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Sentencing of mothers:

Improving the sentencing process and outcomes for women with dependent children

A discussion paper

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This discussion paper was prepared by Shona Minson (independent research associate, University of Oxford) together with Jenny Earle and Rebecca Nadin of the Prison Reform Trust, in the context of the Prison Reform Trust programme to reduce women's imprisonment. www.prisonreformtrust.org.uk/women

The Prison Reform Trust is grateful to the many organisations and individuals who have contributed to the shaping of this discussion paper, including those who participated in our roundtable consultations and the women who have talked directly to us about their own experiences of being separated from their children by imprisonment.

If you would like to comment on the information contained in this paper and the proposals put forward please contact jenny.earle@prisonreformtrust.org.uk

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Foreword from the Chairman of the Magistrates' Association

The Magistrates' Association (MA) welcomes this report which it is hoped will encourage wider discussion of an important topic. The MA shares many of the concerns expressed by the Prison Reform Trust and we support the general aim of the Families Left Behind campaign to minimise harm to children or vulnerable adults as a consequence of the imprisonment of sole or primary carers. We have long been advocates of increased provision of challenging sentences in the community as viable alternatives to custody, especially for parents who often struggle to combine the requirements of a generic community order with childcare and school runs. We are also working to increase awareness among magistrates of the factors which may need to be considered when sentencing women, and the effects of custody on them and their families.

Finding the right sentence means not only balancing the different principles set out in law, but also taking into account the unique elements of each case. It is essential that courts know the circumstances of individual offenders as well as having a consistent range of suitable sentence options, so that appropriate decisions can be made. Sentences which take account of specific circumstances can benefit offenders and their families as well as reducing breaches and reoffending.

There will always be cases where the seriousness of the offence, or the refusal of the offender to engage in other outcomes, will mean sending mothers into custody. However, sentencing guidelines are clear: the court must make sure that all other avenues have been explored before resorting to custody. Magistrates should show, through their reasons when pronouncing sentence, that these have been fully considered. Magistrates need to be informed of and confident in the effective community interventions and programmes for women, when they are available in their area, so they are in a position to consider them when appropriate.

We look forward to engaging in further discussions, offering our advice on the practicalities of sentencing in magistrates' courts and exploring the potential to ensure that, where appropriate, mothers of young children can serve sentences in the community.

Malcolm Richardson JP
National Chairman, Magistrates' Association

Introduction and purpose of the paper

Two-thirds of imprisoned women are mothers of children under the age of 18. A third of these women have children under the age of five, and a further 40% have children aged between five and ten.

> *There's a lot of reasons why women come to jail and it doesn't really make sense. It shouldn't be a jail sentence. You literally turn a child's life upside down.*
> Annie, mother to an 18 month old boy, sentenced to imprisonment.

> *Much more regard should be had to the needs of children whose mothers are caught up in the criminal justice system and steps taken by all relevant agencies to mitigate the impact.*
> Transforming Lives: reducing women's imprisonment.[1]

Background

The Prison Reform Trust (PRT) project on the sentencing of mothers is intended to promote better outcomes for women offenders and their children. It reflects the emphasis in the United Nations Bangkok Rules on the need to consider alternatives to custody for women with dependent children.[2] PRT is also a member of the Families Left Behind initiative calling for more to be done to ensure the wellbeing of any children or other dependents when a custodial sentence has been imposed.

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), Resolution 2010/16

Rule 64

Non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent or the woman represents a continuing danger, and after taking into account the best interests of the child or children, while ensuring that appropriate provision has been made for the care of such children.

The focus of this discussion paper is on England and Wales, as criminal justice is devolved in Scotland and Northern Ireland but the concerns raised pick up on the findings of our UK-wide work with Soroptimists, reported in Transforming Lives – reducing women's imprisonment (2014). The aim of the discussion paper is to promote a constructive dialogue about sentencing principles and options with the judiciary, the Judicial College, the Sentencing Council, government, policy makers and others. To this end we have:

- reviewed research on mothers' imprisonment
- analysed relevant sentencing law, guidance and practice
- talked to mothers in prison and on community orders
- consulted other concerned organisations

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

[2] www.un.org/en/ecosoc/docs/2010/res%202010-16.pdf

- identified good practice in the UK and internationally
- consulted senior representatives from the Sentencing Council, Judicial College, Law Society, Bar Council, Ministry of Justice, the Treasury, Crown Prosecution Service, Director of Public Prosecutions, National Probation Service, Magistrates' Association, Association of Justices' Clerks and the Judiciary.

We convened an initial roundtable in November 2014 with representatives from organisations engaged in the support of women and/or children in the criminal justice system, to canvass their views.[3] From that meeting it was clear that there is a groundswell of opinion that changes are needed, with particular concern expressed about perceived inconsistency in the sentencing of primary carers and over-use of custodial penalties.

At a second roundtable convened in October 2015 at the Royal Courts of Justice, senior members of the judiciary and legal experts considered ways in which principles of fairness, proportionality and child welfare apply in the sentencing of mothers and others with primary care responsibilities.[4]

At both these roundtables there was discussion not only of the sentencing framework but also of the need to ensure the availability of robust and sustainable community sentencing options and interventions for women with dependent children, and improved awareness of their existence and effectiveness.

This year, there have been some positive developments, including the commitment made in the 2015 Conservative party general election manifesto to "exploring how new technology may enable more women with young children to serve their sentence in the community"[5] and a commitment in the March budget 2015 to "designing a more integrated, multi-agency approach to divert female offenders convicted of petty, non-violent offences from custody where appropriate".[6]

Moreover, there is now statutory recognition, in Section 10 of the Offender Rehabilitation Act 2014, that women's needs must be identified and addressed in arrangements for the supervision and rehabilitation of offenders.[7] This should help to ensure that their needs as primary carers are no longer marginalized and that appropriate community provision is established. Also helpful is the new Sentencing Council Definitive Guideline on Theft Offences, which encourages the use of community orders where appropriate.[8] The thematic inspection of supervision and support services for women offenders currently being conducted by Her Majesty's Inspector of Probation provides an opportunity to scrutinize and evaluate sentencing options, process and outcomes for mothers.[9]

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[3] See Appendix 2 for list of participants and organisations represented

[4] A list of judicial roundtable participants is also in Appendix 2

[5] https://s3-eu-west-1.amazonaws.com/manifesto2015/ConservativeManifesto2015.pdf

[6] www.gov.uk/government/uploads/system/uploads/attachment_data/file/416330/47881_Budget_2015_Web_Accessible.pdf

[7] Now section 3(6A) Offender Management Act 2007

[8] Sentencing Council, Theft Offences Definitive Guideline, 2015 – effective from February 2016

[9] https://www.justiceinspectorates.gov.uk/hmiprobation/about-our-inspections/thematic-inspections/call-for-evidence

Summary of proposals

The following proposals, reflecting research and discussion so far and set out in greater detail later in this paper, are put forward for consideration:

1. The government should review the sentencing framework to ensure appropriate recognition of and provision for an offender's sole or primary care responsibilities, in relation to both custodial and non-custodial sentencing.

