

Prison Reform Trust evidence to the Sentencing Council consultation on the proposed guidelines for modern slavery offences – January 2021

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

The Prison Reform Trust's main objectives are:

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

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Question 1: Do you have any comments on the proposed culpability factors?

We welcome the addition of “engaged by pressure, coercion or intimidation” as a mitigating factor in assessing lower culpability. However, it is important to recognise that apparent involvement at a higher level of culpability may also be a result of coercion, pressure or intimidation, which may be less apparent. We include the following case study taken from PRT’s 2018 report *Still No Way Out*¹ to illustrate our point:

Cristina’s story – Case study of prosecution of trafficking victim

Cristina is a Romanian national who came to the UK when she was 19 years old, having begun a relationship a few months previously. Her boyfriend treated her well until they arrived in the UK, when he forced her to enter into prostitution and started hitting her regularly. Cristina tried to escape and went to the police. She explained everything to police officers but was left alone when leaving the police station. Her boyfriend had followed her there and picked her up in front of the police station, throwing her mobile phone in the bin and forcing her into the car. Cristina was exploited for years before being arrested by the police during a raid. She was convicted and sentenced to six years for controlling prostitution, despite being a victim herself. Later, while in HMP Peterborough, she disclosed everything to a Hibiscus project worker and the

¹ Prison Reform Trust (2018) [Still No Way Out](#): Foreign national women and trafficked women in the criminal justice system, p.35

immigration officer who acted as a first responder in her case. Although she was officially recognised as a victim of modern slavery, Cristina remained in prison until the end of her sentence and was deported to Romania on her early release date.

Similar concerns relate to ‘county lines’ operations where young people are used to transport large quantities of drugs or cash from one location to another. In many of these cases, a young person may be seen to be involved at a higher level in the operation than is actually the case, potentially placing them at risk of prosecution for a modern slavery offence. This is because they may be coerced into admitting a higher level of responsibility, in order to protect others higher up the chain of command.

In practice, therefore, it will be important to establish how sentencers should carry out the balancing exercise when assessing the appropriate level of culpability. If, for instance, someone is found to have been pressured, intimidated or coerced into offending, there should be a presumption that this factor places them in the lower level of culpability, even when there are other factors which might place them in a higher level. Furthermore, in its response to the consultation, the Sentencing Academy has suggested adding an additional factor indicating lower culpability of ‘the offender has been a victim of slavery/ trafficking related to this offence’. We believe this proposal merits careful consideration, as it would allow previous victimisation to be taken into account in the consideration of culpability, even when the offender has not been engaged directly by pressure, coercion or intimidation in the offence (this is particularly relevant to the consideration of the case study involving Christina, above).

In addition, we support the points made by the Sentencing Academy in its response on the need for greater clarity regarding specific factors, including the difference between “substantial” and “significant” financial advantage, and the need to distinguish between the “threat” and the “use of” physical or sexual violence in assessing culpability.²

A failure to identify whether or not an individual has been engaged in offending through intimidation or coercion, or has previously been a victim of a modern slavery offence, may also result in them being assigned a higher level of culpability than is justified. At the very least, factors indicating greater or lesser role culpability should always be addressed in a pre-sentence report. Sentencers should also have a clear understanding of the complexities of modern slavery, and have access to training and guidance on the subject. For instance, the guideline should include clear links to relevant sections of the Equal Treatment Bench Book.

Question 4: Do you have any comments on the proposed sentence levels?

We accept that the Council has set out the proposed sentences levels after considering sentence levels in guidelines for similar offences. However, we are concerned that the current starting points and category ranges provide no option for sentencers to impose a community sentence other than at the lowest levels of culpability and harm.

The consultation acknowledges that Parliament’s intention to increase the maximum sentences available to courts for the most serious offences should not have an impact on sentence levels at the lower end of culpability and harm. It is unclear, therefore, why the draft guideline has only limited options for sentencers to pass non-custodial sentences at the lower level of seriousness.

² Sentencing Academy (2021) [Response to Consultation: Modern Slavery Guideline](#), London: Sentencing Academy

At this level, a full range of non-custodial options should be available to sentencers. As government acknowledges, ‘often a well-structured community order can have a greater impact than a very short term of custody’, including but not limited to a smaller proven reoffending rate.³

The draft guideline includes a high-level community order as the lower category range for C4. However, the lower category range of all other options is imprisonment. We also note with concern the point made by the Sentencing Academy in its response to the consultation that the guideline is likely to result in fewer suspended sentences being passed, since the starting point sentence is at least three years in 11 out of 12 cells.⁴ There was an increased use of suspended sentences in 2019 for both Section 1 and Section 2 offences. We would encourage wider use of the sentencing option rather than less. Therefore, we recommend that the option of a community order is included in the lower category range of B4, the starting point of B4 is revised to two years, and the lower category range of C3 is revised to two years.

