjected to coercive and controlling behaviour.

We primarily focus our comments on the role that the Sentencing Council may play in ensuring that there is just sentencing for the small minority of women who use violence in reaction to domestic abuse by a primary aggressor, and who are prosecuted for a domestic abuse related offence.

The term 'domestic abuse' encompasses a range of different crimes occurring in a private and personal context. In order to identify and prosecute offences effectively, to protect victims/survivors (usually women) and ensure fair and proportionate sentencing, criminal justice agencies require a sophisticated understanding of the potentially complex dynamics of domestic abuse, the behaviour of perpetrators, and the effects on victims/survivors. We believe that the Sentencing Council has a unique role to play in educating both the judiciary and the wider public about these matters.

In this submission we seek to highlight the links between women's experience of violence, sexual violence, domestic abuse and coercion, and their experience as offenders in the criminal justice system. We specifically explore the experience of the small minority of women who use violence in response to abuse by a primary aggressor. We also briefly consider the availability of robust, accredited perpetrator programmes for men in prison and in the community.

We would also like to make a general recommendation that the Sentencing Council should carry out an impact assessment of all its proposals on the prison population, if this has not already been done.

Facts

Domestic abuse in England and Wales

An estimated 1.8 million adults aged 16 to 59 experienced domestic abuse in the year ending March 2016, equating to a prevalence rate of 6 in 100 adults.¹ Women were more likely to say they have experienced domestic abuse than men, with an estimated 1.2 million female victims compared to 651,000 male victims according to the survey. In 2014/15, 81 women were killed by a current or former partner.

In the year ending September 2016, 11 per cent of all offences (447,950) were flagged as domestic abuse related, with violence against the person offences and sexual offences the most likely to be flagged.²

On 29 December 2015 the government introduced a new criminal offence of "coercive and controlling behaviour". The new law captures coercive control through psychological and emotional abuse that falls short of physical violence. Official data is not yet available about

¹ Office for National Statistics (2016) Domestic abuse in England and Wales: year ending March 2016. A report bringing together statistics to enable more thorough analysis of how domestic abuse is dealt with at the local level within England and Wales, London: ONS

² Ibid

the number of these offences or how they have been dealt with in the criminal justice system,³ but media reports suggest there have been few prosecutions to date.⁴

A quarter of domestic abuse-related prosecutions are unsuccessful in securing a conviction. HM Inspectorate of Constabulary reported improvements in police practice in 2015, with an increased focus on developing evidence-led prosecutions and greater awareness amongst response officers of the importance of collecting evidence at the scene (for example, using body-worn cameras) so that prosecutions can continue even if the victim does not support further action.⁵ Continued improvements in practice in these areas should lead to more successful prosecutions.

The vast majority of defendants (92%) of domestic abuse-related prosecutions are men. In contrast, victims are female in 69% of domestic abuse-related prosecutions and 14% are male. The sex of the victim is not recorded in 17% of prosecutions. If this category was excluded from the analysis, the proportion of female victims would be 83% and male victims would be 17%.⁶

Women offenders who have experienced abuse and coercion

Women in prison in England and Wales 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.⁷ Fifty seven per cent of women in prison report having been victims of domestic violence.⁸ Because many women fear disclosing abuse, both figures are likely to be an underestimate.⁹ The charity Women in Prison report that 79% of the women who use their services have experienced domestic violence and/or sexual abuse.¹⁰

Women's offending is more likely than men's to be prompted by their relationships or by financial concerns. Nearly half of women prisoners (48%) questioned for the Surveying Prisoner Crime Reduction (SPCR) longitudinal survey reported having committed offences to support someone else's drug use, compared to 22% of male prisoners.¹¹

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.¹² Leaving an abusive relationship can be risky – the period when a woman is planning or making her exit is often the most dangerous for her and her children.¹³

³ Ibid

⁴ The Guardian newspaper, 31 August 2016: <https://www.theguardian.com/society/2016/aug/31/police-failing-to-use-new-law-against-coercive-domestic-abuse>

⁵ HM Inspectorate of Constabulary (2015) Increasingly everyone's business: A progress report on the police response to domestic abuse, London: HMIC

⁶ Office for National Statistics (2016) Domestic abuse in England and Wales: year ending March 2016. A report bringing together statistics to enable more thorough analysis of how domestic abuse is dealt with at the local level within England and Wales, London: ONS

⁷ Ministry of Justice (2012) Prisoners' childhood and family backgrounds, London: MoJ

⁸ Ministry of Justice (2014) Thinking differently about female offenders. Transforming Rehabilitation, Guidance Document, London: MoJ/NOMS

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

¹⁰ House of Commons Justice Committee, Women Offenders: after the Corston Report, HC 92, 15 July 2013 para 207, p.78

¹¹ Light, M. et al (2013) *Gender differences in substance misuse and mental health amongst prisoners* London: MoJ

¹² Loveless J. (2010) Domestic violence, coercion and duress, *Criminal Law Review*, February 2010

¹³ [Women's Aid \(2006\) Why doesn't she leave? London: Women's Aid](#)

