



Still No Way Out

Foreign national women and trafficked women in the criminal justice system

Summary report

About the Prison Reform Trust

The Prison Reform Trust (PRT) 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. Our Transforming Lives strategy to reduce the unnecessary imprisonment of women, supported by the Big Lottery Fund, includes a specific objective to reduce the disproportionate imprisonment of foreign national women and trafficked women. For further information about Transforming Lives see: www.prisonreformtrust.org.uk/women

PRT's Advice and Information Service provides information to women and men in prison on prison rules, life in prison, prisoners' rights, prison conditions and how to get help in prison and can be contacted at: Prison Reform Trust, FREEPOST ND 6125, London EC1B 1PN or by freephone on 0808 802 0060.

About Hibiscus Initiatives

Established in 1986, Hibiscus Initiatives (Hibiscus) is a leading specialist charity, committed to supporting foreign national people involved in the immigration and criminal justice systems. Thirty years on, their expertise and depth of experience is widely valued. While women remain the main focus of Hibiscus' work, the organisation assists some men in similar circumstances. The work falls into four broad areas:

- Advocacy and welfare advice in prison
- Assistance and support with return and reintegration to home countries
- Assistance with community resettlement and reintegration in the UK
- Mentoring support in prison and the community.

Identification and support of victims of human trafficking is embedded in all areas of Hibiscus' work. For more information see: www.hibiscusinitiatives.org.uk

Credits and acknowledgements

This report is the result of collaboration between PRT and Hibiscus, as part of PRT's Transforming Lives programme. It was prepared by Katy Swaine Williams with Zoey Litchfield and Dr Jenny Earle, with assistance from Ryan Harman and volunteer Lauren Nickolls of PRT, and in consultation with Adrienne Darragh, Michaela Jarosinska and Vanna Derosas of Hibiscus. The report includes an analysis of caseload data and case studies prepared by Michaela Jarosinska of Hibiscus, and the views of women expressed at a focus group led by PRT and hosted at Hibiscus' specialist women's centre in London in June 2017.

We would like to thank Liz Hogarth OBE (Trustee of Hibiscus), Paramjit Ahluwalia (barrister), Philippa Southwell (solicitor advocate) and Dr Liz Hales for commenting on drafts and all those who took part in our roundtable on 19 July 2018. We are particularly grateful to all the foreign national women who took part in our research, whose insights are invaluable in developing a more just and humane criminal justice system.

This is a summary and overview of the full report which can be accessed online and contains further detailed information about the policy frameworks, the research and the evidence gathered to underpin our recommendations.

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Methodology and scope of this report

This report considers the experience of foreign national women and trafficked women in the criminal justice system in England and Wales. It draws upon data from a number of sources, including published statistics, freedom of information requests and parliamentary questions, inspectorate reports and research studies as well as evidence gathered by Hibiscus.

Analysis of Hibiscus' caseload data 2013-2017

Hibiscus analysed three sets of data gathered through their work with foreign national women. Although the numbers of women involved are relatively small, this provides an important insight into women's experiences that is not available from other sources.

Quantitative analysis: The cases of 585 women service users in prison were reviewed, drawing out quantitative data relating to their experiences. These women received services from Hibiscus in two prisons between 2013 and 2017.

Qualitative analysis: This draws on the cases of 182 women who received services from Hibiscus in prison between April 2016 and March 2017.

Trafficking caseload analysis: Data was analysed from the cases of 45 women in prison whom Hibiscus case workers identified as victims and potential victims of trafficking between February 2013 and March 2017.

Freedom of information request

The government does not routinely publish criminal justice data broken down by gender and nationality except quarterly snapshot prison numbers. These figures do not reflect the total number of women received into prison over the course of a year ('receptions data') and show a preponderance of people serving longer sentences. In response to a freedom of information request by PRT, in February 2018 the Ministry of Justice provided receptions data which is referred to under Key Facts.¹

Focus group, June 2017

A focus group was held by PRT at Hibiscus' specialist women's centre in North London on 1 June 2017. Seven women service users took part, all of whom had been told about the purpose of the event and freely consented to participate.

Roundtable consultation, 19 July 2018

We held a roundtable meeting in the House of Lords on 19 July 2018, hosted by Baroness Hamwee and chaired by Anne Fox, CEO of Clinks, at which the report's draft findings and recommendations were considered. Attendees included representatives of the judiciary, CPS, police, probation, prisons, Ministry of Justice, Police and Crime Commissioners, parliamentarians and voluntary sector agencies, as well as two foreign national women with experience of the criminal justice system who participated with support from Hibiscus. These discussions informed the final report.

Key facts

- Foreign national women represent 8% of the general population in England and Wales², but over 12% of all women received into prison each year and nearly 19% of those remanded³.
- This has come down since 2013 when foreign national women represented 17.5% of all women received into prison and 23.3% of those remanded.⁴
- Foreign national men and women accounted for nearly a fifth of self-inflicted deaths investigated by the Prisons and Probation Ombudsman in 2015–16.⁵
- Most (59%) of the foreign national women in prison in England and Wales on 30 September 2017 were from Europe, with the largest groups from Romania and Ireland.⁶ The most common countries of origin have remained consistent since 2013, apart from a decrease in the number of imprisoned Vietnamese women.⁷
- Of 585 foreign national women in prison supported by Hibiscus from 2013 to 2017:
 - Nearly half (49.7%) were held on remand. Of those sentenced, 49% were serving short sentences of one year or less, with 15% serving three to six months and 14% serving one to three months.
 - The offences for which foreign national women are imprisoned are overwhelmingly non-violent. The most common offences for which the women were in prison were fraud (18%), theft (18%) and false document offences (10%). These are all indicator offences for trafficking and coercion.
 - 57% of the women did not speak any English and required an interpreter.
 - 38% (222 women) disclosed that they had dependent children. For over a fifth of these women, their children were five years old or under.
- Amongst 182 foreign national women in prison supported by Hibiscus from 2016 to 2017, 53% had problems relating to their immigration status.
- Over half (56%) of all foreign national women prisoners in England and Wales are located in three prisons: HMP Bronzefield (27%), HMP & YOI Peterborough (18%) and HMP Downview (11%).⁸ The other 44% are dispersed across the women's prison estate.
- Support for foreign national women in prison, such as interpreting and immigration legal advice, varies considerably and resettlement support is generally poor.⁹ They are rarely considered for open conditions and Release on Temporary Licence (ROTL).¹⁰ As at 31 December 2017 there were only two foreign national women held in open conditions¹¹, severely restricting access to ROTL¹².
- The Modern Slavery Act 2015 introduced a defence for victims of modern slavery compelled to commit a criminal offence.¹³ Yet evidence confirms that victims of modern slavery continue to be prosecuted for crimes they were forced to commit.
- Hibiscus identified 45 women in prison as victims or potential victims of trafficking from February 2013 to March 2017, all of whom had disclosed information about their exploitation. They were in prison for between one and three months to up to three years, with four remaining in prison at the time of completing the data analysis.

