

# Engendering Justice – from Policy to Practice

**Final report of the Commission on Women  
and the Criminal Justice System**

**May 2009**



Commission on  
Women and  
the Criminal  
Justice System

**Fawcett**



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We are also very grateful to all those who have contributed to this report, in particular the many women and organisations who gave up their valuable time to share their experiences of the criminal justice system with us. We would like to especially thank the British Association for Women in Policing, the Magistrates' Association, UK Association of Women Judges, Women and Young People's Team (NOMS) and the Governors of the female prison estates for their help in putting us in touch with women with direct experience of the criminal justice system. Thank you also to the Government departments, criminal justice agencies and organisations (outlined in Chapter One) who attended Commission evidence sessions and to the staff and volunteers at the Fawcett Society who contributed to this project.

Report compiled by Sharon Smee, Justice Policy Officer at the Fawcett Society.

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# List of Acronyms

<b>ACPO</b>	Association of Chief Police Officers	<b>SDVC</b>	Specialist Domestic Violence Courts
<b>BME</b>	Black- Minority Ethnic	<b>SOIT</b>	Sexual Offences Investigative Technique [officer]
<b>BAWP</b>	British Association for Women in Policing	<b>SRA</b>	Solicitors Regulation Authority
<b>CEDAW</b>	Convention for the Elimination of All Forms of Discrimination Against Women	<b>TWP</b>	Together Women Programme
<b>CICA</b>	Criminal Injuries Compensation Authority	<b>VAW</b>	Violence against Women
<b>CJLD</b>	Criminal Justice Liaison and Diversion [schemes]	<b>WAVE</b>	Witness and Victim Evaluation Survey
<b>CPS</b>	Crown Prosecution Service		
<b>DV</b>	Domestic Violence		
<b>EHRC</b>	Equality and Human Rights Commission		
<b>GED</b>	Gender Equality Duty		
<b>GSS</b>	Gender Specific Standards		
<b>HMPS</b>	Her Majesty's Prison Service		
<b>IDVA</b>	Independent Domestic Violence Adviser		
<b>IPCC</b>	Independent Police Complaints Commission		
<b>ISVA</b>	Independent Sexual Violence Adviser		
<b>MARAC</b>	Multi-Agency Risk Assessment Conferences		
<b>NHS</b>	National Health Service		
<b>NOMS</b>	National Offender Management Service		
<b>QC</b>	Queen's Counsel		
<b>RCC</b>	Rape Crisis Centre		
<b>SARC</b>	Sexual Assault Referral Centre		

For the past five years, Fawcett's Commission on Women and the Criminal Justice System has examined the experiences of women as victims, offenders and workers in the criminal justice system. This unique Commission has published four reports and has achieved a number of key legislative, organisational and policy changes.

Since its inception, the Commission's work has benefited from the considerable and diverse expertise of its Commissioners, drawn from across the criminal justice system and areas of public life. Vera Baird MP QC expertly chaired the Commission until 2006 when she stepped down following her appointment as a minister in the Department of Constitutional Affairs. I have been privileged to Chair this Commission since that time.

This final report is an in-depth examination of the experiences of women in the criminal justice system and incorporates testimony of women themselves to give voice to the diverse experiences of individuals. One of the key emerging themes is the persisting gap between strong policy development and consistent implementation. This report contains detailed recommendations which address each stage of the criminal justice process and which aim to close the widening gap between policy and practice.

The Commission welcomes the Government's work over the past five years towards ensuring that the criminal justice system meets the needs of women but the pace of change has been disappointingly slow. There remains much work to be done. Part Two of this final report sets out the Commission's vision of a justice system which recognises and responds to the unique needs, experiences and skills of women and the institutional change which is needed to achieve this. It is up to each of us to work towards this goal.



**Baroness Jean Corston,**  
**Chair, Commission on Women and the Criminal Justice System**

# List of Commissioners 2008-2009

**Baroness Jean Corston (Chair)**

Labour Party

**Colin Allen,**

Former Governor of Holloway Prison and Former Prisons Inspector

**Liz Bavidge OBE**

Magistrate

**Ruth Bunday**

Solicitor, Harrison Bunday Solicitors

**Mr Justice Calvert-Smith**

High Court Judge

**Malcolm Dean**

Former assistant editor, the Guardian

**Lord Navnit Dholakia OBE DL**

Liberal Democrats

**Deputy Assist. Commissioner Cressida Dick,**

Metropolitan Police Service

**Mrs Justice Linda Dobbs DBE**

High Court Judge

**Mitch Egan CB**

NOMS advisor and former North East Regional Offender Manager

**Professor Liz Kelly CBE**

Roddick Chair in Violence against Women at London Metropolitan University  
Commissioner, Women's National Commission

**Karon Monaghan QC**

Barrister, Matrix Chambers

**Baroness Gillian Shephard**

Conservative Party

Since 2003, Fawcett's Commission on Women and the Criminal Justice System has examined the experiences of women in the criminal justice system as victims, offenders and workers. This approach has allowed us to draw parallels across the system, demonstrating that women continue to be marginalised in a criminal justice system, designed by men for men. Despite improved policy developments since the inception of the Commission, institutional sexism remains deeply embedded in practices and attitudes towards women in the criminal justice system.

## A Gender-responsive Criminal Justice System

### Our vision is for a society in which:

- The criminal justice system provides women with support, safety and justice.
- The sentencing of non-violent female offenders is responsive to the needs of these women and their families.
- Women working in the criminal justice system are free from discrimination and harassment with equal opportunities to progress at all levels of the various criminal justice agencies.
- Policy and practice of all criminal justice agencies is informed by gender analysis so as to meet the diverse needs of both men and women.
- The Judiciary and the senior levels of the legal profession, the police, the CPS, the prison service and the probation service are broadly representative of a society with a balance of women and men and recognition of the skills and experiences of women.
- Society recognises that all women have the right to live their lives free from the threat and reality of violence.

## Acknowledgement and Understanding of Institutional Sexism

Institutional racism became a familiar term following the Stephen Lawrence inquiry but institutional sexism is rarely openly acknowledged. The experiences of women within the criminal justice system provide countless examples of institutional sexism in practice through processes, attitudes,

and behaviour which amount to discrimination which disadvantages women.

### The criminal justice system remains largely defined by male standards:

- Flexible and part-time working is not consistently accepted and the culture of long working hours disadvantages any individual with caring responsibilities, the majority of whom are women.
- Promotion and ability to perform a job are frequently judged against male standards rather than the competencies of the job, such as fitness tests in the police force focusing on upper body strength, rather than the actual requirements of the role.
- Attitudes and expectations as to how a 'proper victim' should behave continue to shape the criminal justice system response to violence against women. A 2009 Home office survey revealed one in four respondents believe that a woman is partially responsible if she is raped or sexually assaulted when she is drunk and one third thought she would be partially responsible if she flirted heavily with the man beforehand.

*I feel if I don't partake in sexual banter I get left out and am not one of "the boys."*

*Female Prison Officer*

### Women who are carers experience disadvantage throughout the criminal justice system:

- Women victims without access to support from family and friends to look after their children often have to bring their children to court. Yet courts have no facilities to assist mothers in this position.
- It is estimated that up to 17,700 children each year are separated from their mothers due to imprisonment and at least a third of women offenders with children are lone parents. Women are often not prepared for sentencing outcomes by their lawyers and may be placed in custody without the opportunity to arrange for the care of their children.
- For women in custody, maintaining contact is very important yet the location of female prisons means families are often unable to visit and call costs are higher than standard rates.
- Women workers with children face disadvantage in the

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way workplaces are organised such as on-call work and shift work and training and development programmes far from home.

## Double disadvantage on the basis of both race and sex

- Ethnic minority women and foreign national women are overrepresented within the female offender population and are more likely to feel isolated in custody, less likely to seek help and face additional language and cultural barriers.
- Foreign national women, who make up nearly one in five of the female prison population, are particularly isolated from their children and are currently only provided with free phone use for five minutes per month to speak to their family.
- Understanding of the needs of ethnic minority women who experience violence and appropriate support is lacking. Only one in ten of all local authorities have a specialised service for BME women.
- Ethnic minority women are under-represented among workers in the criminal justice system. For example, there is only one ethnic minority woman in the senior judiciary.

## One size does not fit all

- A misunderstanding of equality as requiring same treatment for men and women has led to male-defined practices and programmes being applied to women.
- The high levels of self-harm within the female prison estate are one manifestation of the effects on women of a prison estate which is designed for male prisoners. Self-harm among women in custody has increased by 48 percent between 2003 and 2007 and women commit around 50 percent of self-harm incidents although they represent only 5 percent of the total prison population.
- Despite the different needs of women (such as women-only accommodation for women who have experienced violence and abuse), there have been instances where local authorities have stipulated that support services, such as refuges, must provide to men on a parity with women.

## Squeezing Women into the Male Mould – The Police Uniform

The police force uniform provides a clear example of attempts to make female workers fit the male mould. In some police forces, the current uniform is based upon a 1950s military uniform and the same male-designed uniform is issued for both men and women. Shirts are designed for men and are ordered by collar size and stab vests have no shaping for women. There is little understanding that women come in different shapes and sizes to men and therefore need clothing tailored to meet their body form, resulting in a very impractical and uncomfortable uniform for women officers in these forces.

## Key Findings:

This final report of the Commission reveals a persisting gap between strong policy development and consistent implementation. Evidence has demonstrated that throughout the criminal justice system, practices and attitudes continue to discriminate against women.

## As a consequence the criminal justice system:

- Does not address the causes of women's offending with the result that too many women continue to be imprisoned on short sentences for non-violent crime;
- Fails to provide female victims of violence with support, safety and justice; and
- Creates a glass ceiling for women working within the system so that higher positions across the sector remain male dominated.

## The Gap between Policy and Practice

When the gender equality duty came into force it was hoped that it would result in all organisations providing a public service proactively addressing discrimination and promoting gender equality. However, results to date have been disappointing and highlight the slow translation of policy into practice.



Gender equality is still not being mainstreamed into all policies and processes, and results are not monitored to ensure accountability. Equality is often misunderstood as a requirement to treat men and women in identical ways. This has led to the redirection of funds from women-only services and the application of programmes, services and treatment designed for men to women. Too often the practical application of the duty has been reduced to ticking boxes, such as the completion of Gender Impact Assessments without real focus on outcomes. For the duty to be effective there is a need for practical and cultural change at every stage of the policy-making cycle so that equality of outcomes is assured.

### **Women Offenders**

Too many women continue to be imprisoned on short sentences for non-violent crime and remand continues to be over-used. Meanwhile short sentences have a devastating effect on the lives of women, of whom one in three have histories of sexual abuse and over half have been victims of domestic abuse.

There have been some significant steps forward in response to the Corston Report, such as the establishment of an inter-ministerial sub-group and a cross departmental Criminal Justice Women's Strategy Unit, the introduction of gender specific standards for women's prisons and the new changes to the full search arrangements, which alleviate routine strip searching. These steps are commendable but until more women are diverted from prison the levels of self harm, mental illness, and the long term effects of the separation of children from their mothers will continue. The commitment to community alternatives to custody is encouraging but given the number of female offenders still receiving custodial sentences there remains a long way to go.

### **The Commission has identified five key areas requiring urgent attention:**

- A consistent approach to the needs of female suspects in police custody;
- The sentencing of female defendants and the over-use of remand and custodial sentences for non-violent offences;

- The implementation of the Corston Recommendations, particularly in relation to community alternatives to custody, the mental health needs of female offenders, women with caring responsibilities and the relationship between female offending and histories of violence and abuse;
- The accommodation and support needs of female offenders and their children following release; and
- The need to consider women-focused custodial alternatives while a national network of community provision is developed.

*It's my children – they are my biggest concern because I've not spent a day away from them since they were born. I was still breast feeding my baby when I came in here. I think me being in prison has mentally affected my children. My son's school work has suffered. I didn't get the chance to explain to him that I was coming to prison.*

*Female Offender*

### **Women Victims**

The criminal justice system continues to fail to provide female victims of crime with the support, safety and justice they need. It is estimated that only 15 percent of serious sexual assaults against adults are reported to the police and of the rape cases that are reported only 6.5 percent result in conviction. Recent high profile cases, such as John Worboys, Kirk Reid and the murder of Sabina Akhtar by her abusive husband, have exposed the extent to which frontline staff continue to doubt the credibility of victims and fail to adequately investigate cases of rape, sexual assault and domestic violence.

Improvements have been made to national policy on violence against women with the substantial increase in the number of specialist domestic violence courts and sexual assault referral centres. All police forces now have a rape champion and a domestic violence champion; local action plans have been developed and sexual offences training introduced for police officers. The CPS is to be particularly commended on the introduction of a new Violence against Women indicator to measure performance

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on domestic violence, rape and sexual offences as well as its Violence against Women Strategy and Action Plans. The Commission is also encouraged by the current work of the Home Office in leading on a long over-due Cross-Government Strategy on VAW. However, good policy development will not have impact on the ground, unless resources and targets are directed towards creating a shift in attitudes and culture.

## The Commission has identified five key areas requiring urgent attention:

- A cross-government integrated and strategic approach to ending violence against women. The new Violence against Women Strategy will only succeed if there is real cross-government commitment and an understanding that violence against women is a relevant issue for every department.
- Violence against women should be treated with the same professionalism as other crimes with consistency in initial responses to victims and investigation across police areas.
- A uniform approach to communication with victims by the police during investigation and by the CPS, particularly at the point in time when the decision is made not to proceed with the prosecution of a case.
- Support for women who experience violence should not depend on a woman's postcode. Currently, there is patchy provision of violence against women services across England and Wales, particularly in rural areas, and the provision of special measures, interpretation and support for women during the court process is inconsistent.
- The attitudes towards violence against women, particularly in relation to rape and sexual offences, exhibited by the police, prosecutors, judges, juries and the general public.

## Women Workers

While there is growing acknowledgement that female victims and female offenders require a justice system that is responsive to their needs there is less recognition that justice needs women. However, a greater representation of women, particularly in high level positions, is crucial to create a criminal justice system which is representative of our diverse society; responsive to the needs of women; and reflective of unique perspectives to issues.