2. The government's Advisory Board on Female Offenders should review arrangements in the criminal justice system for women with primary or sole care responsibilities in light of s.10 Offender Rehabilitation Act 2014, and ensure a whole of government approach to improving outcomes for mothers and their children, including coordinated and consistent funding streams for women's services and interventions.

3. Sentencing guidelines should be strengthened by the addition of an 'Overarching Principle' setting out the court's duty to investigate sole or primary caring responsibilities of defendants and to take these responsibilities into account in sentencing decisions. This would reflect the Court of Appeal decision in R v Petherick.[10]

4. Courts should establish mechanisms to ensure the provision of sufficient information to sentencers where the offender has primary caring responsibilities, including a requirement for a full written pre-sentence report and a local directory of women's services and interventions.

5. When imposing non-custodial sentences, sentencers must inquire about and consider a woman's family responsibilities and ensure 'rehabilitation activity requirements'[11] are achievable within those constraints.

6. Judges, district judges and magistrates should be obliged to consider non-custodial sentences for offenders with primary care responsibilities, and in cases when imprisonment is an option should consider a community order, deferred or suspended sentence. If an immediate term of imprisonment is imposed, written reasons should be given for their decision.

7. Training bodies, including the Judicial College, the Law Society and the Bar Council, should ensure sufficient emphasis in both induction training and continuing education on the balancing exercise to be undertaken when sentencing an offender with sole or primary care responsibilities.

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[10] [2012] EWCA Crim 2214 – and see Appendix 1

[11] The Rehabilitation Activity Requirement (RAR) was introduced by the Offender Rehabilitation Act 2014 s.1 and can be tailored to the individual's needs and circumstances.

8 The Equal Treatment Bench Book should be revised to include evidence about the differential impact of imprisonment on women and men, to reinforce its message that gender should not be disregarded in sentencing decisions.

9 The Sentencing Council should undertake or support targeted research and consultation with magistrates and judges on how sole and primary caring responsibilities are and should be taken into account in court, as well as monitoring sentencing practice and outcomes in this area more closely.

Context – overview of sentencing of women

Information on the use of custodial sentences for women, the characteristics of the female prison population, and on the implications of the use of custody for families and society is summarised below.

The use of custodial sentences for women

The women's prison population accounts for approximately five percent of the total prison estate. In 2014, there were 9,051 first receptions of women into prison.[12] At 6 November 2015 there were 3,936 women in prison in England and Wales.[13]

Nearly 60% of sentenced women received into prison in 2014 were serving sentences of six months or less, many in custody for very short periods of time.[14] Despite the courts' power to suspend sentences of 24 months or less,[15] there is still an overuse of short custodial sentences for women.

Outcomes for women who are sent to prison are significantly worse than for those given community orders, with 55.8% of women released from prison reoffending within a year, compared to 26% of those commencing a community order. Women released from custody are also more likely to reoffend, and reoffend quicker than those serving community sentences.[16]

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[12] Table A2.1 - Prison receptions 2014, Ministry of Justice (2015) Offender management statistics - annual 2014 London: MoJ

[13] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/470394/prison-population-figures-6-nov-2015.xls

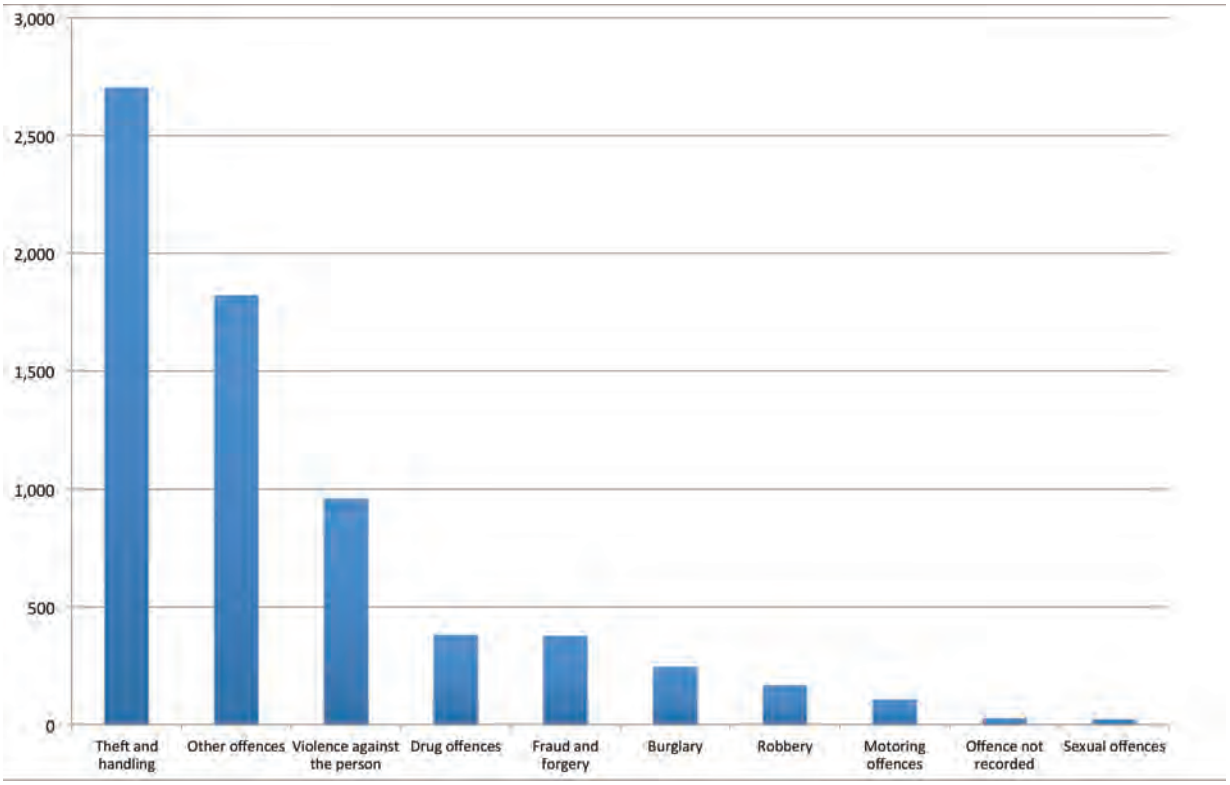
[14] Table A2.1 - Prison receptions 2014, Ministry of Justice (2015) Offender management statistics annual 2014 MoJ: London; see also Ministry of Justice, Freedom of Information request 82495, May 2013 available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/223541/females-sentenced-prison-length-offence-annex-a.xls

[15] Section 189, Criminal Justice Act 2003 as amended by Section 68, Legal Aid, Sentencing and Punishment of Offenders Act 2012

[16] Hedderman, C. & Jolliffe, D. (2015) 'The impact of prison for women on the edge: paying the price for wrong decisions', Victims and Offenders: An international journal of evidence-based research, policy and practice D0I. Further information can also be found in Prison Reform Trust (Autumn 2015) Bromley Briefings Prison Factfile, p.24.