Background

...[My probation officer later] said that if the judge had seen a presentence report about me probably my sentence wouldn't have been ... a 20 month sentence, for a first time...too harsh and too quick as well...and I think all that was because I was a foreign national.

Hibiscus focus group, June 2017

Six years on from the No Way Out briefing¹⁴, which highlighted the over representation of foreign national women in prison in England and Wales, their particular vulnerabilities and the barriers to justice that many face, it is time to review progress. Whilst there has been a decrease in both the number and proportion of foreign national women in prison, the reasons for this reduction are not clear and they remain over represented.

The Ministry of Justice's Female Offender Strategy, published in June 2018, acknowledges the unique challenges faced by foreign national women in the criminal justice system and expresses a commitment to improve outcomes for this particularly vulnerable and disadvantaged group.¹⁵ This is welcome progress after successive calls for a strategic approach have previously been ignored.¹⁶

There is little published information about foreign national women in the criminal justice system so this report aims to shine a light on their experiences and make practical proposals for reform. The insights gained from the women supported by Hibiscus, as well as prison inspections, indicate that outcomes for foreign national women have not improved and in some respects have got worse. The stories and statistics included in the report reveal a picture of inadequate legal representation, disproportionate punishment, isolation, fear, trauma and confusion experienced by the women themselves, with similar repercussions for their children. Meanwhile many women reported to Hibiscus that the atmosphere following the EU referendum has become even more hostile to 'foreigners'.

The overarching aim of government policy in recent years has been to deport 'foreign national offenders' as quickly as possible¹⁷, the stated intention being to create a 'hostile environment' for those who do not have a right to be in the UK¹⁸. In the context of the Windrush scandal, which has exposed the unlawful treatment, including deportation, of people wrongly designated as foreign nationals, the Home Secretary has signalled his intention to move away from 'hostile environment' terminology and take a more humane approach to migrants.¹⁹ This resonates with the government's stated commitment to tackle unfair and discriminatory treatment of Black, Asian and minority ethnic people, and with recommendations made by the All-Party Parliamentary Group for Ending Homelessness to increase legal aid funding for immigration advice and to tackle the poverty and injustice faced by many migrants in the UK.²⁰

Where women are fearful of deportation they may not report crimes of sexual and domestic violence to the police or seek support,²¹ so the Home Secretary must act. The post-Lammy 'explain or reform' agenda for tackling racial bias in the criminal justice system must include addressing the treatment often unfairly afforded to those labelled as a 'foreign national offender'. However progress can only be monitored if criminal justice data disaggregated by gender, race/ethnicity and foreign national status, are collected and regularly published.

What does it mean to be a foreign national woman in the criminal justice system?

'Foreign national offender' is a broad term encompassing those convicted of any offence without evidence of British nationality. They may have arrived as children with their parents or may be second generation, often from former colonies; they may be asylum seekers or have indefinite leave to remain as refugees; they may be European and European Economic Area nationals or Irish nationals; they may be trafficked persons; they may have been arrested entering or leaving the UK on false documents. Also included are those who have entered the UK illegally and those who came legally as students, visitors or workers. The extent to which Windrush immigrants in contact with the criminal justice system may have been wrongly designated as foreign nationals is unknown.

Where the immigration status of a foreign national suspect, defendant or prisoner is unclear, criminal justice agencies generally proceed on the basis that they are liable for deportation or removal. Women classed as foreign nationals may have lived legally in the UK for many years, in some cases since childhood, and may regard themselves as British. They may have dependent children; yet their leave to remain may be revoked following a criminal conviction, so that they face possible removal or deportation to a country where they have no connection, leaving family and community behind.²²

A foreign national person who has been sentenced to 12 months imprisonment or more is subject to automatic deportation from the UK unless a defined exception applies. A range of other circumstances may make a foreign national person liable for deportation or removal where they have been convicted of an offence. They may also be detained for immigration purposes after the end of a prison sentence, either in prison or in an immigration removal centre²³, subject to limitations established by domestic case law and by the European Court of Human Rights.²⁴ Guidance under the Immigration Act 2016 is intended to reduce the detention of vulnerable people and the length of detention before removal. However critics call for a maximum time limit, for automatic judicial oversight of decisions to detain and for community alternatives.²⁵ A small number of women continue to be detained for immigration purposes in prison, post-sentence (18 women as at 30 June 2017).²⁶

Operation Nexus, the government's action plan to increase the removal of foreign national offenders whether or not they met deportation criteria, was set up to focus on 'high harm' offenders but was criticised for mission creep.²⁷ In July 2017 the Supreme Court found the government's 'deport first, appeal later' approach to be unfair and unlawful.²⁸ A further legal challenge to the government's deportation policy is being brought by the Aire Centre.