A significant proportion of foreign national women in prison have been trafficked or coerced into offending.¹⁴ This is also increasingly likely to be the case for British women and girls, with growing numbers of British women and particularly girls now being referred to the National Referral Mechanism because they are believed to have been trafficked within the UK.¹⁵

Of young women offenders in custody, 40% have suffered violence at home and 30% have experienced sexual abuse at home.¹⁶ 31% of women in prison spent time in care as children compared to 24% of men.¹⁷ The majority of looked after children are looked after by the state due to abuse or neglect.¹⁸

Women (49%) are more likely than men (29%) to report needing help with a drug problem on entry to prison.¹⁹ Women prisoners are also more likely than men to associate drug use with their offending. Alcohol is a significant factor in women's offending. 59% of women prisoners who drank alcohol to excess four weeks before custody felt they had a problem with alcohol, 52% thought their drinking was out of control and 41% wished they could stop.²⁰ In many cases domestic abuse victims/survivors may turn to drug and alcohol use as a coping mechanism.

"When you're drunk you don't feel the pain as much."²¹

Women are nearly twice as likely as men in prison to be identified as suffering from depression (65% compared to 37%) and more than three times as likely as women in the general population (19%).²² Almost a third (30%) of women in custody had a psychiatric admission prior to entering prison.²³ 46% of women prisoners report having attempted suicide at some point in their lives. This is twice the rate of male prisoners (21%) and more than seven times higher than the general population (6%).²⁴

¹⁴ Hales, L. & Gelsthorpe, L. (2012) *The criminalization of migrant women* Cambridge: Institute of Criminology

¹⁵ NCA (2017) National Referral Mechanism Statistics – End of Year Summary 2016, London: NCA. Here it is reported that there was a 100.8% increase in the numbers of girls being referred to the NRM due to suspected trafficking within the UK, from 2015 to 2016. For adult women there was an increase of 10.9%. The United Kingdom was the most common country of origin for girls referred to the NRM in 2016.

¹⁶ *Old enough to know better?* A briefing on young adults in the criminal justice system in England and Wales, January 2012

¹⁷ Ministry of Justice (2012) Prisoners' childhood and family backgrounds, London: MoJ

¹⁸ In England, 60% of children looked after as at 31 March 2016 were in care primarily due to abuse or neglect. Source: Department for Education (2017) Statistical First Release SFR 41/2016: Children looked after in England (including adoption) year ending March 2016, London: DfE; in Wales, 64% of children starting to be looked after during the year ending March 2016 came into care primarily because of abuse or neglect. Source: Welsh Government (2016) StatsWales, Children Looked After, Cardiff: Welsh Government

¹⁹ Light, M. et al (2013) Gender differences in substance misuse and mental health amongst prisoners, London: MoJ

²⁰ Tables A28, A24 and A27, Light, M. et al (2013) Gender differences in substance misuse and mental health amongst prisoners, London: MoJ

²¹ This quote is taken from a woman who participated in a focus group held by the Prison Reform Trust at the 218 Service in Glasgow in March 2017. All the women taking part had experience of domestic abuse and had been involved with the criminal justice system as offenders. The focus group findings are planned for publication by the Prison Reform Trust in Autumn 2017.

²² Light, M. et al (2013) Gender differences in substance misuse and mental health amongst prisoners, London: MoJ

²³ Department of Health (2007) Sharing good practice in prison health, London: DH

²⁴ Light, M. et al (2013) Gender differences in substance misuse and mental health amongst prisoners, London: MoJ

Criminal justice responses to women offenders who have experienced abuse and coercion

Law and policy

The fact that victims/survivors of domestic abuse are usually women has made it necessary for services to be gender specific and to be tailored around women's needs. Law and policy in the UK make clear that applying the equality principle requires consideration of women's specific needs, as well as an awareness of the historic and present patterns of disadvantage that women face. However, once women become offenders they are often subjected to gender neutral practices and policies, in contradiction with the gender specific approach reserved to women who are victims of violence and who do not have criminal records.

This current framework is not able to deliver justice for women who are simultaneously victims and offenders. According to a 2011 Women's Aid report, women offenders *'might experience double discrimination: their needs might not be taken into consideration within the criminal justice system and their victimhood is undermined by them being offenders'*²⁵.

Rule 8 of the United Nations Resolution 61/143 'Intensification of efforts to eliminate all forms of Violence against women' of 19 December 2009²⁶ calls on member states to *'[t]ake positive measures to address structural causes of violence against women... including with regard to women who need special attention in the development of policies to address violence, such as... women in institutions or in detention'*.