The law requires that prison be used as a sanction only when the offence is so serious that neither a fine alone nor a community sentence can be justified.[17] However, in 2009, 1,052 women were sent to prison for breaching a court order[18] with an average sentence length for that offence of less than two months,[19] while the most recent Ministry of Justice (MOJ) prison reception data reveals that theft and handling offences account for 41% of all custodial sentences given to women (See Table 1 below). The argument is sometimes raised that prison is necessary for repeat offenders, but 28% of all sentenced women are in prison for a first offence (compared to 12% of men).[20]

Table 1: Immediate custodial sentenced receptions by offence group



Source: Table A2.2b, Ministry of Justice (2015) Offender management statistics annual tables 2014, London: Ministry of Justice

Mothers and their children

Although there is a lack of routine data collection in the UK about mothers and children affected by the criminal justice system, there is a growing body of research evidence about the harm caused to children by the imprisonment of their mother, who is almost always the primary carer.

A major study found that two-thirds (66%) of imprisoned women are mothers of children under the age of 18. A third (34%) of these women had children under the age of five, and a further 40% had children aged between five and ten.[21] More recently the MOJ has estimated that between 24% and 31% of all women offenders have one or more child dependents. This is based on data from the police national computer (PNC) matched with Department of Work and

[17] Section 152 (2) Criminal Justice Act 2003

[18] Table 6.9, Ministry of Justice (2010) Offender management caseload statistics 2009 London: MoJ

[19] Ministry of Justice (2014) Criminal justice system outcomes by offence 2009-2013 – Criminal justice statistics 2013 London: MoJ

[20] Tables A1.28 & A1.29, Ministry of Justice (2012) Offender Management Caseload Statistics 2011 London: MoJ

[21] Liebling, A. & Maruna, S. (2005) The effects of imprisonment Devon: Willan.

Pensions benefits data, identifying female offenders who made a child benefit claim at the time of their disposal (caution or conviction) in 2012.[22]

Estimates vary and are inevitably made more problematic by the reluctance of some women to disclose that they have children for fear of consequences, including possible state intervention. However, in 2010 it was estimated that 17,240 children were separated from their mothers by imprisonment,[23] whilst approximately 3,000 babies aged two years and under have their mothers imprisoned each year.[24] For 85% of mothers in custody, their imprisonment is the first time they have ever been separated from their child.[25]

> *I need support with how to catch up to where my son is now. He's developed. He was a baby, he was four, I was carrying him in my arms when I came to prison. Now he's a boy. How to reconnect with him? The gap is…it's such a large gap, even for like six months, it's a lot of time, especially for kids.*
> Jenna, mother to an eight year old boy, sentenced to imprisonment

Disruption to children's lives

Only five per cent of children with a mother in prison remain in the family home during their mothers' imprisonment,[26] and only nine per cent are cared for by their fathers,[27] whereas most children with an imprisoned father remain with their mother. About a fifth of mothers are lone parents prior to imprisonment,[28] and according to research conducted at HMP Styal, whilst 61% of women there had partners, 31% of them were also in prison.[29] In a survey of 1,400 women serving a first sentence in Holloway prison, 42 did not know who was looking after their children.[30] The latest thematic inspectorate review of resettlement recommends more focus on the specific needs of women and parents.[31]

> *When I got out of prison I was in a catch-22, that's what they kept telling me. If your child doesn't live with you, you can't get accommodation, but you can't get your child back unless you've got accommodation….I got a room in a hotel. I didn't want to take my son from his stable home and bring him to a little hotel, he's just not used to living like this, I wanted to do everything right. But eventually I was just like, I want my son back.*
> Jenna

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[22] https://www.gov.uk/government/statistics/female-offenders-and-child-dependents

[23] Wilks-Wiffen, S. (2011) Voice of a child London: Howard League for Penal Reform

[24] Galloway, S. et al (2014) An unfair sentence - All babies count: Spotlight on the criminal justice system London: NSPCC

[25] Home Office Research Study 162 (1997) Imprisoned women and mothers London: Home Office

[26] Caddle, D. & Crisp, D. (1997) Mothers in Prison HO Research and Statistics Directorate Findings no.38 London: TSO

[27] Corston, J. (2007) The Corston Report - A review of women with particular vulnerabilities in the criminal justice system London: Home Office

[28] Social Exclusion Unit (2002) Reducing reoffending by ex-prisoners London: SEU

[29] Prison Reform Trust (2014) Bromley Briefings Prison Factfile Autumn 2014 London: PRT

[30] Research by Revolving Doors, reported in Cabinet Office Social Exclusion Taskforce (2009) Short study on women offenders London: MoJ

[31] Criminal Justice Joint Inspection (2014) Resettlement provision for adult offenders: Accommodation and education, training and employment London: HM Inspectorate of Prisons

Nearly three-quarters (73%) of respondents to an ICM Survey of over a thousand people did not think that mothers of young children should be sent to prison for non-violent crime. The survey was commissioned by Smart Justice in 2007.

Breakdown in family contact

Due to the small number and geographical spread of women's prisons, most women are held a long way from their homes. The average distance between home and prison is 60 miles,[32] but 20% of women in HMP Eastwood Park are up to 150 miles from home.[33] This means fewer visits being made by children to see their mothers and is a barrier to family contact which is an important factor in reducing the risk of reoffending on release. Only half of women who had lived with, or been in contact with, their children prior to imprisonment had a visit from their children whilst in custody.[34]

> *My daughter can't get access to family visits. She tries to ring all day, but it's a lottery as you can't get through and you can only ring three days before.*
> Katie, imprisoned mother to a 16 year old girl

Social and intergenerational costs

The consequences of imprisonment for women and their families are far reaching. Prisoners' families experience financial, housing, emotional and health problems as a result of the decision to imprison, with one third of women, for example, losing their home and possessions whilst in prison. Imprisonment also has a lasting impact on women's capacity to find employment. For example, in 2011-2012 less than one in ten (8.7%) women had a successful employment outcome on release, compared to 27.3 % of men.[35]