The government has been criticised by some for not removing foreign national offenders more quickly,²⁹ while the National Audit Office's 2014 report called for a full end-to-end review of the deportation process.³⁰ In its 2016 report on the work of the Immigration Directorates, the Home Affairs Committee concluded that the government 'should have done better' in deporting offenders with EU citizenship.³¹ The Home Office responded that the number of offenders removed from the UK in 2015-16 was the highest since records began.³² None of these reports consider women, who are rarely high harm offenders but who suffer the consequences of policies framed in response to such offending by (mainly) men.

Accounting for the reduced number of foreign national women in prison

The government aim to remove foreign national offenders as quickly as possible³³ may have contributed to the fall in numbers of foreign national women in prison. Another key factor is the marked reduction in drug importation offences and welcome changes to the sentencing guidelines for such offences.³⁴

There is nonetheless a continuing over representation of foreign national women in prison, particularly amongst those on remand. This may be due to the way in which bail criteria are applied by the courts, such as evidence of community ties, a suitable bail address, the provision of surety or security and perceived risk of absconding. For defendants who may be subject to deportation proceedings, this weighs in favour of custodial remand, even where deportation is unlikely or contestable.

There is no strategic approach to the diversion or rehabilitation of foreign national women in the criminal justice system who may in fact legitimately remain in the United Kingdom long term. There is no monitoring of their access to court disposals or community sentencing options. Probation services are not contractually required to provide services that meet their specific needs, although this should be understood as part of the Secretary of State for Justice's duty under Section 10 of the Offender Rehabilitation Act 2014.ⁱ Hibiscus has found that since the Transforming Rehabilitation reforms to probation, foreign national women are often left to fall through the gaps.

Multiple disadvantages faced by foreign national women

As recognised by Baroness Corston,³⁵ foreign national women face a range of challenges and vulnerabilities. For many, English is not their first language. They are more likely than British women to be from a minority ethnic group and subject to compound disadvantage and inequality.³⁶ Uncertain immigration status may lead to financial insecurity where women are unable to claim benefits or work legally. Fear and a lack of confidence in the authorities may deter them from seeking help through official channels. Like British women, many foreign national women in prison are primary carers of dependent children and many have underlying physical and mental health problems.

Despite the state's obligation to provide independent, accredited interpreting and translation services in criminal proceedings, women continue to report difficulties. Inspectorate reports suggest that provision varies widely. There is no requirement to provide a suitably qualified female interpreter where requested. Unless women can make themselves understood and feel able to speak about the circumstances of their alleged offence, which may involve abuse and coercion, criminal justice agencies cannot make informed decisions about arrest, detention, conviction and sentencing.

Survey results from an inspection of the foreign national women's wing at HMP & YOI Peterborough suggest that a dedicated unit may facilitate women's access to some specialist support.³⁷ However the overriding purpose of the unit is to expedite deportation,³⁸ and the same survey reveals that the women there have much poorer experiences than British women in areas such as resettlement. Most foreign national women are held in other prisons where support is variable and very few have access to Home Detention Curfew or Release on Temporary Licence.

ⁱ This is a duty to identify and address the needs of women.

Prosecution of trafficked women

Foreign national women are more likely than British women to have been victims of trafficking.³⁹ Prosecutions for trafficking are increasing year on year, but official estimates of the extent of trafficking vastly outstrip these figures.⁴⁰ Women and girls account for over half the victims referred to the National Referral Mechanism (NRM).⁴¹ In some cases, women's exploitation includes direct coercion to commit offences such as cannabis production, prostitution related offences, begging and theft. In other cases their adverse experiences may have left them vulnerable to offending even some time after they have escaped, for example where traffickers have stolen their identity documents or given them false papers. These women are likely to have been vulnerable before they were trafficked, as a result of poverty, domestic abuse or other circumstances.

The UK government's resolve to improve the response to human trafficking and modern slavery offences included appointing an anti-slavery commissioner in 2015. His resignation in May 2018, when he raised concerns about the lack of progress, is worrying.⁴² A statutory defence is in place for victims of human trafficking and modern slavery who are coerced or compelled to commit offences (section 45, Modern Slavery Act 2015). Yet evidence from Hibiscus, confirmed in recent police and Crown Prosecution Service (CPS) inspectorate reports, suggests a continuing failure to ensure victims are identified, protected and supported in a timely fashion.⁴³ Further information is needed about the impact of reforms to the NRM announced in October 2017.⁴⁴

For women who have not been trafficked but whose offending has been driven by abuse or coercion, there is no statutory defence. The forthcoming Domestic Abuse Bill presents an opportunity to remedy this.⁴⁵

Linh's story - 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 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.

Findings and recommendations of No Way Out (2012): action needed

Many of the proposals made in our 2012 No Way Out briefing remain relevant, including the need for a well informed national strategy for the management of foreign national women in the justice system, taking into account the following recommendations:

- Nationality should not prejudice court decisions and foreign national women should be included in any objectives to divert women from custody, both in the context of the remand and sentenced population.
- Where there is evidence of coercion, exploitation and duress this should be considered integral to all decisions within criminal justice proceedings in compliance with the United Nations Protocol to Protect Victims of Trafficking.
- Unless they pose a threat to UK security, those arrested on passport charges at point of departure en route to their country of origin should not necessarily be charged with a criminal offence. Instead they could be allowed to return to their country of origin where matters can be dealt with.
- Foreign national prisoners with contested or uncertain immigration status should be guaranteed independent immigration advice and should not have to enter a plea on a criminal matter until legal advice has been provided.
- Decisions on the management of foreign prisoners and detainees should include consideration of the welfare and human rights of their children.
- Courts should be fully informed about dependent children, where necessary deferring sentencing until suitable arrangements are put in place. If the mother faces a custodial sentence, where the child is under six months, then she should be assessed for a place in a mother and baby unit prior to sentencing.

We reiterate the above proposals and set out our updated findings and recommendations in the following section.