This understanding is echoed and furthered in the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) of March 2011, which aim to set standards for the application of the equality principle to women who are in detention, highlighting that this requires consideration of women's needs. Rule 41(b) recommends that women's experiences of violence must be considered when deciding a sentence as well as for sentence planning. Further, Rule 60 recommends that: *'Appropriate resources shall be made available... to address the most common problems leading to women's contact with the criminal justice system. These may include therapeutic courses and counselling for victims of domestic violence and sexual abuse...'*

The 2007 Corston report on vulnerable women in the criminal justice system, commissioned by the UK government and accepted in full, called for the recognition of women's specific needs and vulnerabilities and advocated extensive reforms.²⁷ The report recognised women's different criminogenic needs and added two pathways to reduce reoffending which involved consideration of women's past experience of abuse (pathway 8) and the experiences of women who have been trafficked for exploitation (pathway 9). The Corston report highlighted how women offenders have often experienced violence early in their lives. It also raised awareness about perpetrators' roles in involving women in crime through coercion.

²⁵ Women's Aid (2011) Supporting women offenders who have experienced domestic and sexual violence, London: Women's Aid

²⁶ United Nations Resolution 61/143 'Intensification of efforts to eliminate all forms of Violence against women' of 19 December 2009

²⁷ Home Office (2007) The Corston Report. A report by Baroness Jean Corston of a review of women with particular vulnerabilities in the criminal justice system, London: Home Office

The UN Special Rapporteur on violence against women in the UK has called for women offenders' history of victimisation to be taken into account when deciding sentences and has urged the UK to apply the recommendations formulated by the Corston Report²⁸.

In 2008 the Prison Service Order issued the first Prison Order (PO 4800) containing gender specific guidance, following the Corston recommendations for pathways 8 and 9. In March 2013 the Ministry of Justice developed Strategic Objectives for Female Offenders²⁹ in which the government commits to ensuring that the needs of women are taken into consideration with particular attention to the most vulnerable detainees. In the 2014 Women's Custodial Estate Review by NOMS, it is stated, 'Provision of services to women who are survivors of domestic violence or who have been sex workers should be of a consistent quality and should meet the relevant NOMS framework'.³⁰ Section 10 of the Offender Rehabilitation Act 2014 makes explicit the need for gender-specific treatment of women offenders in the delivery of probation services, pursuant to the requirements of the Equality Act 2010.

The Prime Minister has lent her personal support to an ambitious, cross-government strategy to end violence against women and girls, which explicitly recognises the vulnerability of women offenders who are affected by domestic abuse.³¹ If fully implemented and matched by similar commitments across central and local government, backed up by adequate and sustainable funding for services in the community, this could significantly reduce the risk of women's involvement in offending and imprisonment.

The government's strategy recognises that many victims of sexual, physical and emotional abuse can also be drawn into offending behaviour.³² It reports that the government is 'working with regional areas to encourage a more effective joined-up approach to addressing these complex needs', referring to the 'whole system approach to managing female offenders' which is under development in Greater Manchester, Wales and London, as well as the National Offender Management Service (NOMS) document 'Better Outcomes for Women' which sets out the commissioning principles for developing services for women in the criminal justice system.³³ The government aims 'to build on this work to ensure that female offenders who are also victims of abuse can access the help they need to rebuild their lives and the break the cycle of offending'.³⁴

The introduction of the offence of coercive and controlling behaviour in December 2015 is fundamental to distinguish domestic abuse-related crimes from other offences. The government's guidance on the offence recognises that forcing someone to commit a crime could be part of a pattern of abuse.³⁵

Sentencing guidance now recognises coercion as a mitigating factor in theft, fraud and drugs offences.³⁶ The existence of high quality pre-sentence reports will be essential to ensure

²⁸ UN General Assembly (2015) Report of the Special Rapporteur on violence against women, its causes and consequences. Rashida Manjoo. Addendum: Mission to the United Kingdom of Great Britain and Northern Ireland (A/HRC/29/27/Add. 2). See recommendations viii and ix.

²⁹ [Ministry of Justice \(2013\) Strategic objectives for female offenders. London: MoJ](#)

³⁰ [Robinson, C. \(2013\) Women's custodial estate review. London: NOMS](#)

³¹ [Home Office \(2016\) Ending violence against women and girls. Strategy 2016-2020](#), London: Home Office

³² Ibid

³³ National Offender Management Service (2015) Achieving better outcomes for women offenders, London: NOMS

³⁴ [Home Office \(2016\) Ending violence against women and girls. Strategy 2016-2020](#), London: Home Office

³⁵ Home Office (2015) Controlling or Coercive Behaviour in an Intimate or Family Relationship. Statutory Guidance Framework, London: Home Office

³⁶ See the relevant Definitive Guidelines at: www.sentencingcouncil.org.uk

sentencers are able to take evidence of coercion into account. However the law still provides limited protection for people who are experiencing abuse and coercion and who commit an offence because of that. This includes women who use reactive violence or criminal damage against a primary aggressor, who then risk facing charges themselves for domestic abuse related offences.³⁷

The police may exercise discretion not to arrest a woman who uses violence in these circumstances, provided it is clear that she is the victim/survivor of abuse by a primary aggressor and where it is not in the public interest to prosecute her. However this requires individual police officers to have the confidence and skills to make a nuanced judgement in individual cases, as well as clear leadership.