Parental imprisonment trebles the risk of antisocial behaviour in children, with the cost to the state of imprisoning mothers for non-violent offences estimated at more than £17million over ten years, primarily because of the increased likelihood of their children not being in education, employment or training.[36]

> *The real battle started when I got out. Everything - home, re-establishing relationships, job. Imprisonment just exploded a bomb into every aspect of my life.*
> Sally, mother to two teenagers, served three months

> *There's nothing for mums being released.*
> Rachel, imprisoned mother of a 14 and nine year old

> *Once you come to prison you've got that hanging over you for the rest of your life… it's like a stigma. It follows you around. It's hard to get a job, a bank account…. Having a criminal record is always going to affect your life.*
> Jenna

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[32] Women in Prison (2013) State of the Estate: Women in Prison's report on the women's custodial estate 2011-12, London: WiP

[33] HMP/YOI Eastwood Park Independent Monitoring Board (2011) Annual Report 2010-11 London: MoJ

[34] Social Exclusion Unit (2002) Reducing reoffending by ex-prisoners London: SEU

[35] Table 2b (Offenders data), Ministry of Justice (2012) NOMS Equalities Annual Report London: MoJ

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

Understanding gender differences, treating individuals equitably

> *There seems to be a common view amongst many working in criminal justice agencies that men and women must be treated the same, albeit as individuals. Guidance on the application of the public sector equality duty is clear that treating people equally does not mean treating them the same.*[37]

To suggest that the consequences of imprisonment for women and their children should be given particular consideration in sentencing is not a discriminatory approach. It recognises the fact that women are much more likely to be the primary or sole carers of children, and that the impact of maternal separation can be severe and lasting.[38]

The UN Bangkok Rules, Resolution 2010/16 Rule 1
In order for the principle of non-discrimination, embodied in Rule 6 of the Standard Minimum Rules for the Treatment of Prisoners to be put into practice, account shall be taken of the distinctive needs of women prisoners in the application of the Rules. Providing for such needs in order to accomplish substantial gender equality shall not be regarded as discriminatory.

The Equal Treatment Bench Book emphasises that "*Fair treatment does not mean treating everyone in the same way"* and cautions against both stereotyping and overlooking disadvantage.[39] The chapter on Gender Equality emphasises women's continuing disadvantage in many areas of public and private life and includes Prison Reform Trust data on differences between women and men in the criminal justice system. It cites Baroness Hale DBE saying in her 2005 Longford Trust Lecture:

> *It is now well-recognised that a misplaced conception of equality has resulted in some very unequal treatment for the women and girls who appear before the criminal justice system.*[40]

In April 2014 the UN Special Rapporteur on Violence Against Women commented following her mission to the UK:

> *It is crucial to develop gender-specific sentencing alternatives and to recognize women's histories of victimization when making decisions about incarceration. Most women in prison do not present a threat to society and the consequence of their incarceration includes enormous personal, economic and social costs. Creativity in sentencing decisions could lead to more orders of a non-custodial nature.*[41]

There is now a broad consensus on the need for a distinct approach to women in the criminal justice system, but as yet insufficient regard is paid to their caring responsibilities.

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

[38] For an overview of research see Sheehan R and Flynn C, Women prisoners and their children, in What Works with Women Offenders, ed Sheehan R, Mcivor and Trotter C, Willan Publishing, UK, 2007

[39] www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/judicial-college/ETBB_all_chapters_final.pdf

[40] ibid

[41] www.ohchr.org/EN/NewsEvents/Pages/displayNews.aspx?NewsId=14514&LangId=E

Existing guidance on the sentencing of mothers in England and Wales

> *...with a mother who is the sole support of two young children...the judge has to bear in mind the consequences to those children if the sole carer is sent to prison.*
> Lord Woolf, Lord Chief Justice, R v Joanne Mills [2002] EWCA Crim 26

A series of Supreme Court and Court of Appeal decisions have addressed the need for sentencing courts to consider the welfare of dependent children and the consequences for family life. Key extracts from one of the leading authorities, *R v Petherick*, are set out in Appendix 1. The following principles have been established:

1. The sentencing of a parent for a criminal offence engages the right to family life of both the parent and the child, as the right is not lost automatically by reason of criminal conviction.[42]

2. Any interference by the state with a person's right to family life must be in response to a pressing social need, and proportionate to the legitimate aim pursued.[43]

3. The more serious the interference the more compelling must be the justification, and it cannot be much more serious than the act of separating a mother from a very young child.[44]

4. Non-custodial sentences are preferable for women with dependent children, with custodial sentences to be considered when the offence is serious or violent or the woman represents a continuing danger. Even when that is the case, a custodial sentence should only be given after considering the best interests of the child or children, whilst ensuring that appropriate provision has been made for their care.[45]

These principles should be applied to sentencing decisions in the following way:

1. The court must balance the impact on the child against the need to punish the offender and if the court has insufficient information to enable it to carry out the balancing exercise it must ask for more information.[46]

2. In a case where the right to family life applies the court should ask 3 questions:
   i. Is there an interference with family life?
   ii. Is the interference in accordance with law and in pursuit of a legitimate aim?
   iii. Is the interference proportionate given the balance between various factors?[47]

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[42] R (on the applications of P and Q) v Secretary of State for the Home Department [2001] EWCA Civ 1151 at paragraph 78

[43] ibid Note 4, para 87

[44] ibid note 4 para 78 iv); also see R (on the application of Amanda Aldous) v Dartford Magistrates' Court) [2011] EWHC 1919 (Admin) in the High Court; and R v Petherick [2012] EWCA Crim 2214 paragraph 18

[45] United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) UN Resolution 2010/16; Article 3, UN Convention on the Rights of the Child

[46] R v Bishop [2011] WL 84407 Court of Appeal paragraph 9

[47] R v Petherick [2012] EWCA Crim 2214 paragraph 18

3 In a case which is on the threshold between a custodial and non-custodial or suspended sentence the impact on a dependent child can tip the scales and a proportionate sentence can become disproportionate.[48]

4 There is no standard or normative adjustment for dependent children but their best interests must be "*a primary consideration*".[49] The welfare of the child should be at the forefront of the judge's mind.[50]

It is worth remembering that in all sentencing decisions the courts should only use imprisonment in the most serious cases:

> *The court must not pass a custodial sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that neither a fine alone nor a community sentence can be justified for the offence*.[51]

The Sentencing Council guidance on the interpretation of this statutory obligation is that:

- the clear intention of the threshold test is to reserve prison as a punishment for the most serious offences;
- it is impossible to determine definitively which features of a particular offence make it serious enough to merit a custodial sentence;
- passing the custody threshold does *not* mean that a custodial sentence should be deemed inevitable, and custody can still be avoided in the light of personal mitigation *or* where there is a suitable intervention in the community which provides sufficient restriction (by way of punishment) while addressing the rehabilitation of the offender to prevent future crime. For example, a prolific offender who currently could expect a short custodial sentence might more appropriately receive a suitable community sentence.[52]

The courts are also obliged to consider the best interests of the child (Article 3, United Nations Convention on the Rights of the Child) and should consider the relevant UN Bangkok Rules.