Question 5: Do you have any comments on the proposed aggravating and mitigating factors?

We welcome the inclusion of the mitigating factor “Offender has been a victim of slavery/trafficking, whether or not in circumstances related to this offence (where not taken into account at step 1)”. As highlighted above, we believe that the Sentencing Academy’s proposal to add an additional factor at step one indicating lower culpability of ‘the offender has been a victim of slavery/ trafficking related to this offence’ merits careful consideration.

We recommend that this section includes a link to the Equal Treatment Bench Book highlighting sections relevant to mitigating factors.

Question 9: Do you have any comments on the approach to section 30 guidance?

The draft guideline asks sentencers to select from a wide number of breach offence guidelines, and allows them a considerable degree of latitude in how they are applied. It might be helpful to provide additional guidance and examples to help sentencers determine which guidelines may be more relevant and appropriate for different types of section 30 offences.

Whatever guideline is used, imposing a custodial sentence for breach should be a last resort. Only where the breach is ‘very serious or persistent’ should a custodial sentence be contemplated. This should 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 ‘very serious or persistent’. We note the stepped approach to breach, and inclusion of a range of community order options, in the majority of the guidance cited. However, we would again highlight the futility of very short prison sentences and emphasis a community order as an often better alternative to such sentences. The conditions and requirements imposed as part of a community order should be appropriate, and take into consideration the particular abilities and support needs of individual offenders to avoid

³ Ministry of Justice (2020) [A Smarter Approach to Sentencing](#), London: MoJ

⁴ Sentencing Academy (2021) [Response to Consultation: Modern Slavery Guideline](#), London: Sentencing Academy

unreasonable or unrealistic expectations being imposed without appropriate support and other reasonable adjustments also being put in place.

Question 12: Are there any other equality and diversity issues the guidelines should consider?

Clear links to the Equal Treatment Bench Book should be included throughout, flagging sections on Modern Slavery, Children, Young People and Vulnerable Adults, Physical Disability, Mental Disability, Intercultural communication for those speaking English as a second language and Effective Use of Interpreters, which are welcome resources.

Individuals whose offending is a result of coercion, intimidation or exploitation are afforded specific protection under provisions of the Modern Slavery Act and the UK has obligations under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially to women and children (United Nations 2000). Despite this, evidence from recent police and Crown Prosecution Service (CPS) inspectorate reports, as well as research by PRT and Hibiscus Initiatives, suggest a continuing failure to ensure victims of trafficking are identified, protected and supported in a timely fashion as required under section 45 of the Act and associated policies.

We are concerned that there is a particular failure to identify, protect and support female victims of trafficking, which would avoid them being prosecuted for offences committed as a consequence of their exploitation by traffickers. Women often do not disclose themselves as such and defense lawyers often do not ask the right questions in order to establish whether their client might be a victim of trafficking.⁵ We note that a disproportionate number of women are sentenced to modern slavery offences. It will be important to determine whether or not women are being inappropriately prosecuted for offences of which they themselves may be victims. The Council may want to consider this issue as a subject for further research. It is also important to ensure appropriate training and guidance for sentencers to help them recognise potential victims of modern slavery. We include the following case study taken from PRT's 2018 report *Still No Way Out*⁶ to illustrate our point:

Linh's story – Case study of prosecution of trafficking victim

Linh is a Vietnamese woman speaking no English, remanded in prison for cannabis production. During her initial needs assessment interview, Hibiscus identified Linh as a victim of trafficking and referred her case to the first responder.

Linh was raised in a farming family in Vietnam and has three children. She ran away from her abusive husband who deployed her as a drug mule. Working as a waitress in Hanoi, Linh was promised a better job abroad by some regular customers. She was taken with six or seven other women and girls, travelling first to Russia before being led on foot through the countryside to Slovakia, then taken at night by boat to the Czech Republic where they were forced to hand over their passports and money, taken to a house and forced to have sex with men who visited. Later, Linh was taken to the UK in the back of a lorry and left near a train track. She met a

⁵ Prison Reform Trust (2018) [Still No Way Out](#): Foreign national and trafficked women in the criminal justice system

⁶ Ibid, p.35

woman who promised to find her a job. She was then trafficked within the UK, forced into prostitution and cannabis production.

Hibiscus supported Linh for five months while she was in prison, working closely with her criminal solicitor and immigration solicitor as well as the first responder, until she was recognised as a victim of human trafficking by the competent authority. Her charges were then dropped and she was released into safe accommodation with specialist support.