*I think it is important for women to be seen in all areas of the criminal justice system. Until this is true the system is not reflective of society. I do not believe that there is a difference in the administration of justice because there are women doing the job but that is an argument for women to do the job not to the contrary.*

*Female Judge*

Whether gender balance can be achieved, particularly in senior levels, will depend on how responsive career progression and grading practices are to the needs of women and how workplaces adapt to utilise the skills and experiences of women. Adopting a gender neutral approach, which ensures the 'playing field remains the same' is not the solution. Rather, the participation of women should be understood as a route to challenging male dominance.

There have been policy developments across the criminal justice system in an attempt to increase the representativeness of the justice sector, such as the introduction of the Judicial Appointments Commission and changes to the Queen's Counsel Selection Process. Policies in relation to flexible working, equal opportunities and diversity have also been introduced across the criminal justice agencies. However, although women are making inroads at lower levels, the higher positions remain strongly male dominated.

*I felt that I had to defend my actions rather than him having to defend his. I often felt like the perpetrator and not the victim.*

*Female victim of Rape*

### **The Commission has identified five key areas requiring urgent attention:**

- Women's caring responsibilities continue to operate as a disadvantage in career progression (with promotion or training requirements often requiring travel or long hours) and in coping with shift or on-call work.
- When flexible working and part-time working arrangements are in place, they are not applied consistently and rely on the interpretation of local line management. There is also a lack of understanding that flexible working can benefit all staff.
- Women continue to earn less than their male counterparts, particularly within the legal profession.
- The diversity of individuals applying for the judiciary and for Queen's Counsel remains worryingly low. The number of female applicants for QC in 2008 was at its lowest level for ten years.
- A male dominated culture continues to exist across the criminal justice system with women constantly having to prove themselves against male-defined standards such as long working hours.

#### **Women working in the Criminal Justice System**

In 2008, only 12 percent of police officers at Chief Inspector grade and above were female.

Only 15.9 percent of partners in the UK's ten largest law firms were women in 2008.

At the top 30 sets of the UK bar, there are only 42 female compared to 479 male silks.

In 2008, less than a quarter of the prison governors are female and fewer than one in four prison officers are women.

In 2008, just over 10 percent of the 109 High Court Judges were women and just over 8 percent of the 37 Court of Appeal Judges were female. There is only one female Law Lord.

### **Key Recommendations – Women Need Justice and Justice Needs Women**

The Commission welcomes the Government's work over the past five years towards ensuring that the criminal justice system meets the needs of women but the pace of change has been disappointingly slow. This in-depth examination of the experiences of women in the criminal justice system has resulted in recommendations which address each stage of the criminal justice process. These recommendations can be found at Appendix B.

#### **Key over-arching recommendations include:**

##### **Female Victims of Crime**

- A Cross-Government Strategy on VAW must be implemented with real commitment from all Government departments.
- The Government should fund a national awareness raising campaign on rape and sexual violence, similar to awareness raising campaigns in relation to drink driving.
- Specific training aimed at frontline staff within the police and the CPS to change attitudes towards rape, and improve initial responses to women and early evidence collection must be rolled out across the country.
- Joint targets for the CPS and the police should be developed to incentivise them to work together and develop a national strategy towards rape and other serious sexual violence offences.
- A Government commitment to long term funding for violence against women service provision, including a national network of rape crisis centres and a 24 hour helpline.

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## Female Offenders

- Criminal Justice Liaison and Diversion Schemes should be adequately resourced to work in partnership with the police and courts to divert offenders with mental health needs away from the criminal justice system.
- Adequate and robust alternatives to remand must be made available to the judiciary, such as adequate single-sex bail hostel provision (for women and their children), intensive supervision and electronic surveillance.
- Comprehensive pre-sentence reports which analyse the harms likely to result from incarceration should be prepared for each female offender, including an assessment of the impact of incarceration on any dependents.
- Prison staff should be provided with training in relation to mental health needs of offenders and the needs of female victims of violence, including screening, risk assessment, safety planning and referral to specialist services.
- Long term funding for community provision and the development of a national network of gender specific community provision with accommodation facilities for women and their children.
- The development of small custodial units in each county area to aid the transition to community alternatives to custody and to be eventually integrated into the national network of community provision.

## Women Workers

- Extensive research into sexual harassment and discriminatory practices, including pregnancy discrimination, in the police, probation service, prison service and legal profession should be undertaken by the EHRC in partnership with the relevant authority / inspectorate and the results widely publicised.
- An explanation of the benefits of part-time working and flexible work practices and the availability of these initiatives for male and female employees should be widely promoted.
- An appeal system within the police, CPS, probation

service and prison service should be introduced to allow employees to appeal decisions in relation to flexible working beyond local managers.

- Methods for promotion and locations for prerequisite training should take into account caring commitments of staff as well as any disadvantage for part-time or flexible workers in assessment methods chosen.
- Part-time working and a programme of equality and diversity should be made available to all levels of the judiciary.

Creating a criminal justice system which is fair for women requires consistent and focused hard work on the part of criminal justice agencies and organisations. Importantly there can be no real change until there is a shift in the mindset of those working within all levels of Government and the criminal justice system that equality does not require that women be treated the same as men but rather that women should be treated appropriately according to their needs.

*I truly welcome the work of the Fawcett's Commission on Women and the Criminal Justice System in uncovering the treatment of women. Fawcett's annual reviews have led to real reform of the system and I welcome the continued pressure for change.*

*(Charles Clarke, then Home Secretary, launch of Justice and Equality, 2005)*

## Remit and Scope of the Commission

Fawcett's Commission on Women and the Criminal Justice began its work in 2003 with a one year inquiry into the experiences of adult women in England and Wales. Since that time the Commission has published three annual reviews which have continued to highlight women's experiences of the criminal justice system.

Our remit has not extended to Scotland, due to the different nature of the criminal justice system. However, we have drawn on examples of good practice from Scotland to inform our work. Time and resources also dictated that the Commission's work has been limited to adult women and has not considered, in detail, the specific needs of girls and young women offenders or the families of women offenders and/or victims. We acknowledge the importance of these issues and commend the specific research that has been conducted by other bodies.

### **The Commission has published four reports since its inception in 2003:**

- Women and Justice (2007)
- Justice and Equality (2006)
- One Year On (2005)
- Commission on Women and the Criminal Justice System Report (2004)

Each of these reports has examined issues for women as victims, offenders and workers and has made a series of recommendations aiming to create a better and more equitable way of dealing with women in the criminal justice system.

### **Evidence Collection**

Since its inception, the Commission's work has benefited from the considerable and diverse expertise of its Commissioners, drawn from across the criminal justice system and areas of public life. A full list of Commissioners, current and previous, is at Appendix A. Since 2007, the Commission has been chaired by Baroness Jean Corston, author of the Corston Report - a review of women with particular vulnerabilities in the criminal justice system.

During 2008-09, we held three evidence sessions. Significantly, government departments, voluntary sector organisations and criminal justice agencies were all very receptive to the work of the Commission and all invitations to attend to give evidence were accepted without exception.

The first evidence session, focused on female offenders, and was attended by high level representatives from the Sentencing Advisory Panel, Women and Young People's Team of the National Offender Management Service; the Women and Criminal Justice Strategy Unit of the Ministry of Justice; and the Offender Health strand of the Department of Health. The first part of the second meeting concentrated on women as victims and the Commission had the opportunity to meet with The Violent Crime Unit within the Home Office; Rape Crisis (England & Wales); the Crown Prosecution Service (leads on Violence against Women and Rape); and the Association of Chief Police Officers (ACPO). The second segment provided us with an opportunity to focus on women as workers in the criminal justice system with the Chair of the Judicial Appointments Commission and the National Coordinator of the British Association for Women in Policing together with Janet Astley, a researcher in the area of women and policing, meeting with the Commission.

The third evidence session focused on creating a Commission-led vision of a criminal justice system which is fair for women and the key reforms needed over the next five to ten years to create this more gender-responsive criminal justice system. Vera Baird QC MP, Solicitor General, provided evidence to the Commission. This was followed by a roundtable lunch event at which approximately twenty organisations who work on issues relevant to women and the criminal justice system shared their views with the Commission on a 'wish-list' for future reform.

# Chapter One: Continued.

## Methodology and an Overview of the Work of the Commission



We are especially grateful to the women's associations and membership associations within the various criminal justice agencies as well as organisations within the voluntary sector who facilitated this process and the numerous individuals who gave up their time to share their views with us. There was an overwhelming response to our work with over 500 questionnaire responses received.

The evidence gathered by the Commission was primarily qualitative and the survey responses from offenders, victims, specialised agencies and workers in the criminal justice system have not been coded for statistical analysis. Content analysis is focused on broad themes and recurring concerns which are addressed throughout the report. The focus in the text has been on giving voice to the diverse experiences of individual women. The emphasis is on *"building knowledge from women's lives – a commitment that, feminists believe, has wider implications that have the potential to transform existing knowledge frameworks."*<sup>1</sup>

### **The Commission Model – a means for achieving real change**

This is the final phase of our work. The use of a Commission model has proven particularly effective as it has enabled the work to go beyond a 'one-off' report and we have not been confined in relation to the breadth of issues which we could explore. The five year duration of the Commission has allowed extensive follow-up work to be carried out in order to track progress on recommendations by the criminal justice agencies.

Through authoritative research, high level lobbying and media interventions, the Commission has achieved a number of key changes.

### **Successful lobbying for the introduction of a duty on public bodies to promote gender equality:**

In its original report, the Commission recommended that legislation on gender should be brought in line with legislation on race by introducing a positive duty on public authorities to have "due regard" to the need to eliminate unlawful sex discrimination and to promote gender equality. The gender equality duty was introduced in the Equality Act 2006, and came into force in April 2007.

These evidence sessions provided the Commission with a valuable opportunity to hear first-hand information and to follow up issues which were of particular concern to Commissioners. We would like to thank all attendees who gave up their valuable time to share their experiences and expertise with us.

*Vera Baird QC MP, Solicitor General and Baroness Jean Corston (Chair) at a meeting of the Commission on 4 March 2009*

A key aim of this final report was to incorporate the voices of women who have experienced the criminal justice system as women accused or convicted of criminal offences; female victims of crime; women working within the various criminal justice agencies; and organisations working with female victims of crime and/or female offenders. Specifically designed questionnaires were distributed within the prison service, the police force, the legal profession, the judiciary, the magistracy, the Crown Prosecution Service and the Probation Service as well as to organisations and individual women via the internet and various networks.

*Commissioners listen to evidence from organisations working on issues relevant to women and the criminal justice system.*



### **Improved treatment of women offenders**

The Commission has led a change in the thinking of politicians and policy makers about the need for women-specific community provision for women offenders, which has resulted in projects such as the Together Women Programme (TWP). The Commission was also influential in making the link between female victims of violence and patterns of female offending.

### **Improved provision for women victims**

Our work has added to the exposure of the scandal of the 'postcode lottery' faced by women victims of violence. In the second annual review, the Commission released figures that demonstrated the inconsistent rape conviction rates between police areas ranging from 13.8 percent in one police force area to 0.8 percent in another. We also called for an increase in the number of sexual assault referral centres and specialist domestic violence courts and there has been progress in this regard.

### **Better working lives for women within the criminal justice system**

The Commission influenced the decision to establish an independent Judicial Appointments Commission to increase diversity in the judiciary and has also exposed the barriers to the participation of women among the senior levels of the judiciary, the legal profession, the police, the prison service and the CPS.

We would like to thank the funders who have generously supported the work of the Commission at various times over the previous five years: The LankellyChase Foundation; The Barrow Cadbury Trust; The Esmée Fairbairn Foundation; The 29th May 1961 Charitable Trust; The Noel Buxton Trust; The Nuffield Foundation; The Home Office; Matrix Causes Fund and Garden Court Chambers. Without the generous support of these funders, the Commission's work would not have been possible.

# The Five Years of the Commission

## Comparative Statistics

### - The First and Final reports of the Commission

We have endeavoured to collect comparable statistics from the time of the first Commission report (2003/ 2004) and the most currently available data but a direct comparison has not always been possible. These statistics present a picture of mixed progress over the last five years. There have been marked improvements in some areas, no change in others and some statistics suggest the situation has worsened. It should also be noted that a five year comparison often does not capture the whole story. For example, the women's prison population has increased by 60 percent over the last decade.

#### Female Offenders

First Report	Final Report
19th March 2004 there were 4,584 women in prison. (In 1993, the female prison population was an average of 1,560)	20th March 2009 there were 4,309 women and girls in prison.
There were 17 prisons that hold women and none in Wales.	There are 14 women only prisons in the U.K. and none in Wales
212,500 women were arrested for notifiable offences.	251,500 women were arrested for notifiable offences (2007).
34,100 females were cautioned.	55,700 females were cautioned (2007).
11% of all sentences of women were community sentences.	10.6% of all sentences of women were community sentences (2007).
12.4% of women in prison were serving sentences of less than or equal to six months.	13.9% of women in prison were serving sentences of less than or equal to six months (2007).
30% of women in prison self-harmed	Around 50% of all self-harm incidents in prison are committed by women.
376 self-harm incidents by women in HMP Styal	1,324 self-harm incidents by women in HMP Styal
Around 17,000 children were affected by their mothers' imprisonment each year.	More than 17,700 children are separated from their mother by imprisonment.
Of all the women in prison two thirds were on remand.	One-fifth of the female prison population is on remand.
20% of female prisoners were foreign nationals.	19% of female prisoners are foreign nationals.
Crown Court (Sentencing) Immediate Custody: Men, 41,165, Women, 3,109 Community Sentences: Men, 19,715, Women 28,545	Crown Court (Sentencing) Immediate Custody: Men, 40,911, Women, 3,123 Community Sentences: Men, 12,575, Women 30,617
Magistrate Court (Sentencing) Immediate Custody: Men, 57,695, Women, 5,701 Community Sentences: Men, 143,421, Women, 25,166	Magistrate Court (Sentencing) Immediate Custody: Men, 46,500, Women, 4,672 Community Sentences: Men, 153,229, Women, 28,378
24 women received life imprisonment sentences.	21 women received life imprisonment sentences.
Percentage sentenced to immediate custody for indictable offences: Women- 15.2%	Percentage sentenced to immediate custody for indictable offences: Women- 14.6%



## Female Victims of Crime

First Report	Final Report
Rape	
11,441 rapes against women.	11,648 recorded rapes against women.
2.8% of women reported they had been a victim of sexual assault	3.1% of women reported they had been a victim of sexual assault
Conviction rate for rape: 5.3% (of reported cases)	Conviction rate for rape: 6.5% (of reported cases)
Sexual offence sanction detection rate for rape of a female: 30%	Sexual offence sanction detection rate for rape of a female: 25%
14 Sexual Assault Referral Centres (SARCs).	22 SARCs in operation and more under development.
Domestic Violence	
37% of victims retracted their cases.	21.2% of victims retracted their cases.
There were 2 pilots of Specialist Domestic Violence Courts in Croydon and Caerphilly	There are 104 Specialist Domestic Violence Courts in England and Wales.
Domestic Violence accounted for 18% of all reported violent crimes.	Domestic Violence accounts for 16% of all reported violent crimes.
26% of women killed were killed by a current or ex- partner.	44% of women killed were killed by current or ex – partner.
Conviction rate from domestic violence prosecutions stands at 25% (of charged cases).	Conviction rate from domestic violence prosecutions stands at 72.5% (of charged cases).