The Sentencing Guidelines published by the Sentencing Council provide the sentencing framework for criminal courts. Since 2011, in response to recommendations made by the Prison Reform Trust, the Women's Justice Taskforce and others, the 'factors reducing seriousness or reflecting personal mitigation' these guidelines have included the need to consider whether the offender is a '*Sole or primary carer for dependent relatives'*.[53] This was a welcome advance but does not specify how heavily this should weigh in the balance.

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[48] ibid 6, paragraph 22

[49] ibid paragraph 19 and UNCRC Article 3(1)

[50] ibid paragraph 24 and ZH (Tanzania) (FC) Appellant v Secretary of State for the Home Department [2011] UKSC 4 paragraphs 25 and 26

[51] Section 152(2), Criminal Justice Act 2003

[52] www.sentencingcouncil.org.uk/wp-content/uploads/web_seriousness_guideline.pdf

[53] www.sentencingcouncil.org.uk/wp-content/uploads/Assault_definitive_guideline_-_Crown_Court.pdf

Accounting for inconsistent sentencing practice

> *The more serious the intervention in any given case (and interventions cannot come very much more serious than the act of separating a mother from a very young child), the more compelling must be the justification*.
> Lord Phillips MR, R (on the applications of P and Q) v Secretary of State for the Home Department [2001] EWCA Civ 1151 at paragraph 78

There is concern about inconsistent application of these principles to the sentencing of mothers in both the magistrates and crown courts.[54] Possible explanations for this include:

- A lack of familiarity with Court of Appeal and Supreme Court dicta. Judges and magistrates may be unaware of the guidance from case law and believe that any consideration of dependents is entirely discretionary.

- Concern about non-discrimination in sentencing and a wish to avoid 'gendered decisions'. However, gender-sensitive sentencing, and having regard to the family responsibilities that disproportionately fall to women, is necessary to achieve equal outcomes, as provided for in the Bangkok Rules.

- A reluctance to reduce sentences on the ground of hardship caused to dependents, as this could be seen to allow dependent children to be a 'get out of jail free' card.

- A lack of appropriate local community sentencing options for women, as noted in Transforming Lives and a forthcoming Magistrates' Association research paper.

- Insufficient information provided to sentencers to allow appropriate sentencing decisions. The quality, depth and availability of pre-sentence reports are variable, as is the quality of legal representation, and it seems that judges may not always obtain information that would enable them to make a decision in which the child's best interests can be properly considered.

> *The solicitor made it clear to the court that I had a disabled husband and child, and I had cancer too. I was sent to prison the same day. The judge didn't ask who would look after my husband and daughter.*
> Katie

> *I had a pre-sentence report, but the judge wasn't interested. No-one really mentioned my son, only that his dad was a gang member.*
> Annie

54 Minson, S. (2014) Mitigating motherhood: A study of the impact of motherhood on sentencing decisions in England and Wales London: The Howard League. See also Epstein, R. (2012) 'Mothers in prison: the sentencing of mothers and the rights of the child' Coventry law Journal December 2012 and Reed, K. (2014) 'Children of prisoners: orphans of justice?' Family Law Journal January 2014; Baldwin, L. (ed) Mothering Justice: Working with Mothers in Criminal and Social Justice Settings, Waterside Press (2015)

Got to court and he [solicitor] didn't mention I was pregnant. He forgot to tell him [the judge]. I didn't know if I should speak up in court because I felt my lawyer was supposed to be representing me in court, but he didn't mention it.
Deena, pregnant, sentenced to imprisonment.

- Lack of confidence in or knowledge of local non-custodial sentencing options. The provision of women's services and programmes varies between areas and information is not easily or routinely available in a standardised format.[55] The government's obligation to ensure appropriate criminal justice interventions for women, including childcare support where necessary, may not yet be fully appreciated.

- Lack of sentencing data against which sentencers can frame their decision-making. For example, although there is a requirement to balance the child's best interests against the appropriateness of a prison sentence, it is impossible to know whether sentencers are engaged in this practice, as reasons are not generally recorded. This can lead magistrates and judges to believe that they are going 'out on a limb' if they do consider dependents.

- Although the 'custody threshold' is clearly set out in the Sentencing Guidelines, this does not mean custody is inevitable, appropriate or proportionate. The assessment of what constitutes a serious enough offence for custody can vary between the crown court and the magistrates' courts. Because magistrates mainly try summary offences, whilst most of the more serious indictable offences are tried in the crown court, the bar may be lower for perceived seriousness in the magistrates courts, resulting in custodial rather than community penalties. Clarification and training on the scope for imposing a suitable community sentence even where the custody threshold has been passed could reduce the number of short custodial sentences being passed by magistrates.

> The Secretary of State must ensure that arrangements for the supervision or rehabilitation of persons convicted of offences:
> a) state that the Secretary of State has, in making the arrangements complied with the duty under section 149 of the Equality Act 2010 (public sector duty) as it relates to female offenders, and
> b) identify anything in the arrangements that is intended to meet the particular needs of female offenders.
> S.10 Offender Rehabilitation Act 2014

55 See Clinks (2014) Who cares? Where next for women offenders services London: Clinks and Radcliffe, P. & Hunter, R. (2013) The development and impact of community services for women offenders London: ICPR

Sentencing advisory panel

This paper is not identifying a new problem. In 2009, the Sentencing Advisory Panel provided advice to the Sentencing Guidelines Council which stated in a section on *Women offenders and other equality and human rights issues*:

> *It is recognised that many women offenders are particularly vulnerable and that sentencing them within a criminal justice system that primarily has been developed to deal with the majority of offenders, who are male, may sometimes result in unfair treatment and outcomes*.[56]

The Sentencing Advisory Panel made four women-specific recommendations:[57]

- The statutory requirement that a custodial sentence must not be imposed unless the offence is so serious that neither a fine alone nor a community sentence can be justified has a special force in relation to women offenders because of the multiple harms that are likely to result from incarceration.
- A court always must obtain a pre-sentence report (PSR) before sentencing a woman offender to custody; wherever possible, the defendant should be granted bail whilst the PSR is being prepared.
- Where an offence committed by a woman merits a community sentence, the court must not impose a custodial sentence because of a perceived lack of community sentence provision or difficulty in identifying suitable community order requirements.
- Where an offence committed by a woman offender is not serious enough to merit a community order, the appropriate sentence is a fine or a discharge. The fact that a woman offender is on a low income or in receipt of state benefits should not prevent the court from imposing a fine if this is the most appropriate sanction for an offence.