Findings and recommendations

Findings

1. Foreign national women are still over represented in prison, especially on remand.

- 1.1 Despite a reduction in the number and proportion of foreign national women in custody they remain over represented, particularly on remand. Most are imprisoned for non-violent offences, predominantly theft, fraud and false document offences, and many have dependent children. There is a perception of bias in remand and sentencing decisions amongst foreign national women and the services that support them.
- 1.2 It has long been recognised that foreign national women in the criminal justice system face particular disadvantages.⁴⁶ Yet the only strategy in place is the government-wide policy to remove from the UK any offender deemed not to have the right to be here. This is a barrier to fair and proportionate treatment of those facing proceedings for non-violent, minor offences, many of whom may legitimately remain in the UK long term.
- 1.3 Little is known about foreign national women's access to out of court disposals and community sentencing although police report that they are less likely to use out of court disposals. There is no strategic approach nationally or locally to providing appropriate interventions and ensuring equitable outcomes.
- 1.4 Recent changes to court practices, including Transforming Summary Justice⁴⁷ and Better Case Management⁴⁸ in the Crown Court, have contracted the timescales for prosecutions. This can mean that the criminal justice process concludes before the NRM process is complete. It also allows less time to enable women to make disclosures about the background to their alleged offence.
- 1.5 Research shows that the falling number of pre-sentence reports (PSRs) produced between 2012 and 2017 is strongly linked to a decline in community sentencing and that an increase in the use of PSRs could reverse this.⁴⁹ A PSR can be particularly important for foreign national women.
- 1.6 The use of custody could be reduced if suitable accommodation was made available. When bail is refused, children may not be taken into account as they should be.⁵⁰ Where the defendant is pregnant, this should also be taken into account. The impact of maternal imprisonment can be particularly traumatic for dependent children of foreign national women.
- 1.7 The limited availability of official data about foreign national women in the criminal justice system and failure to monitor outcomes impede both understanding of their over representation in custody and progress to address this.
- 1.8 Foreign national women are more likely than British women prisoners to belong to a minority ethnic group.⁵¹ Disparities in the treatment of, and outcomes for, minority ethnic women and girls in the criminal justice system can only be overcome using a gendered approach.⁵²

2. There is a continuing failure to identify and avoid prosecuting victims of trafficking and modern slavery.

- 2.1 There are no official data on the number or experiences of victims of trafficking who are wrongly prosecuted for offences carried out due to exploitation. This constrains any meaningful assessment of the extent to which criminal justice agencies are discharging their legal responsibilities towards victims of trafficking who present as offenders.
- 2.2 Evidence collated by Hibiscus and from inspectorate reports suggests that, despite police and prosecution guidance, there is a disturbing failure to identify, protect and support victims of trafficking at an early stage and avoid prosecuting them for offences committed as a consequence of their exploitation by traffickers.⁵³
- 2.3 College of Policing guidance is clear that where an individual raises the section 45 defence⁵⁴ *before* a police interview, he or she should be offered a separate interview about their experience of trafficking and a NRM referral should be made. However the guidance fails to specify that where this is raised *during* a police interview the same steps should be taken.
- 2.4 Defence lawyers often do not ask the right questions in order to establish whether their client may be a victim of trafficking and some fail to advise women where appropriate about the section 45 defence.
- 2.5 It can be difficult for defence lawyers to apply successfully for proceedings to be moved to a different court in order to safeguard defendants going through the NRM process. Difficulties in obtaining suitable bail accommodation can lead to such defendants being remanded in custody.
- 2.6 Some training is available for judges and magistrates in relation to trafficking and in relation to women's caring responsibilities but more is needed. The Equal Treatment Bench Book, which includes new sections on Modern Slavery, Intercultural communication for those speaking English as a second language and Effective Use of Interpreters, is a welcome resource.
- 2.7 The National Probation Service (NPS), HM Prisons and Probation Service (HMPPS) and Community Rehabilitation Companies (CRCs) are not 'first responders' (with a duty to refer to the NRM). The government advises that further information and training on this will be provided later in 2018. The NPS is starting to raise awareness of human trafficking and modern day slavery and has established a working group.

3. Foreign national women have distinct needs requiring specialist, women-specific support but provision is patchy in prison, in the community and throughout the criminal justice process.

- 3.1 Some foreign national women experience insecure immigration status, social isolation, coercion or trafficking and legal barriers to working or claiming benefits, leading to an increased risk of poverty. Many are inherently vulnerable within the criminal justice system due

to language and cultural barriers, and report feeling disempowered and confused. Their difficulty is compounded by the interaction of criminal justice and immigration proceedings and the NRM process.

3.2 Foreign national women need independent legal advice as early as possible, including legal aid immigration advice before entering a plea, and while in prison, but this is rarely provided.ⁱⁱ In an adversarial system the quality of legal advocacy is key, but defence lawyers often fail to raise factors such as abuse and trafficking early in the criminal justice process. They often lack expertise in the interaction between criminal and immigration proceedings and may not appreciate the risks of deportation if a woman receives a custodial sentence of over 12 months.

3.3 Interpreting services are widely viewed as inadequate. Not enough time is allocated to interpreters, especially where there is a history of trauma. There is no requirement for a qualified female interpreter to be provided even if requested.

3.4 Foreign national women report feeling more isolated and less safe in custody than British women, except those supported by specialist services such as Hibiscus, who report tangible gains. Prisons face significant challenges in meeting the needs of foreign national women and trafficked women in prison, due to a lack of information about prisoners before their arrival, the churn of women serving short sentences and a lack of resources for 'non-core' activities.

4. Foreign national women in prison receive little or no access to rehabilitative opportunities in prison and poor resettlement planning and support.

4.1 Official data and prison inspectorate reports show that access to open conditions, Release on Temporary Licence (ROTL) and Home Detention Curfew (HDC) remain very limited for foreign national women in prison. This is despite the fact that most have been convicted of non-violent, often minor, offences and many may not ultimately be deported.