## Women Workers

First Report	Final Report
Judiciary	
High Court Judges, 5.7% are female Circuit Judges, 9.4% are female District Judges, 21.2% are female Total, 14.9% are female	High Court Judges 10% are female Circuit Judges 13.32% are female District Judges 22% are female Total 19% are female  (Apr 2008 figures – 2009 not released at time of publication)
Police	
Women represented: 21% of constables 11% of sergeants 9% of inspectors and chief inspectors 8% of superintendents and above.	Women represent: 27% of constables 16% of sergeants 14% of inspector and chief inspectors 11% superintendents and chief superintendents.
Prison Workers	
19% of Governor or equivalent grades were women.	23% of Governor or equivalent grades are women.
32% of prison officers were female	23% of prison officer grades are female.
Probation Staff	
18/42 chief officers of probation were women.	19/40 chief officers of probation are women.
Legal System	
On the roll of solicitors 39.5% are female. Of new admissions, 56.8% are female.	On the role of solicitors 44.3% are female. Of new admissions 59.9% are female
In 2003 335 men applied to the Queens Counsel, 112 were awarded. 39 women applied, 9 were awarded.	2008/9 213 men applied to QC, 87 were awarded. 29 women applied, 16 were awarded.
Forensic Medical Examiners	
18% of forensic medical examiners are female.	18% of FMEs working for the Met Police (29 out of 159) are female.
Crown Prosecution Service	
67% of CPS staff are women. 7 (16.5%) Chief Prosecutors are women.	67% of CPS staff are women. 16 (38.1%) Chief Prosecutors are women.

# Chapter Two:

## Introduction - From Policy to Practice

For the past five years, the Commission on Women and the Criminal Justice System has brought issues surrounding women and the criminal justice system into the policy spotlight. The Commission has highlighted the disadvantages faced by women throughout the criminal justice system and has succeeded in prompting legislative, organisational and policy changes. However, while there is growing awareness and improved policy development designed to obviate the systematic discrimination faced by women as offenders, victims and workers in the criminal justice system, there remains a significant gap between policy and practical implementation.

Part One of this report tracks the key areas of progress and of failure in relation to Commission recommendations across the agencies and considers how failures in translating policy into practice are impacting on the actual experiences of women in the criminal justice system.

One of the key emerging themes is a persisting gap between strong policy development and consistent implementation. Evidence from female victims of crime, female offenders, women working in the criminal justice system and specialist organisations revealed that the needs of women are continually marginalised in a system which was designed for men by men. Importantly, there can be no real change until there is a shift in mindset towards a realisation that equality does not require that women be treated the same as men but rather that women should be treated appropriately according to their distinct needs – whether accused or convicted of crime, female victims of crime or women working in the criminal justice system.

When the Gender Equality Duty ('GED') came into force in April 2007, it was identified as having the "potential to transform the criminal justice system for women – whether they are staff, offenders or victims of crime."<sup>2</sup> It was hoped that the duty would result in a more positive, proactive approach with the burden resting with all organisations providing a public service to address discrimination and promote gender equality. However, results to date have been disappointing.

The GED imposes a clear legislative obligation upon public authorities to adopt a substantive equality (or outcome based) approach to addressing gender inequality. However, there is a lack of understanding around the meaning

of substantive equality and how it differs from formal equality. Formal equality assumes that all people should be treated alike. Such equality can in fact entrench gender disadvantage. Substantive equality, conversely, is directed at achieving substantively equal outcomes. A substantive equality approach to tackling disadvantage recognises that some inequalities – including gender – are so persistent, durable and institutionalised (in both formal and informal structures and processes) that to treat people in the same way may simply be to reproduce disadvantage, thus perpetuating discrimination. Substantive equality requires that the roots of inequality are identified and addressed, and that 'special measures' are likely to be necessary to achieve equality.

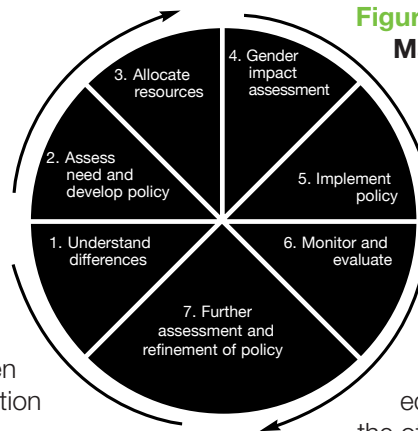
Significantly, the Committee on the Elimination of Discrimination against Women ('The CEDAW Committee') in its examination of the United Kingdom in July 2008, noted with concern that:

*The varying levels of public understanding of the concept of substantive equality have resulted in the promotion of equality of opportunity and of same treatment only, as well as of gender-neutrality, in the interpretation and implementation of the Gender Equality Duty.*

The Commission shares these concerns. Gender equality is still not being mainstreamed into all policies and processes, and there is a dearth of mechanisms to monitor outcomes and to ensure accountability. Further, a misunderstanding of equality as requiring the same treatment for men and women has led to the redirection of funds from women-only services and the application of programmes, services and treatment designed for men to women. The Commission heard evidence that this was particularly a problem at the local government level, where organisations have been asked to provide parity of services to men irrespective of need.

As explored in this report, the GED does appear to have been helpful as a lever for specific policy development in relation to women. For example, the head of the NOMS Women's Team noted that the duty had been useful in pushing for the development of policies such as the Gender Specific Standards for Women's Prisons in Prison Order 4800 and in making policy changes such as the breakthrough new full search arrangements for women

**Figure 1: The Gender Equality Duty & Policy-Making<sup>4</sup>**



prisoners.

However, if the duty is to be as effective as intended there is a need for practical and cultural change at every stage of the policy-making cycle (as outlined in Figure 1) that takes into account the needs of men and women. To-date, the practical application of the duty has too often been reduced to ticking boxes, such as the inadequate or unfocused completion of Gender Impact Assessments, rather than the mainstreaming of gender within core everyday business through concrete understanding of the different needs of men and women. Worryingly, even the completion of Gender Impact Assessments frequently demonstrates an absence of gender analysis. During its collection of evidence, the Commission requested a number of impact assessments from Government departments and was disappointed at the standard of assessments it was shown. Further, the tendency, as noted by the CEDAW Committee, for gender neutrality to be equated with gender equality was apparent. For example, the UK Government delegation to the CEDAW Committee in 2008, did not mention the word ‘women’ once during its six hours of evidence.<sup>3</sup>

There has also been a failure to monitor and evaluate the outcome of policies. The evidence sessions revealed that where information has been collected there has been a tendency for the focus to be on collecting information about women as an undifferentiated group in the criminal justice system. Disaggregation of statistics has been a fundamental requirement in all UN policies and ensures that the intersections between gender and other inequalities such as race and disability can be taken into account.

Clear guidance needs to be issued to local authorities to ensure they fully understand their obligations under the GED in relation to the provision of violence against women (‘VAW’) services and the provision of services for female offenders and women at risk of offending. All public bodies including local councils, police services, probation services, health authorities and government departments should be assessing the needs of both women and men and taking action to meet those needs. Public bodies should also be setting themselves pay related objectives that address the causes of any differences in pay between men and women that are related to their sex.

We are concerned that given the current lack of progress in relation to the GED that the proposed single equality duty for public bodies, proposed in the Equality Bill, if enacted, would lead to further reduced focus on gender inequality and in particular the need to achieve substantive equality, with gender being lost amongst the other inequalities. We recommend that the

Government develops and implements an education and awareness raising campaign in the public sector (with a particular emphasis at the local authority level) to increase understanding of substantive equality and the practical implications of the GED.

The Commission is also concerned that the key actors pushing for reform within the criminal justice sector are largely women. These women are doing a remarkable job. However, there is also a need for men to recognise the skills and experiences which women can bring to the justice sector and the changes which are needed to make the system more responsive to female victims and offenders. A culture of gender equality cannot take root unless men support the rights of women, their equal participation as workers in the system, and understand the distinct needs of women within the criminal justice sector.

Creating a criminal justice system which is fair for women requires consistent and focused hard work on the part of criminal justice agencies and organisations. There is a need for careful evaluation and research as to the effect that policy development is having in practice and an acknowledgement that a culture shift is required in the criminal justice system before any real change can occur.

Part Two of this report sets out the institutional change which is needed to achieve an engendered justice system which recognises and responds to the unique needs, experiences and skills of women and outlines key targets which should be reached by 2020.

# Chapter Three:

## Women and Justice – Meeting the Needs of Female Offenders

*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. Simply put, a male-ordered world has applied to them its perceptions of the appropriate treatment for male offenders.<sup>5</sup>*

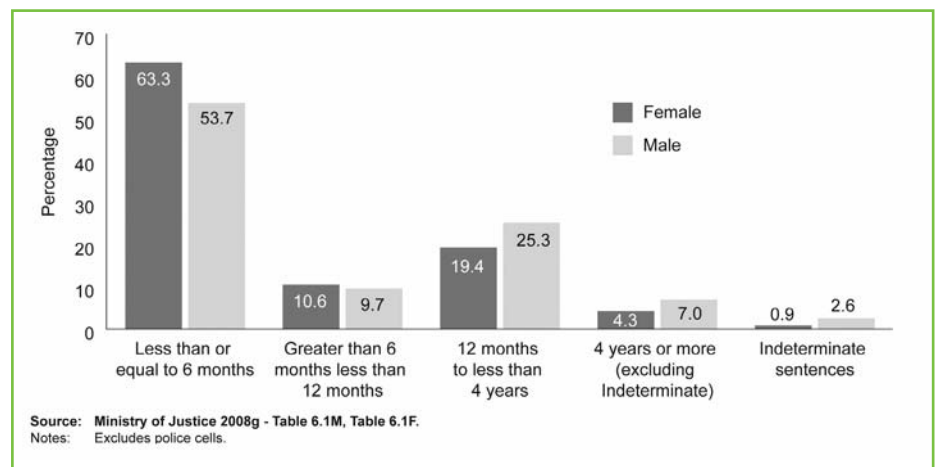
*(Lady Justice Brenda Hale DBE, Lord of Appeal in Ordinary, December 2005)*

Since the Commission began its work in 2003, there have been some important developments in recognition of the distinct needs of female suspects, defendants and offenders. However, despite these steps forward at the policy level, implementation on the ground has been less evident.

Women remain a minority of the prison population (just five percent of the total population) in a prison estate that was designed by men for male prisoners and it is therefore no surprise that the system continues to overlook the needs of female offenders. Significantly, women in prison remained an area of concern for the CEDAW Committee in its examination of the United Kingdom in July 2008. The UK Government was urged to intensify its efforts to reduce the number of female offenders; to develop alternative sentencing and custodial strategies for women convicted of minor offences, including community interventions and services; and to take further measures to increase and enhance educational, rehabilitative and resettlement programmes and health facilities and services for women in prison.<sup>6</sup>

The female prison population remains at a disturbingly high level. On 3 April 2009, the female prison population in England and Wales stood at 4,309, compared to a mid-year female prison population of 2,672 in 1997.<sup>7</sup> Over the last ten years, the female prison population has increased by 60 percent compared to a 28 percent increase for men.<sup>8</sup> Due to the limited number of prisons in the female estate, women continue to be held far from their home and families. In 2007, 60 percent of female prisoners were held in prisons outside their home region. As one female

**Figure 2: Receptions into Prison Establishments – Prisoners under sentence by length of sentence, 2008**



Source: *Statistics on Women and the Criminal Justice System*, Ministry of Justice, January 2009, p.49

offender told the Commission: *“My sentence has had a huge impact on my family even more so because I am now in a prison so far away from home.”<sup>9</sup>*

Too many women continue to be imprisoned on short sentences for non-violent crime. In 2007, 63.3 percent of women were sentenced to custody for six months or less (see Figure 2) and 31 percent of all women sentenced to immediate custody in 2007 were sent to prison for theft and handling of stolen goods.<sup>10</sup> The number of women serving sentences up to and including three months has increased by 68 percent since 1997.<sup>11</sup>

There is now an established body of evidence on the distinct needs of female offenders. Most notably, the Corston Report published in March 2007 sets out in clear terms the improvements required to address the needs of female offenders. The Commission commends the steps which have been taken in response to the Corston Report to make the criminal justice system more responsive to the needs of female offenders and these are discussed in detail in this section. However, there is much work still to be done and evidence from female offenders in custody illustrates that there remains a gap between policy development and change on the ground.

### **The Commission has identified five key areas requiring urgent attention.**

- A consistent approach to the needs of female suspects in police custody.
- Sentencing of female defendants and the over-use of remand and custodial sentences for non-violent offences.
- Implementation of the Corston Recommendations,

particularly in relation to community alternatives to custody, the mental health needs of female offenders and the unsuitability of the current female prison estate.

- The gap between policy and practice especially the lack of a consistent, co-ordinated approach on the ground to the needs of women offenders.
- The failure of criminal justice agencies and local authorities to comply with the obligations imposed by the GED.

This section considers each of these key problem areas alongside noting the significant progress by the Government and criminal justice agencies. Importantly, there can be no real change until those working with women offenders understand that equality does not require that women should be treated the same as male offenders but rather that women offenders should be treated appropriately according to their different needs.