The Sentencing Council did not accept the recommendations and six years on, neither gender factors nor the welfare of children (who are still primarily cared for by their mothers) are explicitly referred to in sentencing guidelines.

Proposals for reform

1 Much of the sentencing framework is in statutory form reflecting and enshrining government policy. A number of the recommendations below could or should be implemented through legislation. We therefore recommend that the government should review the sentencing framework to ensure appropriate recognition of and provision for an offender's sole or primary care responsibilities, in relation to both custodial and non-custodial sentencing (see also recommendation 5 below).

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[56] Sentencing Advisory Panel (2009) Advice to the Sentencing Council - Overarching principles of sentencing SAP: London www.banksr.co.uk/images/Guidelines/Advisory%20Panel%20Advice%20to%20the%20Council/Overaching_principles_of_sentencing.pdf

[57] ibid, Recommendations 20-23

2 The government's Advisory Board on Female Offenders, chaired by Minister Caroline Dinenage MP, should be asked to review provision and arrangements in the criminal justice system for women with primary or sole care responsibilities, and to ensure a whole of government approach to improving outcomes for mothers and their children.

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

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

In addition, in all cases where the defendant has dependent children and a custodial sentence is imposed, the sentencing court should be required to provide reasons for imprisonment and set out the consideration that has been given to dependent children. This would contribute to greater consistency and transparency in sentencing decisions that have consequences far wider than for the individual offender, and would enable more systematic monitoring and feedback in this area.

There is precedent for this approach in Overarching Principles - Sentencing Youths and we believe there is a strong case for having something similar, if briefer, to highlight the factors and vulnerabilities affecting primary carers, most of whom are women, and their dependent children that need to inform sentencing decisions.[58]

4 Mechanisms should be established to ensure the provision of sufficient and timely information to sentencers where the offender has primary care responsibilities, including a requirement for a full written pre-sentence report and a local directory of women's services and interventions.

- The National Probation Service (NPS) should provide training and guidance on the preparation of high-quality pre-sentence reports on women offenders, including the need to enquire about dependent children and the availability of women-specific, child-friendly interventions. Pre-sentence reports could be used to greater effect if they consistently provided more in-depth independent evidence of the change in circumstances or care which children will face if their parent is imprisoned.
- In order to provide sentencers with reliable information about non-custodial options, a national database should be set up to contain information about all non-custodial options available to sentencers.

[58] www.sentencingcouncil.org.uk/wp-content/uploads/web_overarching_principles_sentencing_youths.pdf

- Each court or bench should appoint a 'champion' with responsibility for ensuring that the court has the most up-to-date information available about the provision of local services.
- Magistrates' courts and the NPS should consider piloting a multi-agency problem-solving justice approach, to improve information sharing and the scope for coordinated community-based interventions as has been adopted in Manchester.[59]

5 When imposing non-custodial sentences, sentencers must enquire about and consider a woman's family responsibilities and ensure any 'rehabilitation activity requirements' are achievable within those constraints.

Where the terms of a non-custodial sentence disregard a woman's responsibility for children, there is an increased risk of breach for non-compliance. Breaches can in turn lead to custodial sentences being imposed where imprisonment was outside the sentencing parameters for the original offence.[60]

> *When they say you have to complete an order, it's the school holiday, how can you take the time to do that?…You're trying so hard to get out of what you've just been through and you're taking your children somewhere you don't want them to be. They don't consider school holidays, they don't consider signing in at police stations... They don't understand and that's more of a reason to fail so you will get your sentence or you will end up getting a breach, serving 28 days, because you aren't giving us an equal opportunity.*
> Debbie - mother to three children aged eight, six and one, sentenced to a probation order with conditions.

As noted earlier, the Transforming Lives report concluded that much more regard should be had to the needs of children whose mothers are caught up in the criminal justice system. Specific recommendations include that:

- Women attending court, and those subject to court orders in the community, should have access to childcare facilities if needed.
- Women should not be breached for failing to attend probation appointments where this is a direct result of their caring responsibilities.

We therefore propose a new statutory provision that where, as part of community order, a court is imposing requirements on an offender the court should ensure, as far as practicable, that any requirements avoid conflict with childcare responsibilities. This is modeled on an existing provision that requires a court to avoid as far as possible imposing a requirement that would conflict with an offender's religious beliefs.[61]

6 Judges, district judges and magistrates should be obliged to consider suspended, deferred or community sentences for women with primary caring responsibilities, even in cases when imprisonment is an option, and if they impose an immediate term of imprisonment they must provide written reasons for their decision.

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[59] http://cgm-probation.org.uk/features/focus-on-problem-solving-courts/

[60] Jordan, S. (2013) Missing voices: Why women engage with, or withdraw from, community sentences Research Paper 2013/01 London: Griffin Society

[61] Section 217, Criminal Justice Act 2003

It is a legislative requirement that custodial sentences should be limited to occasions when the offence is so serious that only a custodial sentence can be justified. We would propose the following guidance be given in addition to the already established principle of seriousness:

- Deferring sentence to allow for restorative justice, or to enable the offender to demonstrate engagement with a specific requirement, is a valid and useful sentencing option.[62] It will not preclude a custodial sentence but will permit the offender the opportunity to prove their willingness to engage with a non-custodial sanction. In cusp-custody cases the court should consider deferring sentence to allow the offender to demonstrate capacity to comply. If the court decides not to defer sentence, it should explain why.

  It was kind of difficult at the beginning [restorative justice process] but kind of eye-opening as well, because it let me know how the victim was feeling and it opened up my eyes about what I'd done, and how it affected the victim…it's been like a turnaround for me.
  Lorraine, mother to an eight year old girl, given a non-custodial sentence

- Non-custodial sentences should not be seen as a 'soft option', but as a punishment that enables women to deal with the offending behavior effectively[63] whilst reducing the chances of recidivism by maintaining the family unit.

  It's about dealing with your reoffending and what the problem is, instead of just getting sentenced and doing your sentence and being released. This is trying to get to the root of the problem… going to prison isn't the answer. You're meeting all kinds of people in there… I was mixing with people that were serving life and it just made me learn about other things. I went in for shoplifting and came out one of the best fraudsters going.
  Jenny, mother to two girls aged 18 and 14, sentenced to a probation order with a requirement to attend a particular women's centre

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

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

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[62] Section 1, Powers of the Criminal Courts (Sentencing) Act 2000 as amended by Part 2, Section 5, Crime and Courts Act 2013

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

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

- There should be a presumption that very few cases tried summarily by magistrates will be serious enough to warrant a custodial penalty.