4.2 Most foreign national women receive very poor levels of resettlement support. In implementing the Transforming Rehabilitation reforms, the government failed to require 'through the gate' service providers to address their distinct needs. Confusion over the respective responsibilities of prisons, the NPS and CRCs has created additional difficulties for foreign national women, who are at increased risk of getting 'lost in the system'.

4.3 Where foreign national women are released from prison with no recourse to public funds and no right to work, probation services rely on charitable organisations to offer support, which is often unavailable. It may be impossible for these women to escape a cycle of reoffending linked to their own or their children's survival.

5. A small number of foreign national women continue to be held in prison for immigration purposes after the completion of their sentence. This is unacceptable.

ⁱⁱ According to BID UK's most recent legal advice survey, only 3 out of 50 detainees received any advice about their case from an immigration solicitor while they were in prison. (BID (2018) Legal advice survey – Spring 2018, BID: London)

Recommendations

1. The UK and Welsh governments must adopt a strategic approach to achieving equal treatment and better outcomes for foreign national women in the criminal justice system.

1.1 The Ministry of Justice's Female Offender Strategy provides the framework for developing a clear set of expectations and measures to improve outcomes for foreign national women, in partnership with the Home Office.⁵⁵ These should also be included in the blueprint for women offenders being developed in Wales and in the forthcoming UK government strategy on victims. Consultation with specialist services and foreign national women must inform implementation.

1.2 The measures adopted should ensure compliance with the public sector equality duty and with Rules 54 and 55 of the Bangkok Rules (UN Rules for the Treatment of Female Prisoners and Non-Custodial measures for Women Offenders), which require prison authorities to address the distinct needs and multiple discrimination often experienced by women from different religious and cultural backgrounds.

1.3 The Ministry of Justice must ensure that contractual arrangements for offenders' support and supervision address the needs and circumstances of foreign national women, in accordance with section 10 of the Offender Rehabilitation Act 2014.

1.4 The Ministry of Justice and Home Office must work together to ensure and monitor women's access to accredited, independent interpreting and translation services, including suitably qualified female interpreters where requested.

1.5 Foreign national women must be given equitable access to:

- out of court disposals
- bail as an alternative to custodial remand
- community sentencing where appropriate
- open conditions, ROTL and HDC for women who are imprisoned
- custody planning and resettlement support in preparation for release.

The policy of removing those who do not have the right to be in the UK must not be an automatic barrier to community-based outcomes/resolutions.

1.6 Criminal justice and immigration agencies should consider the dependent children of foreign national women, both in relation to establishing the strength of community ties and to take account of the impact on any children of their mother's imprisonment. The barriers that can

deter foreign national women from disclosing that they have children need to be understood and tackled. Children's best interests should be taken into account throughout the criminal justice process.⁵⁶

1.7 The principle of 'explain or reform' adopted by central government, following the Lammy Review of racial bias in the criminal justice system, must be extended to include foreign national status. Criminal justice agencies should publish data disaggregated by gender, ethnicity, foreign national status, religion, status as a victim or potential victim of trafficking, and offence category. This data should:

- include outcomes at the point of arrest, guilty plea and conviction rates, all sentencing disposals, prison receptions, remands, releases and recalls;
- inform local authority joint strategic needs assessments and commissioning decisions;
- be appropriately shared by the police, courts, CRCs and NPS and scrutinised for evidence of disproportionality or unmet need;
- specify at what stage of the criminal justice process women have been identified as potential victims of trafficking and modern slavery, whether an NRM referral has been made or 'duty to notify' form completed and by which first responder;
- enable criminal justice inspectorates to monitor progress.

2. Trafficked women should not be prosecuted.

2.1 Measures to ensure this should include:

- victims of trafficking are identified at the first point of contact with the criminal justice system or as soon as possible after that point;
- detention is only used where there is no reasonable alternative;
- the principle of non-prosecution of victims of trafficking is consistently upheld and
- the NRM process is adequately resourced to operate efficiently and fairly for women who do face prosecution, including provision of suitable, safe accommodation.

2.2 The Lord Advocate in Scotland's guidance on the non-prosecution of victims of human trafficking and exploitation offers a model of good practice and transparency. The Director of Public Prosecutions should consider whether aspects of the model or other appropriate measures should be adopted in England and Wales in order to achieve greater consistency in prosecutors' non-prosecution decisions.⁵⁷

- 2.3 HM Inspectorate of Constabulary and Fire and Rescue Services should audit implementation of their 2017 recommendations for improving police identification of victims of trafficking, and application of the section 45 defence for those who are coerced into offending. Similarly, HM Inspectorate of the CPS should review compliance with its guidance on non-prosecution.
- 2.4 Where the indicators of human trafficking set out by the United Nations Office on Drugs and Crime⁵⁸ are present, a woman should be immediately referred for a voluntary interview with a specialist agency in a safe, independent space, to establish whether she may have been trafficked. Strong safeguards must be in place, with access to legal advice, to ensure she understands that the interview is not mandatory.
- 2.5 The Home Office should implement measures to strengthen and increase awareness of the section 45 defence.
- 2.6 College of Policing guidance should be amended to make clear that where section 45 is raised during a police interview, the interview should stop and the individual should be offered a separate interview and NRM referral.
- 2.7 We endorse the Equality and Human Rights Commission's recommendation for a requirement on public authorities, including health authorities, schools, prisons, probation services, competent authorities and voluntary organisations performing a public function, to record and report suspected victims of trafficking, and their recommendations for improvements in the treatment of victims of trafficking.⁵⁹
- 2.8 The cross-government work to improve accommodation provision for women offenders and those at risk of offending⁶⁰ must respond to the specific needs of foreign national women and trafficked women, including those with dependent children. This must include supported 'safe house' accommodation where needed, to reduce remands into custody.
- 2.9 Where an individual facing prosecution is referred to the NRM, the prosecution should be adjourned for sufficient time to allow a 'conclusive grounds' decision to be made. Support and protection must be provided to the individual, including suitable bail accommodation for the duration of proceedings. There should be an expectation on prosecutors and defence lawyers to make enquiries regarding progress in reaching a conclusive grounds decision.
- 2.10 HM Courts and Tribunal Service (HMCTS) should consider how it can be made easier for proceedings to be moved to a different court where necessary in order to safeguard defendants going through the NRM process.