## Female Suspects – Experiences of Police Custody

*At the police station they don't let you wash, or brush your teeth or comb your hair. They don't even offer you a shower, and they expect you to go to court like that!*<sup>12</sup>

In 2006/2007, women made up only 16.97 percent of those arrested for notifiable offences.<sup>13</sup> While this number has been increasing over the previous five years, it still results in police dealing with far fewer female suspects than males in an environment which has been traditionally designed for men. There is still a lack of understanding in relation to women's experiences of custody and more detailed research is required at the local and the national level. However, the limited available evidence suggests that women are likely to have a more negative experience of custody than men.

International human rights obligations require that all individuals deprived of their liberty are treated with respect for their privacy, personal integrity and the inherent dignity of the human person. It is therefore important that facilities

at police stations, including washing and toilet facilities, are appropriate and dignified for female suspects, including access to a female member of staff to discuss needs, such as sanitary protection. The Commission has consistently recommended that appropriate hygiene facilities should be made available to female suspects, without the need to ask for them. However, the evidence suggests that this is still not routine practice. Many women told us that they were not offered sanitary protection and were not able to have a shower or clean their teeth prior to Court. As one female offender described:

*There were no appropriate hygiene facilities available. I asked for a sanitary towel and they didn't come back for an hour and a half. When they did bring me one there was nowhere to dispose of the old one. The officer told me to roll it up and leave it in the corner of the cell. I was there for 23 hours and I was only given one sanitary towel. I asked for breast pads, but they didn't have any. I wasn't allowed to shower or wash my face so I had to go to court feeling dirty.*<sup>14</sup>

Women were also concerned at the lack of cleanliness and the cold temperature of the cells.

Given the high number of women suspects who are likely to have experienced abuse by men,<sup>15</sup> it is important that women feel safe in custody. All officers should be trained to deal with women who have experienced abuse, including training as to whether it may be more appropriate for the suspect to be interviewed by a female officer.

The Commission acknowledges that a current lack of women working as police officers in the custody area may make access to a female member of staff difficult. However, the number of women working in the custody area should be increased through use of the genuine occupational qualifications exception in relation to recruitment, training, promotion or transfer under section 7(2) of the Sex Discrimination Act; part-time working and job-sharing; or other positive action measures such as the special measures allowed under CEDAW. If custody arrangements are outsourced to third party providers, a minimum number of female staff per shift should be stipulated as a condition of the contract.

The significance of the unpaid labour of women as carers

## Chapter Three: Continued.

### Women and Justice – Meeting the Needs of Female Offenders

of children is a factor which is under-recognised by the criminal justice system. The provision of unpaid care in the domestic sphere is taken for granted and in times of emergency, including when a woman is arrested or imprisoned, women are forced to rely on the private assistance of family and friends. When this private support is not available, the options are very limited and women experience considerable anxiety about the support provided by social services which may involve removing their children and placing them in foster care. As one female offender told the Commission: “I was taken by surprise when I was arrested and wasn’t asked what I had left behind. I couldn’t sleep for worry of my children, home, job and family.”<sup>16</sup>

Women detained in police custody with childcare responsibilities are likely to experience anxiety over whether their children are being looked after in their absence. This, in turn, can exacerbate risk of self harm, a lack of cooperation and general distress and can also affect their ability to negotiate the legal processes.

The Commission has consistently recommended that custody welfare checklists should include a question about the care arrangements of suspects’ dependents including children and disabled or elderly adults. Notably, some local police areas are incorporating questions into their initial risk assessment of detainees which specifically ask women about childcare arrangements. For example, Dorset Police have introduced questions into their custody risk assessment which specifically ask women if they are pregnant; if they have children; and if so, what are the current care arrangements for their children including contact phone numbers. Another example of good practice is the parent and child rooms where parents can remain with their children until suitable arrangements are made which have been introduced by Sussex Police.

However, while there are examples of good practice developing, there remains a lack of consistency across police areas in relation to whether female detainees are asked about their caring responsibilities. There is need for formal nation-wide guidance as to the appropriate course of action to be taken by police officers when arresting an individual with dependents and mandatory inclusion of questions relating to care arrangements in the initial risk assessment. There should be a standardisation between forces on the custody record sheet, custody risk

assessment and detained person’s medical form. This could be achieved if a consistent IT system was rolled out nationally.

Given the high incidence of mental health problems in the female offender population, female suspects may require referral to mental health agencies or specialist women’s support services. However, there is currently no consistent approach to the health care needs of female suspects in police custody. Police must be trained in identifying mental illness and distinguishing it from those intoxicated by drugs or alcohol. Health and social care needs should begin to be addressed at the first point of contact, through psychiatric assessment schemes funded by Health authorities.

The Commission was particularly concerned to learn from Offender Health at an evidence session that the National Health Service (‘NHS’) standards do not apply in police stations unless police force areas have specifically contracted with a Primary Care Trust commissioned service, which is rare. Offender Health told the Commission in January 2009 that they were in the process of carrying out a scoping study on healthcare in police stations which would consider local and national plans and make recommendations for a national approach. However, it is unlikely that a consistent national approach to the implementation of these recommendations will be possible unless NHS standards apply in all police stations. It is also essential that medical staff are available around-the-clock in each police station (such as a full-time custody nurse) and that these staff are trained to deliver professional standards of medical care to female offenders.

The introduction of the Conditional Cautioning Scheme has the potential to divert women who have committed low level offences away from further criminal justice system action, particularly with the introduction of a new condition aimed at vulnerable women. The condition requires attendance for a needs assessment at a Together Women Programme Centre. Six month pilots of this new condition were launched by the Government on 22 August 2008 in Bradford, Leeds and Liverpool.

Although the pilot has not yet been subject to a full evaluation, results are encouraging. As Together Women Yorkshire and Humberside (TWP) told the Commission:

*[A woman] had admitted to an offence of theft from shops. [She] had accumulated a high level of debt; much of this was related to her offending as stores were attempting to recoup their losses. She also had support needs in relation to substance misuse. [The woman] has engaged well with TWP, seeing this as an opportunity to address the issues that were leading her to commit shop lifting. She was, at the time, in a cycle of offending to pay debts that had been accrued as a result of earlier offending. Her key worker supported her to write to the retail recovery agency. At first the debt was put on hold and then it was written off. [She] attends ADS to address her substance misuse issues as well as counselling with LCWS. She continues to engage with the service although this is likely to be relatively short term as her support needs have been met. For this [woman], referral to TWP as a conditional caution was timely and effective. She has been able to address issues that she needed support with and had not felt previously able to solve alone. She has not re-offended since engaging with the service.<sup>17</sup>*

Requiring women to attend a needs assessment opens the possibility for each individual to consider the reasons behind their offending and, in turn, makes them aware of the support and training available in the community. This rehabilitative approach has largely been absent from the national approach to conditional cautioning to date. Since the scheme began in April 2006 until February 2008, the majority of conditions (just under 60 percent) were for compensation to victims, followed by a letter of apology in 15 percent of cases and it was only in just over ten percent of cases that participation in a drug intervention programme was imposed.<sup>18</sup>

However, the success of the condition aimed at women offenders goes hand-in-hand with the provision of support services for women on a national scale. The Commission also recommends that the impact of the scheme is carefully evaluated and monitored going forward to ensure that women who might have been simply referred for assistance by the local police, without any formal record of the offence, are not being formally cautioned as a result of the scheme.

## Female Defendants – Experiences of the Court System and the Sentencing Process

*Women are always the ones who face court for non-payment of TV licenses... We get women who have never been in court before and they are criminalized and traumatized unnecessarily. Why should this debt be any different from any other non-criminal debt [such as] credit card debt? Also it is women who almost always have to pay the fines for their errant children obviously this is fair enough to a certain extent, but what about the fathers? Again we get women in court for not sending their children to school. I have yet to see a father in this position having been on the bench for 17 years.*

*Female Magistrate, Questionnaire Response, March 2009*

### The Legal Profession and Legal Aid

The Legal Services Commission provides publicly funded legal aid to individuals facing criminal charges through the Criminal Defence Service. Evidence from female offenders suggested that in the majority of cases, female suspects were satisfied with the advice received from their solicitor. Many women commented that they were able to deal with the same solicitor they had dealt with previously which made them feel reassured or were provided with a duty solicitor who explained the process to them. However, the Commission remains concerned that there are frequently delays associated with the provision of legal advice. As one woman stated *"It wasn't until the following day that I was asked if I wanted legal advice which really stressed me out."*<sup>19</sup> This evidence of extensive delay experienced by suspects together with the limited time that duty solicitors are often able to spend with their clients suggests the duty solicitor scheme remains under-resourced: *"The duty solicitor explained everything to me but he was rushing from one station to another. Therefore he told me to give a 'no comment' interview."*<sup>20</sup> Of particular concern was that many suspects who shared their views with the Commission appeared unsure as to their options in relation

## Chapter Three: Continued.

### Women and Justice – Meeting the Needs of Female Offenders

to legal advice, such as being able to elect to have their own solicitor rather than the duty solicitor. All suspects should be provided with the Criminal Defence Service information sheet which sets out entitlement to legal advice and the custody staff should ensure that individuals have understood this entitlement.

The Commission welcomes the research which is being conducted by the Legal Services Research Centre into whether suspects and defendants in the criminal justice process understand their legal rights when arrested and the main factors influencing their choice of solicitor. The fieldwork for this research has included interviews with 167 female prisoners in HMP Send and HMP Downview. This research is crucial and appropriate funding should be provided to allow thorough research in this area to continue.

Once the case progressed to Court, numerous offenders told the Commission that they were dissatisfied with their barrister or the time they were able to spend with him/her and many added that they had not understood the court process. As one female offender stated *“I didn’t understand how it all worked, I had never been before. I needed more time with my barrister.”*<sup>21</sup> This type of comment was frequent.

Evidence also suggested there was little information as to what women could expect as a sentencing outcome. Anawim, a voluntary sector organisation working in Birmingham, told the Commission:

*“We meet women in the prison and they had no idea they would go to prison and have not even arranged someone to pick the children up from school let alone look after them for the next few weeks. They need better preparation and information from their solicitors.”*<sup>22</sup>

Barristers and solicitors also need to be aware of the specific harms which can result from custody for women and their families and ensure that this is clearly presented to the Court. As a Magistrate recounted:

*“We had a case last week where a woman was being sent to prison for non-payment of fines and it only emerged by chance after sentence that she was a single mum with a 3-month-old baby. So she was re-sentenced in a different*

*way. She had a male lawyer who perhaps didn’t take the implications on board.”*<sup>23</sup>

The Poppy Project (providing accommodation, support and outreach for trafficked women within Eaves Housing) told the Commission that poor legal advice has also resulted in a number of trafficked women pleading guilty to charges (such as for holding false documents) whilst evidence about their trafficking had not been raised in their defence. Defence lawyers are under an obligation to make enquiries as to whether there is any credible material showing that their client may have been a victim of trafficking<sup>24</sup> and appropriate services such as the Poppy Project should be involved at an early stage.

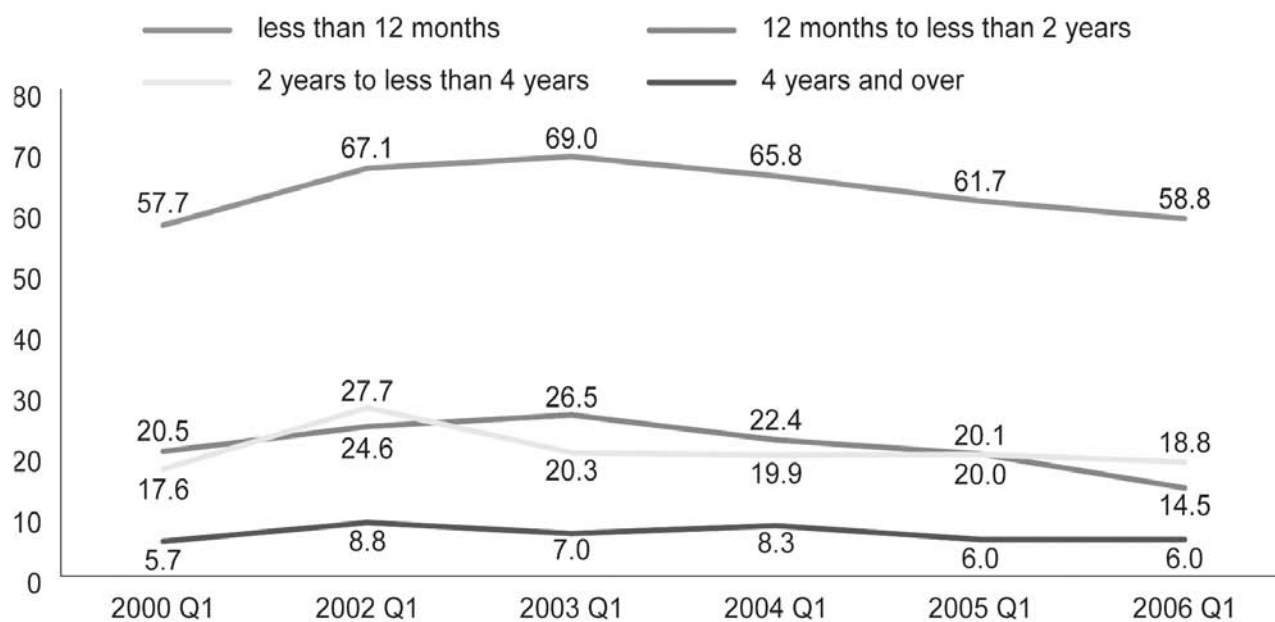
Women offenders with children face similar issues to those experienced by female victims and witnesses (see Chapter Four) due to the lack of childcare facilities available at the courts. This can cause additional anxiety for female offenders. As TWP told us:

*“When attending court, people often have to arrive for 9.45 for the morning sitting but they are given no definite time of when they will be appearing, meaning they could be sitting and waiting for hours...If women have no childcare they are forced to take their children to court with them and there are no childcare facilities available... Sometimes women do not even know why they are at court and often attend court with no idea of what the outcome is likely to be. This means they do not know whether they have to set plans in place for childcare or a tenancy if they are given a custodial sentence.”*<sup>25</sup>

The Commission recommends that courts should provide childcare services and probation staff or a specially designated member of court staff should be able to assist the mother with arrangements for her children in case she is given a custodial sentence.