- There should be a presumption that custodial sentences of less than 24 months will be suspended to enable a parent with responsibilities to dependent children to care for them.[64]

7 All training bodies (The Judicial College, The Law Society, The Bar Council) should ensure sufficient emphasis in both induction training and continuing education on the balancing exercise to be undertaken when sentencing an offender with sole or primary care responsibilities. This is important for all lawyers practicing in the criminal courts with responsibility for both prosecution and defence, but particularly for defence lawyers.

- Research currently in progress has found that judges and magistrates are sometimes unaware of settled law and guidance in this area. We therefore propose that new mechanisms for disseminating advice and guidance to judges, magistrates and criminal court advocates and advisers be established. This could be the responsibility of the Judicial College and other relevant professional training bodies such as the Criminal Bar Association and the Law Society.

- Briefings and training resources produced by Prison Advice & Care Trust (PACT), Barnardo's and other service providers, such as Hidden Sentence Training,[65] could be utilised by the Magistrate's Association and Judicial College to provide more information to sentencers about the impact of a prison sentence on dependents. The Information Pack for magistrates, district judges and court staff on mental health and learning disabilities, is a good model.[66]

8 The Judicial College's Equal Treatment Bench Book[67] should be revised to include evidence about the differential impact of imprisonment on women and men, to reinforce its message that gender should not be disregarded in sentencing decisions.

9 Alongside the implementation of such reforms, the Sentencing Council should undertake or support targeted research and consultation with magistrates and judges on how primary caring responsibilities are and should be taken into account in court, as well as monitoring sentencing practice and outcomes in this area more closely.

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[64] As per Section 68, Legal Aid, Sentencing and Punishment of Offenders Act 2012

[65] www.nepacs.co.uk/resources/documents/1407402680hidden_sentence_leaflet.pdf

[66] www.mhldcc.org.uk/

[67] www.judiciary.gov.uk/publications/equal-treatment-bench-book/

Conclusion

As noted at various points throughout this discussion paper, there is a need for further research on the sentencing of mothers and how their children are affected. Whilst it is complex to analyse sentencing decisions and outcomes it is important that more work be done in this area to help build the confidence of sentencers in a wider range of non-custodial penalties for less serious offending, and to inform community understanding of the sentencing process. This research could include evaluation of the problem-solving court pilots, as well as monitoring the process and outcome of more traditional approaches, and provide benchmarking for considering the impact of any reforms.

Meanwhile, there is already widespread agreement that scope exists to improve the sentencing process and outcomes for women with children, and that this would benefit children, families and communities. We look forward to responses to the proposals advanced here, and to working together to achieve the necessary changes.

Depriving women with caretaking responsibilities of their liberty has a harmful impact on children and other family members within their care. Many women offenders suffer from trauma of domestic violence or sexual abuse, have mental health-care needs, or are drug and/or alcohol dependent. Diverting these women to a suitable gender appropriate treatment programme would address their needs much more effectively than the harsh environment of prisons, which often does not help but hinder their social reintegration.

Information note for criminal justice practitioners on non-custodial measures for women offenders
UN Office of Drugs and Crime update on the Bangkok Rules October 2015 p.6

Appendix 1: Sentencing primary carers: a key authority

R v Rosie Lee Petherick [2012] EWCA Crim 2214

Summary

The defendant, aged 22 at the time of the offence, appealed against a sentence of four years and nine months imprisonment imposed for causing a passenger's death by dangerous and drunken driving. She was the single mother of a 16 month old son. She tendered a prompt guilty plea, and was of previous good character. The sentencing judge rightly adopted a starting point of eight years for the offence. He reduced this by a third for the guilty plea, and then by a further nine months "for the personal factors in the case" which included "the inevitable effect on the child", resulting in a custodial sentence of four years and nine months. On appeal this was reduced to three years and ten months. The Vice-President delivered the judgment of the Court of Appeal, which differed from the sentencing judge's overall approach "*only in the adjustment which we think should properly be made to reflect the combined factors of personal mitigation coupled with the effect upon the child."*

Key passages of Lord Justice Hughes' widely respected judgment are set out below with their paragraph numbers.

'17. …First, the sentencing of a defendant inevitably engages not only her own article 8 family life but also that of her family and that includes (but is not limited to) any dependent child or children. The same will apply in some cases to an adult for whom a male or female defendant is a carer and whether there is a marital or parental link or not. Almost by definition, imprisonment interferes with, and often severely, the family life not only of the defendant but of those with whom the defendant normally lives and often with others as well. Even without the potentially heart-rending effects on children or other dependents, a family is likely to be deprived of its breadwinner, the family home not infrequently has to go, schools may have to be changed. Lives may be turned upside down by crime.

18. Second, the right approach in all article 8 cases is to ask these questions: A. Is there an interference with family life? B. Is it in accordance with law and in pursuit of a legitimate aim within article 8.2? C. Is the interference proportionate given the balance between the various factors? That is carefully set out by Lady Hale in her speech in HH. Although she was in the minority as to the outcome in relation to one of the persons sought for extradition, she gave at paragraph [30] this analysis with which there was general agreement. That approach is as true of sentencing as of any other kind of case in which family life is in question. Of course in sentencing, the first two questions will usually be straightforward. There will almost always be some interference with family life and it will be in accordance with law and due to legitimate aims. It is the third question which may call for careful judgment.

19. Third, long before any question of article 8 or of the Human Rights Act 1998 was thought of, sentencing practice in England and Wales recognised that where there are dependent children that is a relevant factor to sentencing. That is most conveniently to be extracted from the careful words of Lord Judge, CJ, in HH at paragraphs 126 to 130, to which reference should be made if this point is taken. In particular, at paragraphs 128 and 129 he said:

"128. The continuing responsibility of the sentencing court to consider the interests of children of a criminal defendant was endorsed time without number over the following years. Examples include Franklyn (1981) 3 Cr App R(S) 65 Vaughan (1982) 4 Cr App R(S) 83, Mills [2002] 2 Cr App R (S) 229, and more recently Bishop [2011] EWCA Crim 1446 and, perhaps most recently in Kayani; Solliman [2011] EWCA Crim 2871, [2012] 1 Cr App R 197 where, in the context of child abduction, the court identified

> '… a distinct consideration to which full weight must be given. It has long been recognised that the plight of children, particularly very young children, and the impact on them if the person best able to care for them (and in particular if that person is the only person able to do so) is a major feature for consideration in any sentencing decision.'