3. Criminal justice agencies and legal practitioners must work with specialist women's services to improve the treatment of foreign national women.

3.1 Police and Crime Commissioners, the police, probation providers and courts should work closely with women's specialist services that have relevant language and cultural knowledge, facilitating co-location and making use of liaison and diversion workers where possible. This will enable referral of foreign national women to services and accommodation, and support effective out of court disposals and community sentencing. This objective must inform commissioning processes and funding priorities.

3.2 HMCTS' £1bn transformation programme⁶¹ must take full account of the needs and interests of foreign national women defendants and include them in the equality impact assessments of the proposed changes.

3.3 HMPPS and the Ministry of Justice must ensure consistent access to independent, accredited interpreting and translation services throughout the criminal justice process, including female interpreters where requested, to ensure women understand and can participate in criminal justice and immigration proceedings and the NRM process, and to inform decision making by relevant agencies.

3.4 Government should work with specialist agencies and foreign national women to develop information resources that target foreign national women, trafficked women, the police, prosecution and defence lawyers, the judiciary and magistracy and prison and probation workers, including safer custody departments in prison. The resources should raise awareness of obligations in relation to foreign national and trafficked women, and improve women's own understanding of the criminal justice system, immigration procedures and the NRM.⁶²

3.5 Criminal defence lawyers should receive training on the specific factors affecting foreign national women and trafficked women, including for example:

- the questions they should ask in order to establish whether their client may be a victim of trafficking;
- when it is appropriate to advise women about the availability of the section 45 defence;
- matters to raise in defence and in mitigation;
- an awareness of the potential impact of criminal justice proceedings on immigration matters;
- the interaction between criminal proceedings and the NRM process.

3.6 The Judicial College should continue to develop information and training on factors affecting foreign national women and trafficked women as part of the social context within which the judiciary operate and should monitor awareness and use of the Equal Treatment Bench book.

- 3.7 The Sentencing Council should review the need for further sentencing guidance on the particular vulnerabilities of foreign national women and the proportionality of imprisonment, including in its forthcoming guidelines on modern slavery and immigration.
- 3.8 Training for offender managers should include cultural awareness relevant to their client groups and indicators of human trafficking and coercion. Ministry of Justice commissioning processes should include this as a requirement. The HMPPS Guide to working with women offenders should be amended to address specific considerations for foreign national women.
- 3.9 The NPS and CRCs should ensure that pre-sentence reports always draw the court's attention to relevant factors and pressures, including where the defendant is a potential or known victim of trafficking, and the related processes and protections connected to this status, such as the section 45 defence and NRM referral. There should be a presumption against the use of oral 'on the day' pre-sentence reports for foreign national women. If an adjournment is required for the production of a written report, the defendant should not be remanded in custody unnecessarily.
- 3.10 Specialist support must be provided for foreign national women in prison and upon release, to comply with Rules 54 and 55 of the Bangkok Rules and section 10 of the Offender Rehabilitation Act 2014. Contracts for 'through the gate' services should include a specific requirement to meet the needs of foreign nationals.
- 3.11 HMPPS and the Ministry of Justice should work with women's prison governors, probation services and community agencies to ensure there are programmes of information and support funded for foreign national women offenders, including victim support services where relevant, both in prison and in the community. These efforts should be focused on strengthening and supporting specialist services, as well as improving mainstream provision, through close joint working. The planned roll out of prison key workers must ensure that sufficient time and training is available for key workers to offer adequate support to foreign national women in prison. Local commissioners must evidence consultation and partnership working with specialist organisations and be held to account for this.
- 3.12 The Ministry of Justice, HMPPS and Home Office must work together to address the lack of support available for foreign national women who are released from prison with no recourse to public funds and no right to work, in order to avoid a continued cycle of reoffending.
- 3.13 The Ministry of Justice and HMPPS must work with the Home Office to ensure foreign national women have access to free, independent immigration advice throughout proceedings, including in custody before entering a plea in criminal proceedings.

3.14 Initial training for all prison staff should include recognising the indicators of trafficking and modern slavery and understanding the NRM process. Every women's prison should designate a staff member as a single point of contact for trafficking and modern slavery, with additional training to enable them to make NRM referrals as first responders.

4. The Ministry of Justice and the Home Office must work together to ensure that women are never detained in prison for immigration purposes after the completion of their sentence.

Virginia's story – Impact of Home Office delays

Virginia came to this country from South Africa in 2003 as a visitor and obtained a student visa to study IT. Her life back home had been very hard and she was abused and beaten by her husband who threatened to kill her on several occasions.

When her student visa expired in 2006 Virginia applied for further leave to remain in the UK. Although she received confirmation from the Home Office that they had received her application, Virginia did not hear from them again nor get any decision until ten years later in 2016, when she received a letter refusing her application.

By this time Virginia had been living in the UK for 13 years and had met her current partner who is a British citizen. They have been unable to marry because the Home Office has not responded to Virginia's requests to return her passport. She has tried to make the best of living in limbo and in very difficult circumstances. Virginia was a qualified support and care worker for people with learning disabilities and mental health needs and had obtained a NVQ Level 2.