**Figure 3: Female Reoffending Rate by Length of Custodial Sentence 2000-2006<sup>29</sup>**



Source: *Statistics on Women and the Criminal Justice System, Ministry of Justice, January 2009, p.61*

### The Judiciary and the Sentencing of Female Offenders

*Of course it is right that the judiciary should jealously guard its independence from Government and the executive. But that does not mean that it should ignore the concerns expressed by others about the trends for which its decisions are responsible. The family justice system is asking itself whether it is indeed unjust to fathers. The criminal justice system could also ask itself whether it is indeed unjust to women.<sup>26</sup>*

*(Lady Justice Brenda Hale DBE, Lord of Appeal in Ordinary, December 2005)*

Since its inception the Commission has drawn attention to the fact that: too many women are being imprisoned on short sentences for non-violent crime; there is an over-use of remand for female defendants; and there are too many foreign national women in prison, particularly those serving long sentences for drug-smuggling offences. Much of the rise in the female prison population can be attributed to a significant increase in the severity of sentencing. For example, in 1996, 10 percent of women convicted of an indictable offence were sent to prison. While in 2006, 15 percent of women were.<sup>27</sup> Short sentences continue to have a devastating effect on the lives of women while leading to increased rates of reoffending. As a prison worker commented to the Commission, *“Getting sentenced to four weeks for driving whilst disqualified, what does it achieve”<sup>28</sup>*

A lack of information available about sentencing practices makes it very difficult for any analysis of the reasons behind this increase in the severity of sentencing. This dearth

of information is an issue of particular concern to the Commission, resulting in limited knowledge as to the effect of sentencing guidelines or trends in sentencing in relation to female offenders.

The Commission understands that the new Sentencing Council, proposed in the *Coroners and Justice Bill*, will be coordinating the collection of data on sentencing. Information on gender, ethnicity, previous convictions, mitigating circumstances and aggravating factors is crucial in the long term in order to understand sentencing practices and trends. Mechanisms and resources should be put in place to collect this information. However, in the short term, the NOMS regional structure could be utilised to compile information which is currently available such as offence type and sentencing outcome. It is crucial that steps are taken to collect this information and in fact, the collection of data and the implementation of monitoring systems to assess the different impacts of sentences on women and men are necessary in order to comply with the GED. This duty will also apply to the new Sentencing Council.

The Commission has consistently recommended that the Sentencing Advisory Panel should conduct a thematic review into women offenders. However, the Commission was told by the Sentencing Advisory Panel, that a lack of resources and the need to prepare guidelines for new legislation, had led to an inability to conduct research on this issue. The proposed Sentencing Council must be sufficiently resourced to enable such research, including recent trends in sentencing and whether the available requirements of the community order are effectively meeting the needs of women offenders.

# Chapter Three: Continued.

## Women and Justice – Meeting the Needs of Female Offenders

### Pre-Sentence Reports

Understanding current sentencing trends is only the beginning and steps also need to be taken to ensure that sentencers are aware of the needs of each female offender and the community alternatives to custody which are available. In this regard, evidence presented to us highlighted the important role that pre-sentence reports (PSRs) have to play. The Commission recommends that a pre-sentence report is always obtained before sentencing a woman offender to custody.

*My sentence has resulted in a break with my partner of eight years and has obviously affected my daughter very badly. She has gone from excelling in school to repeating a year and still cries every night. She has also stopped attending other children's parties because she is the only one without her mummy.*

*Female Offender, Questionnaire Response, December 2008*

#### **This pre-sentence report should:**

- be in writing;
- always include community sentence options for non-violent offences;
- where the offender has caring responsibilities, include an assessment of the impact of incarceration on their dependents; and
- give an outline of all sentencing options which were considered including those which were not recommended and the reasons why.

The Commission recommends that mandatory report writing training should be rolled out across probation areas to ensure PSRs are of a high standard and consistent across probation areas. The quality of PSRs should be monitored at the regional level.

*It depends on the time the probation officer has in developing the court report and if they really do look at the whole picture of the woman they are writing the report for. Probation officers that write the court reports can be inexperienced and not have the skills to ask the 'right' questions nor have the availability of resources to offer a recommendation that is going to work for the offender.*

*Previous employee of the National Probation Service, Questionnaire Response, 2009*

These PSRs should be carefully considered by the Court in reaching sentencing decisions. Several female offenders voiced concern that the Judge in their case did not take their PSR into account. *"I felt I was treated unfairly by the judge. He did not look at my pre sentence report or other supporting evidence and I believe as a woman he wanted to make an example, which is unfair."*<sup>30</sup> The Commission recommends that judges should be required to give reasons for not following the recommendation in the PSR (if there is a recommendation).

### Mental Health Needs of Defendants

The prevalence of mental health problems among female offenders remains a major cause of concern and far too many such women are still receiving custodial sentences. The Commission has highlighted this in previous reports but disappointingly no consistent progress has been made. As a Magistrate told the Commission:

*Having sat as a magistrate for 16 years I have seen a great change in attitudes over the years, mainly for the better. However, women with mental health problems still do not seem to get the care they deserve. Great strides have been made to help and support women from black and ethnic minority communities but women with mental health problems seem to be pushed from pillar to post with no one body able to look after them. I have seen many women brought to court who needed help not punishment, but because someone decides they have mental health problems that are not treatable, there is no help for them*<sup>31</sup>

Lord Keith Bradley's review into the treatment of people with severe mental health problems in the criminal justice system has been provided to the Government and at the time of

writing the Government had undertaken to publish it, along with the response, in April 2009. This review should provide much needed guidance on the diversion of offenders with severe mental health problems. The Commission is also encouraged by the forthcoming offender health and social care strategy which should assist with developing a coherent strategic approach to the needs of women throughout the criminal justice system. This strategy should be finalised and implemented as a matter of urgency.

The Commission reiterates its earlier recommendation that where the defendant or offender appears to the court to have mental health problems, but does not justify admission to hospital, they should not be remanded or sentenced to imprisonment without a medical report on the impact of incarceration upon their health. Defendants or offenders should not be sent to prison in order to obtain a psychiatric report. In addition, the Commission recommends that sentencers must have sufficient information about community drug and mental health services so that they do not see custody as the main solution for detoxification.

The introduction of service level agreements between magistrates' courts and mental health services is welcomed by the Commission and pilots are currently being undertaken in South-West and North-West London. However, mental health services, particularly psychiatric services, need to be linked more closely into all courts across England and Wales to ensure that there is swift access.

Criminal Justice Liaison and Diversion (CJLD) Schemes have been tasked with the role of diverting offenders with mental health needs away from the criminal justice system. These schemes involve a range of services and operate within police stations, courts and in rural and urban areas. Provision is patchy with differing approaches and quality across schemes. From January 2006 to March 2007, an evaluation was carried out of 10 CJLD schemes.<sup>32</sup> It found that schemes were seeing on average 2 to 3 percent of the total number of offenders, which suggests a large pool of unmet needs. There is a need for greater resourcing of these schemes to allow a nation-wide proactive approach; greater signposting and partnerships with available community provision; publicity for the schemes in police stations and courts and clear performance targets and monitoring by the Department of Health.<sup>33</sup>

## Training and Awareness of Sentencers

There is widespread variation across courts as to the extent to which custodial sentences are utilised. 2006 figures show that across the 42 criminal justice areas, custody rates in Magistrates' Courts ranged from 6 percent to 16 percent and in Crown Courts from 45 percent to 68 percent. A study by the Ministry of Justice revealed that these variations were not fully explained by a variation in types of cases but rather seemed to depend on the relationship between the courts and other criminal justice agencies such as the police and probation as well as the sentencers' understanding of the availability of community provision in their local area.<sup>34</sup>

Sentencers must be made aware of the differential impact sentencing decisions have on women and men including caring responsibilities for children or elders; the impact of imprisonment on mental and emotional well-being; and the disproportionate impact that incarceration has on offenders who have caring responsibilities if they are imprisoned a long distance from home.

The Commission was encouraged by the Sentencing Advisory Panel's recognition that guidance is required in relation to female offenders in its recent consultation paper on the overarching principles of sentencing. This included the proposed principle that:

*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 special force in relation to women offenders because of the multiple harms that are likely to result from incarceration.*<sup>35</sup>

It was also encouraging that among the proposed mitigating factors listed as specifically applicable to women offenders were: the link between women's involvement in the criminal justice system and prior victimisation; the high percentage of women who are the sole carers for dependent children; pregnancy; and the high proportion of women who suffer from mental health problems. The Commission suggests that it may also be appropriate for a non-exhaustive list of harms which are likely to impact on women in custody to be included in the overarching sentencing guidelines to alert sentencers to the potential impacts of decisions.

# Chapter Three: Continued.

## Women and Justice – Meeting the Needs of Female Offenders

Research conducted in May 2008 concluded that there is little evidence that the new community orders introduced by the Criminal Justice Act 2003, have had any significant impact on the use of custody for women<sup>36</sup> and as figure 4 shows the use of community sentences for women is actually decreasing. The majority of magistrates who provided evidence to the Commission stated that they were fully informed about the range of community orders but that there were limitations in the information about the services which were actually available in the local area resulting in reliance on probation. As one magistrate told the Commission:

*We are kept up to date about the range of sentencing options available within the community but not particularly about what people will do to complete these. For example, we know the individual will have to complete unpaid work, but not what that unpaid work is or what it involves. We rely here on the probation service to advise us within a PSR as to what options are available to us.<sup>37</sup>*

Training provided by probation to magistrates was seen as particularly valuable. However, many magistrates who shared their views with the Commission also highlighted the

need for information as to the success of community orders in practice:

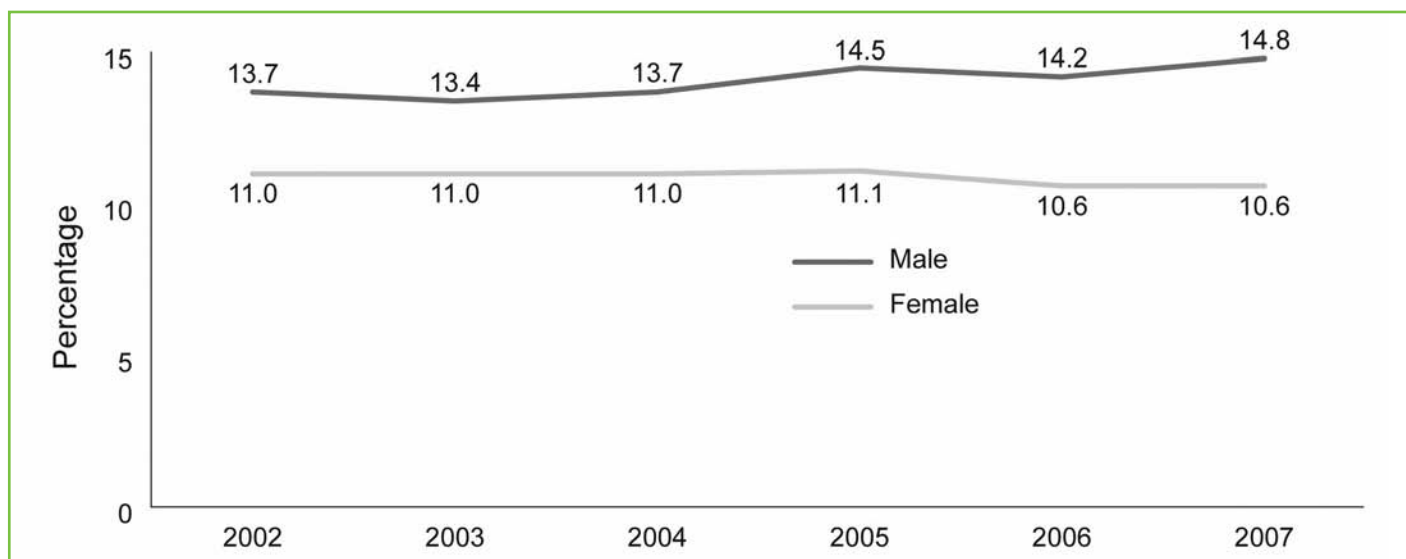
*...to encourage alternatives to custody, there should be more evidence given on the success of these orders...It would be helpful to have more feedback from Probation regarding reoffending rates. We need to know what works.<sup>38</sup>*

*I think there is plenty of information regarding Community Orders it's just a pity the money doesn't seem to be there in order for them to be carried out effectively. Time and time again we are told this or that isn't available or for example the anger management or addressing alcohol abuse and offending behaviour course can't start for several months and because of this the defendant has often re-offended again before the order can start properly. Personally I don't feel at present that many of these orders actually work.*

*Female Magistrate, Questionnaire Response, March 2009*

There is also scope for community orders to be used more creatively. For example, the specified activity

**Figure 4– Percentage of Sentences Resulting in a Community Sentence by Sex, 2002-2007**



Source: *Statistics on Women and the Criminal Justice System, Ministry of Justice, January 2009, p.37.*

requirement could be used to refer women to voluntary sector organisations for specified programmes or requirements can be used to ensure women receive drug or mental health treatment. However, it was reported to the Commission that, at least in some areas, magistrates are advised against using a wider range of orders due to the management burden this would place on probation. There is a need for further investigation on how community sentences could be utilised more effectively for women and magistrates should be consulted as part of this.

Community sentencing and other alternatives to custody will also only be effective if sentencers see these alternatives as viable options which will rehabilitate women offenders. Organised visits to community provision for women would enable sentencers to gain awareness on the community provision available and the benefits of non-custodial approaches for female offenders. Community organisations can also be approached to take part in training sessions and this appears to be starting to happen but as Anawim, a voluntary organisation in Birmingham working with female offenders, told the Commission, this is hard work: *“There are 350 Magistrates in Birmingham and getting around all of them is nearly impossible, but we are booked to take part in their training in October.”*<sup>40</sup>

The Commission is also concerned, given the key role that legal advisers play in advising on sentencing options that training is provided to these advisers. The Magisterial Committee of the Judicial Studies Board has recently circulated the Corston Report to all legal advisers and it will be made available to all Magistrates. The new winger workbooks for magistrates also include sections on female offenders and victims. It is vital to ensure that this information is put into practice on a daily basis within the courtroom.