Women who use violence in reaction to domestic abuse by a primary aggressor

In some cases, the experience of abuse over time may lead victims/survivors (usually women) to react with violence or criminal damage against their abuser. Professor Marianne Hester refers in her 2009 study³⁸ to women using 'violent resistance' against violent male partners³⁹ and notes that 'women's use of violence has been found in a number of studies to be defensive or retaliatory rather than initiating'⁴⁰.

HM Inspectorate of Constabulary, in its 2014 inspection of the police response to domestic abuse, found that in 30% of cases of actual bodily harm which were identified as domestic abuse related, there were counter allegations with both parties claiming to be the victim, and stated: "*Information on the previous history is vital if officers are to be able to identify who the victim is in instances of counter allegations*".⁴¹ In such cases police are expected to identify the primary aggressor and avoid arresting both parties, although this still does occur. The recently introduced Authorised Professional Practice on domestic abuse, issued by the College of Policing, states:⁴²

It can be difficult for officers attending a domestic abuse incident to establish what has happened. A primary perpetrator of abuse may claim to have been assaulted by the other party and have injuries apparently supporting their account. They may in fact have been caused in self-defence by the primary victim. A manipulative perpetrator may be trying to draw the police into colluding with their coercive control of the victim. Police officers must avoid playing into the primary perpetrator's hands and take account of all available evidence when making the decision to arrest.

Identifying the primary perpetrator can mean:

- *looking beyond the current incident to the wider context, eg, is this a case where a long-term victim's self-restraint has snapped as a result of protracted abuse?*
- *remembering that it is often the perpetrator who shouts loudest*
- *not assuming the victim is the person who made the emergency call*
- *being wary of malicious reports being made as a coercive control tactic.*

³⁷ Loveless, J. (2010) Domestic violence, coercion and duress, Criminal Law Review, February 2010

³⁸ Hester, M. (2009) Who Does What to Whom? Gender and Domestic Violence Perpetrators, Bristol: University of Bristol in association with the Northern Rock Foundation

³⁹ Ibid

⁴⁰ Saunders, D. G. (2002) 'Are physical assaults by wives and girlfriends a major social problem? A review of the literature', Violence Against Women, 8 (12): 1424-1448

⁴¹ HM Inspectorate of Constabulary (2014) Everyone's business: Improving the police response to domestic abuse, London: HMIC

⁴² [College of Policing \(2016\) Authorised Professional Practice on domestic abuse, London: College of Policing](#)

The increased focus on ensuring domestic abuse related offences are prosecuted, particularly since the 2014 HMIC report, is welcome but could result in increased numbers of prosecutions for reactive violence if not applied appropriately. Professor Hester notes that there was a 'notable increase in the number of women being arrested for perpetrating domestic violence in the US' following the implementation of a pro-arrest policy there from the early 1990s, with mandatory arrest and prosecution in some US locations. She quotes a number of studies finding different explanations for this increase, including:⁴³

- that the police have become more 'real' about violence where they previously minimised violence by women⁴⁴
- that male perpetrators may be manipulating the system resulting in disproportionate arrests of women, for example where men ring the police first in order to pre-empt a woman asking for help⁴⁵
- that men may be over-reporting instances of being victims of domestic violence while at the same time being perpetrators of domestic violence
- the alcohol use of one or both partners can also impact on the boundaries between victim and perpetrator with subsequent difficulties in determining who is the primary aggressor.⁴⁶

In her own longitudinal study of domestic abuse cases dealt with by Northumbria Police over a six year period, Professor Hester found a small increase in the proportion of women arrested for using violence against a partner, as compared to men (from 9% to 11%), and a slightly higher increase for women recorded as perpetrators but not necessarily arrested (8% to 12%).

Professor Hester found that incidents involving women who used violence (which were the minority as compared to men) mainly involved verbal abuse, some physical violence and only small proportions involving threat or harassment. However, women were much more likely to use a weapon, although this was at times in order to stop further violence from their partners. The police descriptions also characterised women who used violence as to a greater extent having mental health or other health issues.⁴⁷

This research found that, although there were more arrests overall of men than of women, women were arrested to a disproportionate degree given the fewer incidents where they used violence. Women were three times more likely to be arrested.⁴⁸ Reflecting women's use of weapons, violence by women resulted in arrests for a wider range of, and more serious, offences involving assault.

Many cases in this study where women were recorded as 'sole perpetrators' were also characterised by the police as the women being alcoholic or possibly as mentally ill. While

⁴³ Hester, M. (2009) *Who Does What to Whom? Gender and Domestic Violence Perpetrators*, Bristol: University of Bristol in association with the Northern Rock Foundation

⁴⁴ DeLeon-Granados, W., Wellsa, W. and Binsbacher, R. (2006) 'Arresting Developments, Trends in Female Arrests for Domestic Violence and Proposed Explanations', *Violence Against Women* 12 (4): 355-371

⁴⁵ Miller, S. L (2001) 'The paradox of women arrested for domestic violence' *Violence Against Women*, 7: 1339-1376

⁴⁶ Hester, M., Williamson, E. and Gangoli, G. (2009) *Exploring the service and support needs of male, lesbian, gay, bi-sexual and transgendered and black and other minority ethnic victims of domestic violence: Rapid Evidence Assessment*, London: Home Office