Unfortunately, in order to be able to work and earn a living, Virginia resorted to using false papers. She was prosecuted for this in 2010 and received a suspended sentence. Virginia wanted to regularise her status and her solicitor tried in vain to get a response from the Home Office regarding her application. In 2015, Virginia tried again to gain work with false papers because she wanted to pay bills and buy food. She was convicted and spent 4½ months in prison. She was not able to attend her son's funeral in South Africa and was offered no support in prison to help her cope with her bereavement. Virginia concludes:

I still can't pay any bills as I am not allowed to work. I am under a great deal of emotional strain and cannot get any medication because I have no recourse to public funds. I consider the way I am being treated is extremely unfair, especially because of the extremely long delay in my immigration case and the difficulties I have been in as a result. I hope the authorities would be more understanding of my situation.

Experiences of foreign national women and trafficked women

The following accounts (and Linh's and Virginia's above) are taken from the focus group held by PRT at Hibiscus' specialist women's centre in London on 1 June 2017, the roundtable consultation on 19 July 2018 and Hibiscus' 2016-17 caseload records. All names have been changed.

Ifede's story - Maternal imprisonment

Ifede is a Nigerian woman who was convicted of fraud and served three months in prison. Her son was doing his GCSEs at the time of her imprisonment. She told us:

Somebody send money to me, abroad, and I have to go and collect it and my passport was in Home Office...so I have to get an extra passport and show my face...and they arrested me. And I said 'yes, it's true I did it'...

I know that I made a mistake...but it's not something that you're supposed to send me to prison. My son was doing his GCSE exam...The parents saw me on that day when they arrested me...took care of my son. They took me to prison. We thought that I would come back. They sentenced me for three months.

My son was just...I left my home in the morning, I couldn't see him again...

Give them [mothers] ...work to do. It is better than putting them in the prison with their children at home. Nobody can take care of them like their mother, no way.

Whenever my son came to see me, oh my gosh, this is not my son I left...I was crying, I was like, 'I don't want him to come'. He said, 'I just want to see my mum'. They brought him. I couldn't recognise him again...I didn't recognise him...

Ifede faces deportation proceedings and is unable to work legally. She attends Hibiscus' specialist women's centre for support. The long-term effect of arrest and imprisonment remains with her and her son:

I'm telling you I'm really depressed. If I see police, if I hear siren...til now it is still in my body since 2006...If I hear some things now. I am not at myself at all. Everything about me just change.

My son will never forget it.

Cristina's story - 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 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.

Sara's story - Impact of deportation proceedings

Sara is Nigerian and has lived in the United Kingdom for nearly 40 years, since childhood. She had Indefinite Leave to Remain but never obtained British citizenship. She had never had any immigration difficulties before she was arrested and was not familiar with the immigration system. After being sentenced to over 12 months in prison for the offence of false accusation, Sara was now fighting deportation proceedings with assistance from Bail for Immigration Detainees (BID) and Hibiscus. She had nine children, all born in the UK. She was told by an immigration official that if she was deported to Nigeria, she could have contact with her children via Skype.

Eight weeks after her release from prison, Sara went to the immigration centre in Croydon and was immediately taken from there to an immigration removal centre where she remained for three months. BID secured her release and she is now signing in regularly with the immigration authorities. Sara explained how these proceedings created additional challenges for her upon release from prison:

When I came out of the prison... when I went to the housing...I was told that I've not been in prison long enough so there's no way they can help me with housing and they needed to see my immigration letters... I got a letter from my bank saying that immigration said I should go back to my country, I had no right to open an account... When I also tried to go back on benefit I was told that immigration said I'm not entitled...Immigration basically ... destroyed me...

When she was in hospital after giving birth, Sara telephoned the immigration authorities to explain she would not be able to sign in. She was told that they might have to come and collect her. This made Sara frightened that social services would take her newborn baby if she was detained. She contacted BID who helped her. Although the immigration authorities have taken no further action, Sara feels in limbo. The deportation proceedings have not been discontinued and she is unable to travel:

I have been out over three years but I'm still facing immigration – it's like a new sentence.

Justina's story - Specialist support transforms lives

Justina is an EU citizen with limited English. Her ex-partner is also an EU citizen and they have a two year old child, of whom Justina was the main carer before her arrest.

Justina's ex-partner was physically abusive to her during their relationship. She was badly beaten several times and the police became involved. She obtained a restraining order but allowed her ex-partner to return to the property when she discovered he was homeless. The violence continued; on one occasion Justina's ex-partner came home drunk and started hitting her. She was scared but, unable to escape, she grabbed a knife to defend herself and stabbed him in the chest. Justina was arrested and detained on remand. She did not remember the incident and was distressed whenever she tried to recall it. Her ex-partner escaped serious injury. Justina was initially charged with grievous bodily harm, but was convicted on the lesser charge of unlawful wounding and sentenced to twenty one months in prison.

Upon arrest Justina agreed for her child to be taken into care. Hibiscus offered practical and emotional support, helping Justina with financial, criminal, family and immigration matters and providing language support and advocacy. While in prison, Justina struggled to cope with the consequences of her domestic abuse. She was detained by the Home Office post-sentence and served with a deportation order. Hibiscus arranged a pro bono barrister to represent Justina at her immigration hearing and worked closely with them. The charity approached an immigration solicitor for help in applying for immigration bail and finding suitable accommodation. Justina was entitled to legal aid for her immigration bail hearing and her solicitor obtained exceptional case funding for the deportation proceedings.

Justina applied for immigration bail but had no suitable address. After six months of immigration detention the court approved Justina's release on immigration bail to a refuge. Hibiscus gave her financial support for essential expenses and she received specialist support at the safe house.

Justina's priority was to be reunited with her child. While she was in prison, social services could not conduct a parental assessment as had been requested by the family court. Since Justina's release, she has been in regular contact with the Hibiscus project worker who has supported her with her family and immigration proceedings, providing travel expenses for Justina to attend court hearings. The project worker accompanied Justina to the family court, where she was granted a residential order for her child.

While in the safe house Justina completed courses for victims of domestic violence and ESOL level 2. She won her appeal against deportation and is now in work. She has moved with her child into her own accommodation, where she feels safe.