### **The Law in relation to Previous Convictions and Breach of Court Orders**

Evidence presented to the Commission highlighted that women are disproportionately affected by the current law in relation to previous convictions and breach of court orders. The *Criminal Justice Act 2003* requires previous offences to be taken into account in deciding the seriousness of the current offence. This change in the law has meant that women committing repeat shoplifting or low-level fraud

offences are likely to be treated more harshly by sentencers, as their previous offences will increase the severity of their present offence. As a result, this has the potential to increase the likelihood of women receiving a custodial sentence. Further breaches of court orders also have the potential to disproportionately increase the likelihood of female offenders receiving a custodial sentence.

As recommended in the Corston Report, the Commission reiterates that the restrictions placed on sentencers for breaches of community orders should be made more flexible as a matter of urgency. This would allow sentencers to draw a distinction between serious breach and unavoidable breaches such as a failure to keep an appointment due to childcare responsibilities. In turn, the rate of breach should reduce if community sentences are tailored to take into account women’s domestic responsibilities and vulnerabilities.

### **Over-use of Remand**

*In this country it’s ‘innocent until proven guilty’, but yet you are still remanded in custody. I’ve served 5 and half months so far. If I get released by court I would have spent all that time away from my children for nothing.*<sup>41</sup>

In February 2009, there were 782 adult females on remand,<sup>42</sup> almost one in five of the female prison population. Only half of all remanded prisoners go on to receive a prison sentence. In 2005, only 41 percent of women on remand received an immediate custodial sentence.<sup>43</sup> Notably, some sentences are ultimately non-custodial because of time spent on remand. As Table One demonstrates, the number of females being remanded into custody has continued to increase. The Commission has consistently voiced concern at the number of women being held on remand and urges the Government to ensure that adequate and robust alternatives to remand are available to the judiciary, such as single-sex bail hostel provision which is appropriate for women with and without caring responsibilities, intensive supervision, electronic surveillance and transportation to court.

# Chapter Three: Continued.

## Women and Justice – Meeting the Needs of Female Offenders

**Table One: Remands into Custody for Untried Female Prisoners 2002-2006<sup>44</sup>**

Period	Number	Percentage Change on 2002
2002	4,954	-
2003	5,238	+6
2004	4,716	-5
2005	5,173	+4

Source: *Statistics on Women and the Criminal Justice System*, Ministry of Justice, January 2009, p.29

The time spent on remand can have a devastating effect on women and their families, resulting in the loss of housing, children and income. Simultaneously, the short time spent in prison prevents women from accessing the benefits of treatment programmes or training.

*Women are often not given bail and some wait six months on remand, often with children in care and other social problems. The time between arrest and sentencing is often too lengthy to be humane, especially when someone is innocent!*

*Gerald Bishop, The Sozo Project, <sup>45</sup> Questionnaire Response, January 2009*

When women are placed on remand, time should be used to properly inform the sentencing process through an assessment of the needs of individual women. For example, the Together Women Programme (TWP) worker based at New Hall prison prioritises referrals of women on remand and after conducting a needs assessment with the woman, she feeds into the PSR and liaises with legal representatives in an endeavour to ensure the woman is not given a custodial sentence. The Commission recommends that a needs assessment by organisations such as the TWP or by Probation should be a compulsory requirement if women are placed in custody on remand. All prisons holding women on remand should also have a fully functioning bail information scheme.

## The Implementation of the Corston Recommendations

*Implementing Corston requires not just commissioning services but, above all, consistent leadership, direction and resourcing of those people who have to work with and for women prisoners.<sup>46</sup>*

*(Lord Ramsbotham, Women in Prison Question for Short Debate, January 2009)*

The Corston Report published in March 2007, provided clear guidance on how to address the needs of women offenders and it was hoped that it would provide a catalyst for extensive change. However, more than two years later, while there have been some important steps forward in the policy arena, the movement from policy to practical implementation remains disappointingly slow.

The Commission is encouraged by the instrumental shift in thinking of politicians and policy makers about the need for women-specific community provision for female offenders and the allocation of funding for this specific purpose. Most recently, in February of this year, the Ministry of Justice announced £15.6 million of new funding towards the provision of additional services in the community for women offenders including specialist community provision and the development of bail support services.

This commitment is encouraging. However, the diversion of women from custody on a large scale is unlikely to become a reality until a network of community provision is available nation-wide and until these services have developed to such an extent that sentencers have confidence in alternative provision. This will require long term investment and a significant increase in funding. Statistics suggest that the number of women being sentenced to custody is slowly decreasing. However, given the number of non-violent female offenders still receiving custodial sentences there remains a long way to go.

In the meantime, it is likely that the female prison population will continue at a relatively high level, particularly

given current funding allocations and the relatively slow development of community provision to date. Recent projections from the Ministry of Justice are not encouraging (see Figure 5 below). While the focus should remain on the diversion of women from custody and this process should be expedited, the Government must also acknowledge the reality of the current situation: that until community provision is available on a national scale; the high numbers of women in custody are likely to continue. It is therefore crucial that steps are taken to meet the needs of women in custody, particularly in relation to mental health, training and education, and the needs of foreign national and BME women together with the accommodation needs of women and their children upon release.

### Prison: From Policy to Practice

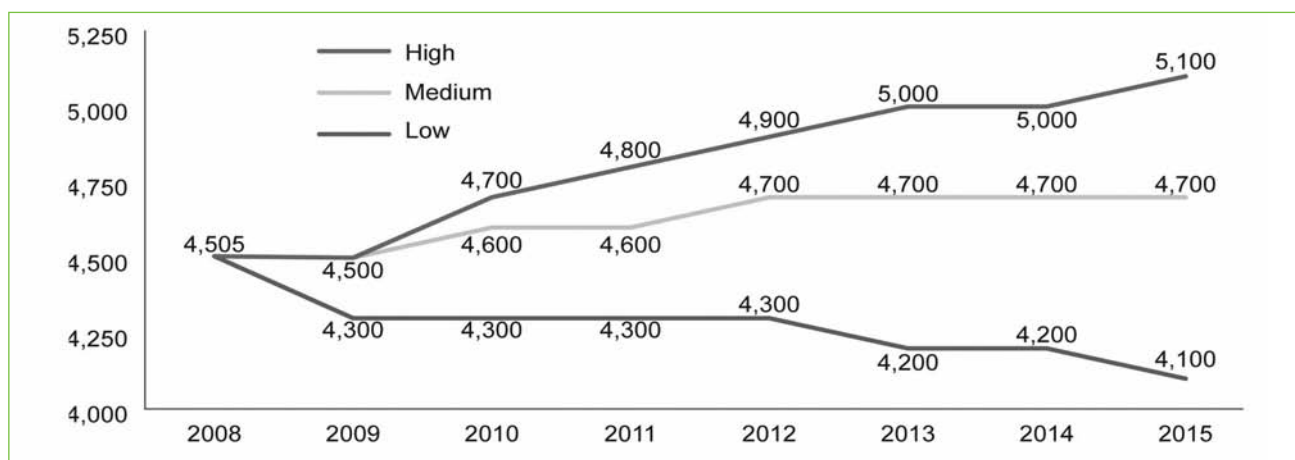
The Commission is pleased to note that the Government has taken steps to establish the governance mechanisms necessary to drive the implementation of Corston and to ensure the issue of women offenders remains on the agenda. A sub group to the Reducing Reoffending Inter-Ministerial Group has been established with members including the Solicitor General, and Ministers from the Government Equalities Office, Department of Health,

Department for Innovation Universities and Skills, Department for Communities and Local Government, and the Home Office. A Cross Departmental Criminal Justice Women's Unit has also been established to manage and co-ordinate the work on Corston. It is also encouraging to note that the Reducing Reoffending Inter-Ministerial Group now has a standing agenda item on women.

There have also been some important and welcome developments at the policy level, such as the introduction of the Ministry of Justice Gender Equality Scheme (1 April 2008); the National Service Framework for Women Offenders (30 May 2008); the Offender Management Guide to Working with Women (30 May 2008); and Gender Specific Standards for Women's Prisons (28 April 2008) in Prison Order 4800.

The Gender Specific Standards ('GSS') is a comprehensive document, providing guidance on the various stages of custody and importantly also considering the needs of different women – such as young and older women, BME women, foreign national women, women with disabilities, women serving a life sentence and women with children. The NOMS Women and Young People's Group is tasked with the delivery of these standards and is to be commended on their work to date. However, with only

**Figure 5: Projected prison population for females, 2008-2015**



Source: *Statistics on Women and the Criminal Justice System*, Ministry of Justice, January 2009, p.47.

## Chapter Three: Continued.

### Women and Justice – Meeting the Needs of Female Offenders

twelve staff members it is a difficult task. Unless training and information-sharing takes place consistently and practice within the prisons is audited, implementation of the GSS within prisons and a real shift in the current mindset is unlikely. Further resources need to be devoted to the delivery of these standards and support provided within the prison service for the work of the NOMS team.

There have been some important changes on the ground. NOMS Women and Young People's team and the Cross Departmental Criminal Justice Women's Unit should be particularly commended for the introduction of the new arrangements for full searching, introduced in all female prisons in April 2009.<sup>47</sup> These new arrangements mean there will be a reduction in the number of full searches required (with a search only to be conducted if there is intelligence or suspicion that an item is concealed) and when a full search is necessary this will not require strip-searching. This measure will go a long way to reducing the humiliation and distress resulting from the previous over-use of strip searching, particularly for those women who have suffered past abuse. The introduction of the two additional pathways in women's prisons in relation to violence against women and women who sell sex is welcomed. Further, the introduction of the Women Awareness Staff Programme (a two day training course) together with the *Working with Women in Prison* training DVD is also a significant achievement of the Women's team.

However, despite these important developments, evidence indicates that the gap between policy and practical change remains within the female prison estate.

#### Mental Health, Deaths & Self Harm in Custody

*It is dreadful to live with women losing their lives in prison.*<sup>48</sup>

When the Commission began its work in 2003, self-inflicted deaths in custody for women offenders for the year totalled a startling 14. At this time, the Commission urged the prison service "to address as a matter of urgency the spiralling incidence of death or self harm among women prisoners."<sup>49</sup>

The numbers of deaths in custody for female offenders have continued to fluctuate since this time. For example in 2006, there were 3 self-inflicted deaths followed by 8 female deaths in 2007. In 2008, the self-inflicted female deaths in custody totalled only one, which was a welcome

reduction.<sup>50</sup> However, at the time of writing this report, one woman had already taken her life in January 2009 at HMP Styal, just one day into her 28 day sentence.<sup>51</sup>

Figures obtained by the Howard League for Penal Reform reveal, although women make up only 5 percent of the total prison population, they commit around 50 percent of self-harm incidents. There has been a dramatic rise in self-harm among women since the inception of the Commission, with self-harm rates increasing by 48 percent between 2003 and 2007.<sup>52</sup>

A national survey of 1,457 newly sentenced prisoners in 2008 revealed that 18 percent of female prisoners had likely psychosis compared to 9 percent of men and 56 percent of female prisoners had 6-10 symptoms of anxiety and depression. 19 percent had attempted suicide and 14 percent self harm in the year prior to custody.<sup>53</sup> A University of Oxford study into the health of female offenders concluded that women in prison were five times more likely to have a mental health problem than women in the general population.<sup>54</sup>

These statistics paint a picture of a criminal justice system which is not only failing to respond to the mental health needs of women but is also not safeguarding their lives while in custody. The recent inspectorate report on HMP Styal, based on an unannounced inspection in September 2008, noted that although there had been improvements with the involvement of the local primary care trust, with initiatives such as a mental health assessment for every woman, the prison remained unable to meet "the scale and complexity of need."<sup>55</sup> Staff lacked the training and support to deal with complex mental health issues such as self harm and as a result, the use of force and lock-up as a means of 'caring' for these women had increased. The Commission supports the finding of the Inspectorate that there is a need for appropriate resources and a professionally led therapeutic environment to allow prisons such as Styal to meet the complex needs of the women living there.

Significantly, the majority of prison workers who shared their views with the Commission from seven of the female prisons expressed their concern that prison staff were not equipped to respond to the multi-layered needs of many female prisoners. As one prison worker commented:



*I feel that women with severe mental health problems are neglected. I often come across women who I feel should not have been processed via the criminal justice system but who should have been immediately redirected to secure hospital facilities. The severe lack of secure female hospital beds in the UK also impacts upon the speed with which these women can be transferred from prison to hospital.<sup>56</sup>*

Staff were concerned at their limited options. *“A lot of females have mental health issues and clearly should not be in prison as most of the officers that have to manage them do not have mental health training.”<sup>57</sup>*

The Criminal Justice Liaison and Diversion Schemes, discussed earlier in this chapter, should develop relationships with teams in female prisons so that support can be provided to offenders in need. The Commission also recommends that training is provided to prison staff in relation to mental health needs and that qualified mental health professionals are recruited to provide this training and to offer around-the-clock guidance for staff. At the very least, one trained mental health nurse or social worker should be on duty at all times.

While further steps must be taken to safeguard the lives of women in prison, the real answer lies in diverting women from prison in the first place. Prison should not be used to contain self-harm, suicide attempts and mental illness. As Deborah Coles, Co-Director of INQUEST stated *“Unless more women are diverted from prison the increase in self inflicted deaths and the associated high levels of self harm, mental distress and family disruption will continue.”<sup>58</sup>*

When deaths in custody tragically occur, support should be provided to the families of these women. The Corston Report recommended that public funding be provided for bereaved families to cover legal representation at inquests relating to deaths in state custody and travel, accommodation and subsistence to attend the inquest. This funding should not be means tested. The Commission is concerned that the Government has rejected this recommendation and strongly reiterates that funding should be provided to these families.

## Women with Children

*It's my children – they are my biggest concern because I've not spent a day away from them since they were born. I was still breast feeding my baby when I came in here. The judge didn't care. My baby wasn't used to bottled milk and he wouldn't take any milk for 2 days. I applied to the mother and baby unit when I first came in; the panel sits in January. When I came into custody there were no facilities to express milk. I think me being in prison has mentally affected my children. My son's school work has suffered. I didn't get the chance to explain to him that I was coming to prison. It happened so fast. He started wetting the bed and it's affected his school work.*

*Female Offender, Questionnaire Response, January 2009*

It is estimated that up to 17,700 children each year are separated from their mothers due to imprisonment and that only 5 percent of the children of women offenders remain in their own home once their mother has been sentenced. At least one third of women offenders with children are lone parents prior to imprisonment.<sup>59</sup> Evidence presented to the Commission revealed that separation from their children and concerns over how the imprisonment was affecting their children was paramount for many women offenders. As one mother told Birth Companions (see box next page): *If it is inevitable that pregnant women and mothers have to be sent to prison, then the Court should take the pregnancy, the children and the length of separation into consideration. Because when mothers are separated from their babies and children, the children suffer<sup>60</sup>*

Maintaining family ties through visits and other contact is very important for these women and their children. First night procedures and induction must provide an opportunity for women to identify concerns about children or any vulnerable adults in their care and phone calls should be allowed on reception to family members. First night in custody initiatives such as that run by the Prison Advice and Care Trust (PACT) are particularly useful to reduce the anxiety faced by female prisoners and to decrease the risk of self harm or suicide and should be introduced across the female prison estate.