⁴⁷ Hester, M. (2009) *Who Does What to Whom? Gender and Domestic Violence Perpetrators*, Bristol: University of Bristol in association with the Northern Rock Foundation

⁴⁸ *Ibid*

some of these cases involved physical violence from the woman including potential use of weapons, the male victims appeared not to fear the perpetrator or to be controlled by her.⁴⁹

One case studied indicated a tendency to see as the perpetrator the individual engaging in problematic alcohol use, although Professor Hester reports that alcohol use by women has in other studies⁵⁰ been found to be a response to experience of abuse from partners.⁵¹

Research by Jo Roberts has found that perpetrators of domestic abuse may employ the criminal justice system as a weapon of abuse or as a means of exerting power and control, by creating a set of circumstances which can cause or facilitate the victim/survivor's involvement in crime.⁵² This qualitative study found that for some women, retaliation against abusers was part of an attempt to survive their domestic abuse victimisation.

In her 2012 article exploring some of the patterns and complexities in the portrayal by the police of women as perpetrators of intimate partner violence, Professor Hester concluded:⁵³

“Understanding gendered dynamics was central to the ability of the police to accurately identify the primary aggressor. Where the police exhibited such an understanding they were also more likely to question whether they had identified the correct perpetrator in instances involving violence by women. This did not abnegate women’s responsibility for retaliatory violence, but contextualised such behaviour, so that it could be dealt with effectively by focusing on and increasing women’s safety. At the same time, the emphasis by the criminal justice system on individual incidents, without a questioning of gender dynamics and constructions, meant that women were 3 times more likely to be arrested, often for violence used to protect themselves from further harm from male partners.”

Women’s views and experiences

In recent focus groups conducted in England by User Voice for the Prison Reform Trust, women with recent involvement in the criminal justice system as offenders have described their experiences of domestic abuse during childhood or as adults and the links to their offending. We also include below extracts from a focus group hosted for the Prison Reform Trust by the 218 Service in Glasgow. The focus group findings are planned for publication in full by the Prison Reform Trust in Autumn 2017.

Although many of these experiences relate to the women’s treatment by the police, they contain lessons for any criminal justice agency which seeks to improve its own response to women in these circumstances, including the judiciary.

Being prosecuted for reactive violence

Some women felt that their experience of abuse had led to their own violent behaviour:

⁴⁹ Hester, M. (2009) *Who Does What to Whom? Gender and Domestic Violence Perpetrators*, Bristol: University of Bristol in association with the Northern Rock Foundation

⁵⁰ For overview see Humphreys, C., Regan, L., D. and Thiara, R. (2005) ‘Domestic Violence and Substance Use: Tackling Complexity’ *British Journal of Social Work*, 35(7): 1-18

⁵¹ Hester, M. (2009) *Who Does What to Whom? Gender and Domestic Violence Perpetrators*, Bristol: University of Bristol in association with the Northern Rock Foundation

⁵² Roberts, J. (2015) ‘It was do or die’ – How a woman’s experience of domestic abuse can influence her involvement in crime: A qualitative investigation of the experiences of community-based female offenders, Unpublished doctoral research findings summary report, University of Leicester

⁵³ Hester, M. (2012) *Portrayal of Women as Intimate Partner Domestic Violence Perpetrators*, Bristol: University of Bristol in association with the Northern Rock Foundation

"I believe my crime is linked by all the domestic abuse I've been through; I'm violent towards men. That's not looked at like that. It's just looked at as a violent offence."

London, January 2017

"I ended up ... in an abusive relationship where someone was hitting me and taking my money; trying to get me to go out and dance to get money for him... I ended up fighting back at the end of it...since then, I've had a lot of incidences involving men and violent altercations."

London, January 2017

"I ended up in prison on remand because of a link to domestic violence and using alcohol. I was brought up seeing domestic violence since I was very young. My dad used to beat my mum. It was punishment."

London, January 2017

At a focus group hosted for the Prison Reform Trust by the 218 Service in Glasgow, women reported how they had been prosecuted for reactive violence against abusive partners. The women all agreed that in general the police were not effective in identifying the primary aggressor and protecting them as a victim and that, as a result, they did not have confidence in the police to help them. Although these experiences occurred in Scotland, the themes arising are equally relevant in England and Wales.

One woman explained how she had been arrested and detained overnight by the police, leaving her young child in the care of her grandmother, because she had scratched her abusive and controlling partner's face in self defence while he was strangling her. This arrest and detention took place despite the presence of strangle marks on this woman's neck which had been remarked upon by the police officer attending the scene. The decision to arrest and detain her appears to have been influenced by her refusal to support a prosecution of her partner for this assault:

"I used to get timed going to the shop. And you could see the shop from my veranda and see if I was a couple of minutes late. He used to accuse me of having an affair."