Useful organisations

[AIRE Centre](#)

The AIRE Centre aims to assist marginalised and vulnerable individuals to assert European law rights. It does this by taking cases to the European Court of Human Rights, providing legal advice to individuals, lawyers and other advisers, carrying out training and producing publications. Its Trafficking and Domestic Violence Legal Project provides advice and representation for victims of trafficking and domestic violence and training sessions for practitioners.

[Anneli Project, Leeds Women's Aid](#)

The Anneli Project offers safe houses for women who have been trafficked for sexual exploitation. They also offer help with issues around immigration, sexual health, mental health, substance use, money, housing and the criminal justice system.

[Bail for Immigration Detainees](#)

BID provides legal advice and representation to foreign nationals detained in removal centres and prisons to secure their release alongside research and policy advocacy.

[Birth Companions](#)

Birth Companions supports women experiencing severe disadvantage during pregnancy, birth and early parenting. It has widely acknowledged expertise in the needs of pregnant women and new mothers facing severe disadvantage both in prison and the community.

[Diogel Project, Bawso](#)

This project provides secure accommodation and support to victims of trafficking in Wales.

[Fatima House, Father Hudson's Care](#)

Fatima House is a partnership project that offers safe shelter to female asylum seekers.

[Helen Bamber Foundation](#)

The Helen Bamber Foundation supports refugees and asylum seekers who have experienced cruelty such as torture and trafficking. They provide therapy, housing and welfare support, legal protection and creative arts and skills programmes.

[Hibiscus Initiatives](#)

Hibiscus Initiatives is a leading specialist charity, committed to supporting foreign national people involved in the immigration and criminal justice systems, mainly focusing on women. The charity's services include advocacy and welfare advice in prison; assistance and support with return and reintegration to home countries or community resettlement and reintegration in the UK; and mentoring support in prison and the community. Identification and support of victims of human trafficking is embedded in all areas of Hibiscus' work.

[Hope for Justice](#)

Hope for Justice (UK) provide training for front-line professionals, identification and rescue of victims and legal advice and support on matters such as criminal complaints against traffickers and housing, employment and welfare issues.

[Imkaan](#)

Imkaan is the only UK-based, second tier women's organisation dedicated to addressing violence against Black and minoritized women and girls.

[Independent Anti-Slavery Commissioner](#)

The Commissioner encourages good practice in the prevention, detection, investigation and prosecution of modern slavery offences with the aim of increasing the number of victims referred for support and increasing the number of prosecutions and convictions of traffickers.

[Kalayaan](#)

Kalayaan is a London-based charity which provides advice and support to, as well as campaigning with and for, the rights of foreign national domestic workers in the UK.

[Mary Ward Loreto Women Project, Albania Hope](#)

The MWL Women Project aims to reduce the risk of human trafficking and exploitation by helping women get out of poverty by engaging them in activities such as vocational training, business start-up, marketing and event organising.

[Foreign National Help](#)

Foreign National Help supports and accommodates vulnerable foreign nationals in the UK.

[Modern Slavery Human Trafficking Unit, National Crime Agency](#)

The Modern Slavery Human Trafficking Unit is a multi-agency organisation led by the NCA. The unit provides a central point of expertise, support and coordination for the UK's response to modern slavery and the trafficking of human beings.

[Nia Ending Violence](#)

Nia provides services for those who have experienced male violence which includes the London Exiting Advocacy project that works with women exiting prostitution, IDVA Service, for those identified as 'high risk' of domestic violence, and 'Safe Choices', a service which aims to reduce and prevent young women's violent offending.

[Rights of Women](#)

Rights of Women aims to achieve equality, justice and safety in the law for all women. It provides free, confidential legal advice by specialist women solicitors and barristers, produces accessible publications and training about women's legal rights and campaigns to ensure that women's voices are heard and law and policy meets all women's needs.

[Salvation Army](#)

The Salvation Army provides a confidential referral helpline for victims of modern slavery and those who are concerned someone else may be a victim.

[Southall Black Sisters](#)

SBS is a leading organisation for black and minority women and girls in the UK. It is committed to the principles of equality and justice for all but especially abused black and minority women. SBS strives to provide a safe environment for women trapped in abusive relationships or at risk of violence and abuse. Its aim is to enable women to take decisions over their lives without fear and repercussions.

[Stop the Traffik](#)

Stop the Traffik is a global organisation that aims to raise awareness of trafficking and the impact it can have on businesses. They also provide training to businesses on what they can do to prevent the harm and abuse associated with human trafficking.

[Trafficked Girls' and Young Women's Project, Refugee Council](#)

This project sits within the Refugee Council in Croydon, offering specialist advice to girls and young women who have been trafficked to the UK.

[Trafficking Awareness Raising Alliance \(TARA\), Community Safety Glasgow](#)

TARA is a support service in Scotland for trafficking survivors which includes accommodation, advocacy, help accessing legal advice and help speaking to the police.

[Unseen UK](#)

Unseen UK runs a safe house in the South West of England for victims of modern slavery. They also run a helpline and a range of services for survivors including support with resettling and integrating, legal assistance and education services.

[Women in Prison](#)

Women in Prison supports women to avoid and exit the criminal justice system and campaigns for the radical changes needed to deliver support services and justice for women.

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Six years on from the No Way Out briefing which highlighted the over representation of foreign national women in prison in England and Wales, their particular vulnerabilities and the barriers to justice that many face, it is time to review progress. Whilst there has been a decrease in both the number and proportion of foreign national women in prison, the reasons for this reduction are not clear and they remain over represented in prison, largely for committing non-violent, minor offences.

Our research reveals a picture of inadequate legal representation, poor access to interpreting services, disproportionate punishment, failure to protect victims, isolation, fear, trauma and confusion experienced by the women themselves, with similar repercussions for their children. The briefing brings together research evidence and women's voices to make a compelling case for change.

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