## Chapter Three: Continued.

### Women and Justice – Meeting the Needs of Female Offenders

#### **Good Practice Example: PACT – First Night in Custody Service**

PACT has run its first night service in Holloway since 2000. The service began with two paid staff and six volunteers interviewing women as they arrived in custody and identifying women that were most distressed. In 2005, Holloway established a dedicated first night suite in which women can receive help from PACT staff and other specially trained prison staff and medical staff. The environment of the suite is designed to be as welcoming as possible and accommodates 17 women. PACT workers identify the needs of prisoners, refer women to appropriate services, liaise with family members and follow-up long term support needs. Since PACT's first night service was established it has worked with over 11,500 prisoners at Holloway.

Website: <http://www.prisonadvice.org.uk/>



**Sandra Duhaney, Manager, PACT First Night in Custody Service, HMP Holloway**

women. These would ensure a woman's family or birth partner were contacted in time to support her at the birth and that she would be able to have essential items at the hospital such as baby clothes, nappies, sanitary pads and food to sustain her.<sup>64</sup> Additionally, guidelines designed to protect the privacy of the woman (for example, during breastfeeding or medical examinations when officers are to wait outside or behind a curtain) are not consistently followed. Prison staff assigned to women who are giving birth should be made clearly aware of privacy requirements as well as what food and clothing arrangements are allowed and ensure that provision is made for this. While, the new Prison Service Order 4800 does provide some welcome guidance on the treatment of pregnant women, there is a need for further guidance, consistency across prison estates and the sharing of good practice.

Regular children and family visits should be allowed and the cost of phone calls from prison should be reduced in line with standard call costs. The Commission is encouraged by the recent announcement that following a campaign by Prison Reform Trust supported by Action for Prison Families, call costs from prison phones to mobile phones are to be reduced from 63p per minute to 37.5p per minute. Improvements should be made to prison visits halls to create a more welcoming environment for children when visiting their mothers.<sup>61</sup> The booking system for family visits also needs to be improved, with some prisons still using telephone lines that are frequently engaged or never answered. There should be an opportunity to book the next visit on the current visit (some prisons already use this practice), along with online booking. Female offenders also need to be supported in relation to the legal arrangements with their children. Women in Prison highlighted to the Commission that there is a lack of information about care proceedings and a lack of support for women who may lose their children whilst in prison.<sup>62</sup>

Between April 2005 and July 2008, 283 children were born to women in prison.<sup>63</sup> The Commission remains concerned at the care provided at the time of birth and the lack of awareness and consistency in support for these women across the female estate. Birth Companions told the Commission that there is a need for clear guidelines for officers in dealing with pregnant, birthing and breastfeeding

### **Good Practice Example: Birth Companions**

Birth Companions is an organisation which delivers emotional and practical support to new and expectant mothers in Holloway prison and to those who are vulnerable post-release. Birth Companions supports women who would otherwise face giving birth alone, many are foreign nationals with minimal links outside of prison. They deal with the practicalities of pregnancy, labour and breast feeding. They support women who are separated from their baby after birth, as many women do not get a place in prison with their baby. Birth Companions also operate a 24 hour birth support phone line, a weekly breastfeeding and parenting support group in Holloway Prison and are working with the Prison to develop a more breastfeeding friendly environment. Birth Companions believes that reducing stress and isolation in pregnancy and birth has a positive impact on the baby's health and the mother-baby bond. Birth can be a turning point and a new beginning for women in prison. Last year, Birth Companions supported 94 women.

Website: <http://www.birthcompanions.org.uk/>



*Female offender supported at the birth of her baby*

## Chapter Three: Continued.

### Women and Justice – Meeting the Needs of Female Offenders

The Prison Service Order in relation to the management of mother and baby units was introduced in February 2000 (PSO 4801) and there are currently eight mother and baby units within prisons accommodating up to 75 women and their babies. However, there is no automatic eligibility for these units and the Commission is concerned that women are being unnecessarily separated from their children. As one prison worker described:

*We have had five cases where mothers with children under six months have been given custodial sentences with no prior consultation and with (perhaps) a false assumption that because we have an MBU that a place will be granted automatically.<sup>65</sup>*

Legal decisions in relation to Prison Service policy have emphasised the balance between the right to family life for the offender and her child; the right of the child to develop relationships with others; and the preservation of prison order and discipline.<sup>66</sup> However, the lack of prison facilities, such as child-care, parent training and counselling and toys and learning materials, should not be used as a justification to separate mother and child. Rather, the onus should be on the prison service to improve such facilities. While examples of good practice are available, such as Askham Grange, reports on other MBUs have found a lack of toys and learning materials, as well as inappropriately limited opportunities for mothers to take their babies outside into prison grounds.<sup>67</sup>

Small things such as extremely restricted opportunities for photographs can have a big impact on a mother and her relationship with her child. The Commission was told by Action for Prison Families that they experience problems with cameras not being allowed into the mother and baby unit, which means a mother cannot capture the early moments of her child's life. Birth Companions told the Commission that women at Holloway are given 2 sets of 27 photos of their baby but no negatives.<sup>68</sup> The Commission recommends that a staff camera is kept in each mother and baby unit which can be used by mothers under staff supervision to take photos of their child. Women should be provided with copies of these photos during their time in prison and a disk of these photos upon release.

#### Training and Education

In August 2006, the Offenders' Learning and Skills Service was introduced across England. The service is funded and planned by the Learning and Skills Council and run in cooperation with the Department for Innovation, Universities and Skills, HM Prison Service and the National Offender Management Service. A recent report of the House of Commons Committee of Public Accounts in October 2008 concluded that the new service has yet to provide offenders with effective and useful skills training.

Specific failures noted by the House of Commons Committee have a particular impact on female offenders. For example, the Learning and Skills Council and the HM Prison Service disagree over what can be delivered to those on short sentences and the priority which this group should be given. This is of particular concern, given that female offenders are the majority of those serving sentences of under twelve months. Education services also tend to overlook the short term remand population. Further, the lack of a core curriculum delivered throughout the prison estate means that learning is disrupted when offenders are transferred between prisons.

The Commission supports the recommendation of the Committee of Public Accounts that evidence-based intensive programmes should be designed specifically for offenders serving sentences of less than twelve months. These programmes should be developed by the Department for Innovation, Universities and Skills, the Learning and Skills Council and the National Offender Management Service in partnership and should be aimed at securing employment on release or signposting offenders towards further training in the community.

A core curriculum of courses should be delivered throughout the prison estate and providers should be required to transfer information about an offender's learning progress if a prison move occurs or upon release into the community. There should also be a focus on training which women enjoy doing and which provides much needed life skills. Additionally, courses to assist women with histories of violence and abuse, may be necessary prior to vocational training.

Female offenders serving indeterminate sentences find it difficult to access accredited programmes that are now an accepted route to prove fitness for release. Accredited programmes such as those to develop cognitive skills have proven effective in helping male offenders address their offending behaviour. No such body of evidence exists to support their efficacy with women and, indeed, very few programmes have been developed which are appropriate to women. As with education and training programmes, there needs to be a separate strand of work which reflects the different learning styles of women. Developmental programmes specific to women's needs need to be accorded the same status in the journey towards release as the traditional male accredited programmes.

### The Differentiated Needs of Women

It is important for any consideration of the needs of women offenders to take into account that women are not a homogenous group. Women will have differentiated needs according to their experiences as well as the intersection between gender and other inequalities. For example, ethnic minority women are substantially overrepresented among the prison population, comprising 22.3 percent of the female British prison population.<sup>69</sup> Further, factors such as whether a woman is a mother or past histories of violence and abuse will also impact on the effect of custody on a woman.

### Women from Black and Minority Ethnic Groups

On 30 June 2007, 29 percent of women in prison were from a black and ethnic minority background.<sup>70</sup> Women from minority groups are more likely to feel unsafe in prison and less likely to feel they are treated with respect from prison staff.<sup>71</sup> The concentration of ethnic minority communities in cities also makes ethnic minority women more likely to be isolated from their families and to receive fewer visits due to the location of the prisons in the female estate. This also creates difficulties for these women in relation to accessing resettlement support.

One of the critical barriers to understanding the needs of ethnic minority women and their patterns of offending is the lack of data which is available on these women and their distinctive needs. As one female ex-prisoner commented:

*There is a lack of understanding of the needs of black prisoners. For example African-Caribbean hair oil is a necessity, not a luxury, but it has to be ordered through the canteen system which is slow and often chaotic.<sup>72</sup>*

Women also commented that they did not receive any consideration for their religious needs throughout the criminal justice process.

BME women and foreign nationals are more likely to experience isolation in custody leading to increased levels of depression. Further, BME women may also be less likely to seek help from staff. This needs to be proactively addressed. Many prison workers who shared their views with the Commission also noted that language was a barrier for BME women. As one prison worker explained:

*For black and minority ethnic women, the biggest problem is communication and language barriers. I know we've got language line but there are not enough bilingual staff. Prison rules, literature etc. is not printed in other languages.<sup>73</sup>*

The use of interpreters and the employment of staff who speak the languages of ethnic minority women should be implemented within the female estate. Further, staff should be trained in some basic words from the most common languages.

Significantly, the Prison Service Order on Women Prisoners provides guidance specifically in relation to BME women noting needs such as toiletries, health care, access to a wide range of faith representatives and courses and training which take taking into account different cultures.<sup>74</sup> This is an important step but this policy needs to be translated into practice and the complexities of the intersection between gender and racial discrimination within the criminal justice system and the attitudes to offending and attached stigma within various communities requires further research.

## Chapter Three: Continued.

### Women and Justice – Meeting the Needs of Female Offenders

#### Foreign National Women

The number of foreign national women in prison in England and Wales continues to be of great concern to the Commission. At the end of September 2008, there were 849 foreign national women in prison which equated to 19 percent of the female prison population, the majority of whom were black and minority ethnic women.<sup>75</sup> Notably, women from other countries (particularly asylum seekers or refugees) may have an exacerbated fear of prison because of their perception or actual experience of incarceration in their home countries.

Efforts have been made by the Prison Service to improve the experiences of foreign national women in custody. The Prison Service Order on Women Prisoners provides guidance specifically in relation to foreign national women including the provision of tuition in English, the provision of basic information in different languages upon reception into prison, advice and support to maintain family links including international phone calls to children; and access to immigration services.<sup>76</sup>

This policy development is commendable but concerns remain about implementation in practice. One prison worker noted that:

*We don't do enough to combat the language barrier with foreign national women. For the first night receptions they just get shoved into reception, and then whisked off to the wings...sometimes they can't make a phone call because it is too late.<sup>77</sup>*

A foreign national woman told the Commission she was waiting in prison for arrangements to be made for her trip home, although her sentence had ended - *"I finished my sentence and I am still in prison. Immigration staff just have to buy a ticket but they are unable to do it for 3 weeks. I don't know what to do. I am not a prisoner anymore. I shouldn't be here."*<sup>78</sup> The distance for foreign national women from their family and children is obviously much greater and contact even more difficult to sustain. The Commission recommends that the monthly free call allowance of 5 minutes for foreign national prisoners should be increased to 20 minutes a month (equating to 5 minutes per week).

Further, the fact remains that there is a need for consideration of alternatives to prison for these women. As previously noted by the Commission, many, despite being first time offenders, are serving long sentences (up to 14 years) for the importation of drugs. Evidence reveals that many of these women are single mothers, are rarely high-up in criminal gangs and are often the victims of exploitative relationships. The Commission welcomes the Prison Transfer Agreement signed with Jamaica in June 2007 which will allow a number of low-risk prisoners to return to Jamaica to serve their sentences. Similar agreements are currently being negotiated with Ghana and Nigeria. These agreements will allow women to serve their sentences closer to their families and should be pursued.

However, an urgent review is needed of the complex issues surrounding these offenders in the UK and an examination of alternative options to lengthy sentences. The Sentencing Guidelines Council announced in 2007 the need for a sentencing guideline for cases involving the importation of controlled drugs by so-called drug couriers, including the particular issues raised in relation to the sentencing of foreign nationals.<sup>79</sup> However, to date a consultation has not taken place. The Commission notes that a consultation paper is currently being prepared by the Panel on sentencing for a range of drug offences which will include the sentencing of drug couriers.<sup>80</sup>

A submission from Eaves to the Commission also highlighted the ongoing problems in relation to foreign national women and trafficking with women who have been trafficked into prostitution being criminalised and jailed for holding false documents, which have actually been given to them by the traffickers. The Commission is very concerned to learn of this growing problem, particularly as the criminalisation of these women is in direct contravention of the Council of Europe Convention on Action Against Trafficked Beings (2005), which was recently ratified by the United Kingdom. The Commission was told that women often come to the attention of the Poppy Project only after they have been detained. Further, if a woman has been placed in custody before referral for support, Eaves described instances where at the expiration of her sentence, (despite an appeal against the sentence having been lodged) women have been sent to a detention centre rather than being released into the care of support services such as the Poppy Project .

The Commission recommends that if prison staff become aware, or have a suspicion, that a woman has been a victim of trafficking that she is referred immediately to support services such as the Poppy Project. In cases where an appeal against a custodial sentence on the grounds that an individual has been trafficked is underway, and the individual's sentence expires, the woman should not be automatically sent to a detention centre but should be released into the care of an appropriate support service, pending the outcome of the appeal.