"So we had a massive argument one day because he accused me of having an affair and he strangled me and I was fighting for breath and I scratched his forehead but I didn't know that at the time and then he took the wain and left and I phoned the police to get the wain back. They brought the wain back to me and the officers were saying to me, they noticed the strangle marks on my neck and asked me what it was...They asked if I wanted to charge him and I said, 'No I don't want to charge him' and then when they got to him he charged me for scratching his forehead. And they came back and picked me up and I had to take the wain to my granny's and I went to the police station..."

"...They took us in the police van and I had to take her to my granny's so it was breaking my heart when my granny was taking her out of my arms. The officers they says to me, 'Well we did tell you, you should have charged him.' But I didn't want to charge him because I used to always think it was my fault. I started to believe it was my fault."

"I went to the sheriff court. I spent the night in the police station and I went to the sheriff court the next day. It got thrown out."

Another woman described a similar experience, in which she was arrested and detained overnight for assaulting her abusive partner, despite his much more violent assault against her and in the context of a controlling, abusive relationship in which he was the primary

aggressor. This resulted in the woman being separated from her young child overnight for the first time:

"I shouldn't have done it but I spat on him because he dropped citric acid on the floor and my wee daughter was just at the crawling stage and obviously she could have picked it up.

"He kicked the door back and grabbed me and dragged us down the hall with the hair of the head and that and ... then he charged me... I never actually went up to the court but I spent the night in the cells... That was the first time I spent the night away from my daughter at the time so that was quite traumatic for me."

Some women commented that if the police attended an incident of domestic violence, it was more likely that their partner (the primary aggressor) would be calm, while they (the victim) would be agitated and lashing out, and therefore more likely to end up being arrested. This was exacerbated further when they had been drinking.

"When the police do arrest you after a domestic incident, maybe because you're the one that's suffering you tend to be the one that's going to kick out at the police. And the chap, you know your abuser tends to be ... dead calm..."

"You just think, 'I'm trapped again, I'm trapped.' And my arrests have been when I feel trapped and then it's just like everything's like a volcano because you think, I'm getting framed here by my abuser and nobody seems to understand..."

A number of women explained how being the victim of domestic abuse over a prolonged period made them resort to violence:

"It's just built in you that long."

One woman explained how the experience of being prosecuted in these circumstances led her to feel no confidence in the police that they would protect her against ongoing abuse. Now aged 53 years, this woman had been in and out of prison for 35 years and explained:

"I used to be in a relationship for about 20 years... One time I had a broken nose and a cracked jaw. But because he had charged me as well, they've taken me to the police station. But I had to go through and get my nose fixed because there was a bit coming through, and they still had to take me to the station after that. So you go, ... you don't even go through the hassle of phoning the police. The only time the police were ever involved with me was if I was took to hospital."

Other women felt that the police rarely showed an understanding of the dynamics of domestic abuse:

"Because he says, 'Oh she hurt me as well' and then they lift you. I mean they must know that nonsense!...It's a joke."

"They're meant to look into things a bit better."

"It's only like if the police maybe know you, happen to know you and your partner. Occasionally the police maybe try to have a different view see you're kicking off and think, 'Well there's got to be a reason for that.' But mostly it's just 'Slap the cuffs on you and lift you' because you're maybe a bit kicking off or whatever."

A number of women in this focus group felt that the courts were not aware of the context of abuse in which they were offending. One woman commented that all the courts were aware of was your previous offences. A number of women described the traumatic nature of court proceedings and their desire to avoid them at all costs, including by pleading guilty:

"The only background the courts have ever had for me is my previous... They don't have any idea of who you are, where you came from, what you've done, you're just that person on the paper."

"You've only got your lawyer to try and put it across."

"You tend to plead guilty."

However one woman had recently had a very positive experience in court, receiving a community sentence which included attendance at the 218 Service. This woman explained how for the first time she felt really positive about her upcoming review with her probation officer, and she could not praise social work and probation highly enough. She was optimistic about her future:

"I found that last time I went to court...I noticed a huge huge change, because I should really have gone to jail to be honest and if it wasn't for the judge giving me a chance to come back here, I got my probation, my whole life's started falling into place because of that judge keeping me out of jail."

"And I've taken it with both hands this time and I'm going tomorrow for my review and I've never felt so positive about something in my entire life. Normally I go for the review and I'm just like, 'Oh...in, out and I'll have a drink when I get out....' ... But this time I'm actually taking time, because I've had so much help..."

"Social work have been brilliant, my probation officer, it's totally different, just everything has been, for me, I'm taking it with both hands and grabbing it. I can't say anything bad about them. But previous to that I didn't think there was so much care."

Experiencing coercive control as a victim/survivor

Many women at the 218 Service focus group commented that psychological abuse was in some ways worse than physical abuse, despite the fact that these women described experiences of extreme violence occurring over many years, in some cases in more than one relationship. There were however no visible signs of psychological abuse. Whereas being the victim of a physical attack could provoke women to feel anger, being the victim of psychological abuse made women lose their self esteem and start to believe their abuser, feeling that it was their fault.

"It's not always just physical. Sometimes they just mentally wear you down as well."

"I think sometimes psychological is worse."

"Playing games with you...If you do that, I'll do this..."

"It could lead to violence at any time."