129. Recent definitive guidelines issued by the Sentencing Council in accordance with the Coroners and Justice Act 2009 are entirely consistent. Thus, in the Assault Guideline, taking effect on 13 June 2011, and again in the Drug Offences Guideline, taking effect on 29 February 2012, among other features the defendant's responsibility as the sole or primary carer for a dependant or dependants is expressly included as potential mitigation."

20. Fourth, it follows that a criminal court ought to be informed about the domestic circumstances of the defendant and where the family life of others, especially children, will be affected it will take it into consideration. It will ask whether the sentence contemplated is or is not a proportionate way of balancing such effect with the legitimate aims that sentencing must serve.'

21. Fifth, in a criminal sentencing exercise the legitimate aims of sentencing which have to be balanced against the effect of a sentence often inevitably has on the family life of others, include the need of society to punish serious crime, the interest of victims that punishment should constitute just desserts, the needs of society for appropriate deterrence (see section 142 Criminal Justice Act 2003) and the requirement that there ought not to be unjustified disparity between different defendants convicted of similar crimes. Moreover, as Sachs J pointed out in the South African Constitutional Court in N v The State [2007] ZACC 18, in a case in which there was under consideration a specific provision in the Constitution which required the interests of an affected child to be "the paramount consideration", not only society but also children have a direct interest in society's climate being one of moral accountability for wrongdoing. It also needs to be remembered that just as a sentence may affect the family life of the defendant and of his/her innocent family, so the crime will very often have involved the infringement of other people's family life. There is a good example afforded by the striking facts of the second defendant Solliman in Kayani and Solliman [2011] EWCA Crim. 2871 at paragraph 54. He, by his crime of abduction of children, had utterly destroyed the abducted children's relationship with their mother and his well deserved imprisonment was now to punish them again by depriving them of his own care as their otherwise unexceptional remaining parent. This present case is also one in which article 8 rights are affected not only in the defendant and her child but in the deceased and his family.

22. Sixth, it will be especially where the case stands on the cusp of custody that the balance is likely to be a fine one. In that kind of case the interference with the family life of one or more entirely innocent children can sometimes tip the scales and means that a custodial sentence otherwise proportionate may become disproportionate.

23. Seventh, the likelihood, however, of the interference with family life which is inherent in a sentence of imprisonment being disproportionate is inevitably progressively reduced as the offence is the graver and M v South Africa is again a good example. Even with the express Constitutional provision there mentioned, the South African Constitutional Court approved the result in which in one of the cases a sentence of four years was necessary upon a fraudulent mother, despite the fact that she was the sole carer for a number of children who were likely to have to be taken into care during her imprisonment see paragraphs 43 to 44. Likewise, in HH, the majority of the Supreme Court was satisfied that there was no basis on which the extradition to Italy could be prevented of a father who was in effect the sole carer for three young children, but who had been a party to professional cross border drug smuggling. His extradition of course meant not only his imprisonment, but his imprisonment too far away from the children's home for there to be more than the most rare of contact.

24. Eighth, in a case where custody cannot proportionately be avoided, the effect on children or other family members might (our emphasis) afford grounds for mitigating the length of sentence, but it may not do so. If it does, it is quite clear that there can be no standard or normative adjustment or conventional reduction by way of percentage or otherwise. It is a factor which is infinitely variable in nature and must be trusted to the judgment of experienced judges.

Appendix 2

Prison Reform Trust Consultations on the Sentencing of Mothers
List of participants

Judicial Roundtable, Royal Courts of Justice, Thursday 15 October 2015

Judge Arbuthnot, Deputy Chief Magistrate

Avtar Bhatoa, Chair, Criminal Law Committee, Law Society

Janine Burke, Deputy Justices Clerk, Justices' Clerks Society

Val Castell JP, Women's Lead, Magistrates' Association

HH Mr Justice Cranston, High Court Judge

HH Mr Justice Davis, Director of Criminal Training, Judicial College

Jenny Earle, Programme Director, Prison Reform Trust

HH Justice Elizabeth Evatt AC, founding Chief Judge of Family Court of Australia

Mark Fenhalls QC, Chairman, Criminal Bar Association

Claire Fielder, Head of Service, Sentencing Council

Alison Foulds, Policy Lead, Custodial Sentencing, Ministry of Justice

HH Judge Andrew Goymer – Southwark Crown Court, Chairman of Criminal Sub-Committee, Council of Circuit Judges

Kara Humphreys – HM Treasury

Juliet Lyon, Director, Prison Reform Trust

Shona Minson, Barrister and independent researcher

Neil Moore, Legal Adviser to the Director of Public Prosecutions

Thomas Guiney – Senior Programme Officer, Prison Reform Trust

Sara Robinson, Women's Lead, National Probation Service

Maya Sikand, Barrister and Griffins Research Fellow, Garden Court Chambers

Lord Justice Treacy, Chair, Sentencing Council

Baljit Ubhey OBE, Chief Crown Prosecutor, CPS London

The Right Hon Lord Woolf, CH, Prison Reform Trust Chair (Chair)

Initial consultation roundtable on the sentencing of mothers

Wednesday 12th November 2014, Leigh Day Solicitors Conference room, Clerkenwell

Christine Baker, Leigh Day

Eleanor Butt, Howard League

Diane Curry, Partners of Prisoners

Ellen Dacre, Spurgeons

Naomi Delap, Birth Companions

Jenny Earle, Prison Reform Trust (Chair)

Rona Epstein, Research associate, Coventry University

Rachel Halford, Women in Prison

Alice Haynes, NSPCC

Amarjit Kaur, Revolving Doors

Andy Keen-Downs, PACT

Patrick Kinsella, Caritas Social Action Network

Bridget Lindley, Family Rights Group

Nancy Loucks, Families Outside

Juliet Lyon, Prison Reform Trust

Shona Minson, Barrister and researcher

Rebecca Nadin, Prison Reform Trust

Deborah Russo, Prisoner's Advice Service

Lucy Satchell-Day, London Community Rehabilitation Company

Neera Sharma, Barnardos

Sam Smethers, Grandparents Plus

Sam O'Sullivan, Prison Reform Trust

Rachel Tonkin, Lesley Dixon, Action for Prisoners Families

Micki Whyte, Housing for Women

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"There's a lot of reasons why women come to jail and it doesn't really make sense. It shouldn't be a jail sentence. You literally turn a child's life upside down."

This Prison Reform Trust (PRT) discussion paper on the sentencing of mothers is intended to promote better outcomes for women offenders and their children. It reflects the emphasis in the United Nations Bangkok Rules on the need to consider alternatives to custody for women with dependent children. It contains a number of proposals to ensure primary care responsibilities are taken into account more fully in sentencing decisions. These include clearer guidance to the courts, improving the quality and timeliness of pre-sentence reports, more information and training for lawyers, judges and magistrates, and improved availability of robust community sentencing options that take account of care responsibilities.

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