"Sometimes verbal's worse because you've no proof, you know... if someone's constantly, constantly putting you down, you don't know how they're gonna react...you're constantly walking on egg shells, you don't realise how ill you actually get, you know mentally ... Sometimes it feels better to get your head smashed in, you know you think 'You bastard, you hurt me.' You've something to actually moan about, but you know the constant verbal, you know...it's hard to fight back with that because you know they'll just turn round and basically you just think you're in the wrong, eventually that's how they wear you down... You start believing it, because it's just constant."

The women described coercive, controlling behaviour they had experienced from their abusive partners:

“I used to get timed going to the shop.”

“They can control you in a lot of ways...financial, shut your friends off.”

“So there’s nothing left apart from them.”

One woman explained that you could be made powerless if you were living in the abusive partner’s house:

“Sometimes if it’s their house, you feel you’ve got to stay because you’ve got nowhere else to go. So you put up with it. You’re ashamed to tell your family.”

Current practice in England and Wales

The College of Policing issued new guidance on the police response to domestic abuse in 2015 which takes into account the new Home Office definition of domestic abuse, as well as the findings of the HMIC report.⁵⁴ The need for an improved understanding of the dynamics of domestic abuse, including controlling and coercive behaviour, is recognised in the provision of government funding for police training and this is an area of focus for the College.

HMIC’s 2015 progress report indicates that there has been an improvement in the police response to domestic abuse following the inspectorate’s 2014 investigation.⁵⁵ Domestic abuse service providers report that there are improvements, but that practice remains inconsistent between police forces and even between individual officers, and considerable further improvements are needed to ensure the police have a good understanding of the dynamics of domestic abuse. Service providers cite the frequent turnover of police staff and officers which creates a challenge in terms of ongoing training.

The differences in approach between police forces can be seen in the operation of police diversion schemes, aimed at diverting vulnerable women away from the criminal justice system and towards services that can help them. Some schemes automatically exclude women who are accused of domestic abuse related offences. Others take a nuanced approach, judging on a case by case basis whether women accused of domestic abuse offences are appropriate for diversion.

It appears there is still considerable distance to travel to ensure a consistent, high quality first response by the police and, particularly, to build the police’s capacity to understand the dynamics of domestic abuse, to recognise and tackle coercive control and to respond appropriately when considering whether it is in the public interest to arrest a victim/survivor. The following quote from a recent focus group in London gives a vivid illustration of what the police must aim to avoid doing:

“My little girl was with me...I tried to jump out the top floor window, I couldn’t get out of it and so I called the police because he absolutely battered me. I had a fractured skull from it...and I had a warrant out for shoplifting or something and I got arrested and nothing happened to him...and this was something happened quite a lot.”⁵⁶

⁵⁴ [College of Policing \(2015\) Authorised professional practice on domestic abuse, London: College of Policing](#)

⁵⁵ See [HM Inspectorate of Constabulary \(2014\) Everyone’s business: improving the police response to domestic abuse, London: HMIC](#) and [HM Inspectorate of Constabulary \(2015\) Increasingly everyone’s business: A progress report on the police response to domestic abuse, London: HMIC](#)

⁵⁶ This quote is taken from a woman who participated in a focus group held by the Prison Reform Trust in partnership with User Voice in London in January 2017. All the women taking part had experience of domestic

It must be ensured that the police are consistently able, first to identify and investigate the offence of controlling and coercive behaviour and, second to identify the primary aggressor in incidents of domestic abuse and respond appropriately to individuals (usually women) who are victims/survivors of abuse and who have used reactive violence or committed other offences.⁵⁷ The police should be equipped and prepared to use their discretion not to arrest where this is contrary to the public interest, but instead to take measures to protect women from further abuse and refer them to specialist support services.

Prosecutors must make the same judgement where such cases result in a charge, when deciding whether it is in the public interest to pursue a prosecution. Similar expectations must be placed on offender managers, defence solicitors and barristers, to identify where a defendant has been a victim of abuse or coercion and to ensure this is taken into account in decisions throughout the criminal justice process. Sentencers also have a critical role to play in ensuring that appropriate account is taken of women's experiences of abuse and coercion. The provision of high quality pre-sentence reports is essential here.

All criminal justice agencies must ensure that they work closely with local specialist, all-round gender-specific services for women with multiple needs, based on the Corston women's centre model and often referred to as the 'one stop shop'. These services should include or be closely linked to specialist domestic abuse and sexual abuse services whose expertise can be drawn upon to assess women's needs, to provide services to those women, and crucially to provide information to the police, crown prosecution service, probation services, courts and prisons to support decision making at each stage of the criminal justice process.

Services must be made accessible to women of all ethnic and religious backgrounds in each local area. This is done effectively in some areas where agencies operate within a consortium including those with specific cultural expertise. The needs of disabled women must also be effectively addressed by involving gender-specific organisations with relevant expertise.

Effective, close joint working may be best achieved by having domestic abuse and sexual abuse specialists co-located within police stations and courts, and by having offender managers co-located within women-only services where women can access a range of support, including specialist domestic abuse and sexual abuse services. This type of arrangement has worked well in areas such as the London Borough of Hammersmith and Fulham, where co-located domestic abuse specialists employed by the charity Advance are able to offer ongoing training to police officers as well as providing their own expertise on a case by case basis.

Given the importance of the correct judgements being made by individual police officers, prosecutors and the judiciary in order to respond appropriately and effectively to women involved in offending who are survivors of domestic abuse, decision makers in all criminal justice agencies including the judiciary must have regular training in domestic abuse and sexual abuse. This should enable them to identify when women are survivors of these experiences, and to have a better understanding of how this may affect women's daily lives and behaviour, as well as how they interact with criminal justice agencies.

abuse and had been involved with the criminal justice system as offenders. The focus group findings are planned for publication by the Prison Reform Trust in Autumn 2017.

⁵⁷ For a relevant longitudinal study and account of earlier research see: Hester, M. (2009) *Who Does What to Whom? Gender and Domestic Violence Perpetrators*, Bristol: University of Bristol in association with the Northern Rock Foundation

Perpetrator programmes for men in prison and in the community

Perpetrator programmes for men, undertaken with the aim of changing their behaviour, are not suitable in every case. However, it is essential that such rehabilitative programmes should be available as part of, or alongside, sentencing in cases where the perpetrator is assessed as suitable for this kind of approach. It is also essential that these programmes are high quality and include robust safety measures such as integrated safety services and that they are accredited.

The Home Office guidance for commissioners of services aimed at tackling violence against women and girls advocates a 'proactive and robust' approach to challenging perpetrators, both in terms of the risk imposed to victims/survivors and in terms of effective interventions to change their behaviour. This includes having a clear plan to ensure that perpetrators are brought to justice and that community interventions are considered as an alternative to justice.⁵⁸

Participation in accredited perpetrator programmes should never be regarded as a substitute for the appropriate administration of justice, and the views and safety of victims should always be given due weight.

It is of concern that despite reported increases in the number of successful prosecutions for domestic abuse, the Ministry of Justice quotes a 7% reduction in starts on probation accredited Domestic Violence programmes in five years, from 5,100 starts in 2009/10 to 4,727 starts in 2014/15 (34% of all starts on probation accredited programmes), explaining:⁵⁹

"This reduction in part reflects the greater focus on programmes for higher risk offenders and prioritised resources on the reduction of sexual offending."

In 2014/15, Domestic Violence programmes accounted for 3% of all prison accredited programme starts with 290 starts, the same number as in 2013/14.⁶⁰ Given the prevalence of domestic abuse related offences, it may be worth investigating whether sufficient programmes are available to ensure that all suitable candidates are offered the opportunity to take part.

The Ministry of Justice has described the evidence on the effectiveness of some perpetrator programmes as '*mixed/promising*' and recommends:

*"Future evaluations of programme effectiveness require clear explanations of how domestic violence is defined, identified and measured."*⁶¹

This is reflected in the 2016 literature review by the Institute of Education and accompanying evaluation commentary, which concluded that while no clear impact of domestic violence perpetrator programmes has been identified, and that effects on further victimisation have been small:⁶²

⁵⁸ Home Office (2016) Violence against women and girls services: Supporting local commissioning, London: Home Office

⁵⁹ Ministry of Justice (2015) Accredited Programmes Annual Bulletin 2014/15 England and Wales, London: MoJ

⁶⁰ Ibid

⁶¹ Ministry of Justice (2014) Transforming Rehabilitation. A summary of evidence on reducing reoffending (Second edition), London: MoJ

⁶² Vigurs, C., Schucan-Bird, K., Quy, K., Gough, D. (2016) What Works: Crime Education Systematic Review

“When deciding whether to commission or fund DVPPs, consideration should be given to how the programme is expected to work, the outcomes that are being sought, and how success is best measured.”

The 2015 final report of Project Mirabal (which evaluated the outcomes of voluntary perpetrator programmes) recorded a number of measures of success which offer promising evidence of positive outcomes for victims/survivors.⁶³

In conclusion, in order to protect victims/survivors of domestic abuse and prevent further abuse taking place, it is important that robust, accredited perpetrator programmes should be made available in appropriate cases, both in prison and in the community.

Conclusion

We appreciate that the Judicial College is the body responsible for judicial education and training but the Sentencing Council also has an important role to play in ensuring through its guidance that sentencers have a good understanding of the gendered dynamics within domestic abuse and coercive relationships, and that this is applied in the sentencing process to ensure fair outcomes for women who are accused of domestic abuse related offences. In cases which result in a woman’s conviction for a domestic abuse related offence committed against a primary aggressor, a nuanced approach is required. The provision and quality of pre-sentencing reports is essential to ensure sentencers are able to take appropriate account of the defendant’s experience of abuse, and sentencers must receive appropriate information, guidance and training to ensure they impose the most appropriate and proportionate sentence.

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⁶³ Kelly, L, and Westmarland, N. (2015) Domestic Violence Perpetrator Programmes: Steps towards change, Durham: Durham University