### **Women with histories of violence and abuse**

One in three women in prison report having experienced sexual abuse and over half have suffered domestic abuse.<sup>81</sup> The Bradford Rape Crisis & Sexual Abuse Survivors Service in their annual report (2007-08) noted that 81.7 percent of women they have seen at HMP & YOI New Hall during the year in the provision of their women's counselling service have suffered domestic violence or sexual abuse.<sup>82</sup> The relationship between female offending and histories of violence and abuse has received increased attention over the past few years. Research has noted the significance of the criminal justice system as a major source of intervention in women offenders' lives and the opportunity for the probation and prison service to take a lead role in co-ordinating the contributions of specialist and voluntary sector agencies in order to help women deal with past violence and abuse.<sup>83</sup>

Counselling services such as that provided by Bradford Rape Crisis and Sexual Abuse Survivors Service (see box) are therefore crucial. However, the funding and provision of services to help female offenders deal with past abuse is limited. Rape Crisis told the Commission that the need for work within prisons with survivors of sexual abuse is urgent but it cannot be undertaken without a Government commitment to fund these programmes.<sup>84</sup>

### **Good Practice Example: Counselling Service in HMP New Hall**

The Bradford Rape Crisis and Sexual Abuse Survivors Service delivers a full time counselling service at HMP New Hall. They work with women who have been raped, sexually abused, physically, mentally or emotionally hurt as children, or have suffered from any form of violence as adults. This service is highly valued by those who use it and has a demonstrated positive impact. The short and long term counselling has helped women deal with their past and plan for their future, build safe and confident relationships, provided women with skills to deal constructively with problems and increased their self worth. In the year from April 2007 to March 2008, 929 appointments were provided by the service and 344 referrals were made to them.

Email address [info@brcg.org.uk](mailto:info@brcg.org.uk) Tel: 01274 723896

Staff who work in women's prisons and probation services should be trained to address the needs of female victims of violence, including screening, risk assessment, safety planning and referral to specialist services.

### **Resettlement Needs**

*Family break up is more severe and final for female offenders and it is more difficult to repair relations especially if children have spent time in care. Men tend to leave prison and be met by their families. Women more often leave alone.<sup>85</sup>*

Women in Prison told the Commission they are particularly concerned that the two new pathways for women offenders are not translating into changes in the approach towards, and provision for, resettlement.<sup>86</sup> Further, there are particular problems for female prisoners in relation to accommodation, accessing benefits and services and regaining custody of their children.

Women often face different and more complex housing issues than male prisoners upon release, with one third of women losing their homes while in prison. For example, as St Giles Trust told the Commission, big hostels for the homeless are often not a safe place to house vulnerable women but in cities (and particularly London) there may be no other option. Women's role as primary carers also

## Chapter Three: Continued.

### Women and Justice – Meeting the Needs of Female Offenders

creates further difficulties accessing housing. If women do not have a home they will then experience difficulty in getting their children back. However, they will also find it harder to get a home if they are not caring for their children.<sup>87</sup> TWP noted this was a common vicious cycle with women unable to get custody of their children unless they have housing with more than one bedroom and because women do not have custody at the time of application they cannot apply for more than one bedroom under Council policy. Women in Prison told the Commission that its support workers are finding it harder to find housing for women leaving prison and that the intentional homelessness criterion presents a further barrier. Women who have children in care as a result of their prison sentence should be made a priority on the housing waiting list and should also be eligible to apply for housing with an appropriate number of bedrooms upon social services confirming the number of children.

#### Good Practice Example: The Re-Unite Project

The Re-Unite Project (a joint project between Women in Prison, Housing for Women and Commonwealth Housing) provides safe, secure housing and key-work support for mothers coming out of prison for up to two years. The project provides for two different strands of support. One for mothers whose children have been cared for by family and friends and the other for mothers whose children are being cared for by social services to provide intensive support to rebuild relationships and enable family reintegration.

Website: <http://www.re-unite.org/>

Access to benefits is a complicated process and women can be left with no funds upon release. TWP noted that getting a woman's benefits restarted after they are released from prison and ensuring they have enough funds to survive until their claims are processed is a major challenge.<sup>88</sup> Women are also being released from prison without receiving their prescription medication or sufficient quantities of their medication to allow time to register with a G.P.

Organisations told the Commission that resettlement services are dispersed, confusing and inconsistent. *"An essential drug or alcohol support agency may be in Camberwell while a prisoners' family organisation may*

*be located in Holloway, travel and money are not easy on release or knowing what to prioritise."*<sup>89</sup> The provision of one stop shop service provision for female offenders and ex-prisoners is key to ensure women are provided with guidance to get the help they need.

#### Good Practice Example:

##### Resettlement Advice Call Centre, St Giles Trust

St Giles Trust is developing a 'peer to peer resettlement advice call centre' in HMP Send and HMP Downview. Female prisoners will be trained as peer advisers to provide a free advice phone line to all female prisoners so they can access resettlement advice from those who really understand their situation – other female prisoners.

Website: <http://www.stgilestrust.org.uk/>



St. Giles Trust staff



## Moving Towards Community Provision

*The potential for change and the delivery of effective services for women is considerable...However, the reality may be very different, especially since women are a minority group within the criminal justice system. The capacity of agencies to attend to gender-specific needs is under question; the quality of inter-agency cooperation is variable; and the position of the voluntary sector in a supportive role may be stronger in some geographical areas than others.<sup>90</sup>*

The Government's commitment to building the capacity of one stop shop services at women's centres and other specialist provision for women in the community through investment in third sector providers is crucial. The Commission is encouraged by the announcement of £15.6 million of new funding towards the provision of additional services in the community for women offenders including specialist community provision and the development of bail support services. However, this amount falls well short of the amount needed to develop a national network of community provision. The Rethinking *Crime & Punishment* report estimates a budget of £4.5 million per region – a national total of £45million/year (£261 million/6 years) to introduce a coordinated multi agency approach across the country to reduce imprisonment for women – with community based centres in major cities and flexible access to services in rural areas.<sup>91</sup>

Investment in community provision in the short term has the potential to save the public purse in the long term (for example, the average cost of a place at the Asha Centre is no greater than £750 compared to £77,000 for the cost of a prison place) as well as reducing reoffending rates and the harm caused to offenders' families. A recent report by the New Economics Foundation found that the social cost to children and to the state of imprisoning mothers for non-violent offences totalled £17 million over ten years.<sup>92</sup>

A study commissioned by the Fawcett Society in 2007 into provision for women offenders in the community revealed a number of identified needs and best practice recommendations.<sup>93</sup> Nine lessons were pin-pointed as

key to the success of community provision for women offenders. In summary, such provision should:

- be women-only to foster safety and a sense of community;
- integrate offenders with non-offenders to normalise women's experiences;
- foster women's empowerment to build self esteem and motivate women to seek employment;
- draw on knowledge of effective learning styles for women;
- take a holistic and practical approach which focuses on addressing social problems which may be linked to offending; including through links with mainstream agencies (such as health, counselling and debt advice);
- have the capacity and flexibility to allow women to return for continued support and development as required;
- offer women personal support through the provision of a mentor; and
- provide women with practical help with childcare and transport to enable them to attend on a consistent basis.

The Together Women Programme has proven the success of such provision, offering a flexible means of support which can be delivered according to individual need and local resources. The two demonstration projects have shown great potential for reducing reoffending rates and providing women with a pathway back into the community. According to a report produced by the Esmee Fairbairn Foundation in July 2008, early results from the TWP had demonstrated considerable success with an 8 percent reoffending rate compared with a 55 percent national reoffending rate for women.<sup>94</sup> Bristol Eden House Project is the latest demonstration pilot. Due to launch in summer 2009, the project will offer residential, day and out-reach services to local women offenders as well as working with statutory and voluntary sector agencies to establish a coordinated response. However, these community projects remain few and far between and there is a need for a co-ordinated roll-out of projects to each county area.

## Chapter Three: Continued.

### Women and Justice – Meeting the Needs of Female Offenders

There is also support for the use of community alternatives for non-violent female offenders. In a study commissioned by the Commission in 2004, 68 percent of respondents indicated that they would like to see greater use of community sentencing.<sup>95</sup> While, a more recent UK-wide ICM survey of more than 1,000 respondents, revealed that 86 percent of respondents supported community alternatives to prison for women.<sup>96</sup>

#### The Role of Probation

Probation staff have a key role to play in the shift towards community provision as an alternative to custody. Firstly, in terms of the information they provide to the courts in pre-sentence reports (as discussed above) and the active promotion of alternatives to custody for non-violent female offenders and for individuals on remand and secondly, by making sure that probation work specifically targets the needs of female offenders.

There is a need for improvement of the level of bail support and supervision for those awaiting trial or sentencing. The Government in December 2008 committed to further development of bail support schemes to better meet the needs of women. This development must happen urgently as current schemes which are in place are not meeting the needs of female offenders. For example, women-only bail hostels are very important for women who have suffered past abuse. However, women-only accommodation is scarce and women face the risk of abuse or the formation of abusive relationships in mixed hostels.

Guidance was issued to all Probation areas in October 2008,<sup>97</sup> encouraging expanded use of female Approved Premises ('APs') for a wider range of female offenders, in particular for those offenders 'who present a medium risk of serious harm, who have suitable needs profiles, and whose offences cross the custody threshold.' However, this guidance is only expected to result in an additional 15-25 women being held in Approved Premises. Further, the Commission believes the current female AP estate is unsatisfactory as it mirrors a central problem of the existing prison estate – being in inconvenient locations for many parts of the country resulting in disconnection from home and family. The Public Protection Unit will be conducting a survey of the need for AP places, which will pay particular attention to the need for APs for female offenders and the

Commission proposes the problems associated with the current locations of APs are considered.

The Commission recommends that in line with the development of one stop shop community provision for women, as discussed above, bail hostels are provided in small, local centres. Bail hostels should also develop greater provision for support, particularly for mental health and drug dependency, as a way of improving service and increasing occupancy rates. This can be achieved in partnership with the development of community provision. The 218 centre in Glasgow (see box) has demonstrated the successful combination of support programmes and accommodation provision. As a national network of women-only community centres is developed, consideration should be given to the provision of accommodation within or close to these centres.

Programmes also need to be developed in the community which specifically target female offenders. Evidence from probation workers acknowledges that there are fewer resources for female offenders and that most probation work was geared towards male offenders. As one senior probation officer noted, "*Programmes and working methods have been trialed with men mostly.*"<sup>98</sup> One senior probation officer in Wales told the Commission that:

*We do not have specific programmes for female offenders (such as women sex offenders, women domestic violence perpetrator) In addition, female offenders rarely attend general offending programmes due to the fact that they may be the only female in the group or that there may be issues relating to domestic abuse.*<sup>99</sup>

Women-only programmes should be provided, together with programmes which directly address the needs of female offenders, including the development of life skills. One probation officer commented how she:

*would like to see interventions delivered to women in an informative and relaxed atmosphere to help them deal with their everyday problems...bringing in partnership agencies who can help them with a range of issues, such as help with jobs and training, housing advice, educational and recreational classes.*<sup>100</sup>

The Commission recommends this type of approach,

which can be developed in conjunction with one-stop shop community provision.

**Good Practice Example: 218 Centre: Combining support programmes with accommodation needs**

218 was established in Glasgow in August 2003 with the aim of diverting women from prosecution and providing an alternative to custody. Based on a single site, the Centre provides a day service as well as supported accommodation. It offers programmes of care, support, and development designed to stop women's offending by tackling substance misuse, trauma and poverty. Women from Glasgow can access 218 from the courts, from prison, or as part of a criminal justice order. They can be referred or can refer themselves as long as they have been in custody (including police custody) at some time in the previous 12 months.

**Small Custodial Units – a transitional measure**

While the Commission accepts that the Government is committed to the diversion of women from custody to community alternatives, given the current numbers of women in custody and the limited resources, a national network of community provision will not be in place for some time. The development of small custodial units provide a short term transitional measure addressing the fundamental issue that the existing prison estates are geared towards the needs of male prisoners.

In June 2008, the Government rejected the recommendation in the Corston Report to replace existing women's prisons with suitable, geographically dispersed, small, multi-functional custodial centres within 10 years. The Government rejected this recommendation as 'neither feasible nor desirable'. The units appear to have been rejected on the basis of the need for economies of scale for provision of services; the potential effects of a small unit on vulnerable women; the inappropriateness of small units for more serious offenders; difficulties with the management of risk; and the use of resources which could be more appropriately used in improving community provision.<sup>101</sup>

The Commission notes the new 77 place wing which is due for completion at HMP Bronzefield this year which the Government has indicated will provide an opportunity to test a new approach to the physical environment and

prison regimes. While this is an improvement on current provision, the fact that it is within the existing prison estate undermines many of the aims of the provision of small custodial units such as accessibility for visitors and resettlement needs.

Given that the high level of women in prison is likely to continue for some time, with the current pace of community development and present sentencing practices, the Commission recommends further research is undertaken by the Ministry of Justice on the feasibility of small custodial units. The Commission acknowledges that there would be some initial cost in their establishment. However, given that the current female prisons could be incorporated into the male estate this would help to off-set the need for substantial investment in prison building for increased male places. Further, the development of small custodial units does not need to be seen as an alternative to community provision (or as a redirection of resources away from community provision) but can be seen as a means of moving towards community provision. The two can be progressed hand in hand.

If the proposed units were increased in size, housing up to 70 prisoners, in each county area, they could be developed in conjunction with specialist community provision for women. The location in each county area would enable third sector providers to extend their support services to women in custody and would allow the one-stop shop model (such as the Together Women Project and the new Eden House which will shortly begin operation in Bristol) to access female offenders before they are released from custody. It would also allow prisoners on remand to have their needs appropriately assessed before sentencing.

The development of such units would permit the environment to be designed for women rather than women being confined to the current male-designed prison estate. In other countries, where the small custodial unit approach has been adopted, initiatives have included a garden for recreation, a kitchen for the joint preparation of food, and rooms which are residential in style. Contact with children can also be managed within each unit. For example, the facility in Western Australia provides permanent residential accommodation for children under the age of four to enable them to stay with their mothers. Training and health needs can also draw on local communities, which will

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### Women and Justice – Meeting the Needs of Female Offenders

aid resettlement in the longer term (with a continuity of education and medical care possible). The residential set-up of the unit also allows for the development of life skills.

Models which have been adopted in Western Australia and Northern Ireland, illustrate how risk can be managed appropriately with separate houses having different requirements depending on risk management needs. It is possible therefore for the needs of short term offenders to be met alongside the needs of offenders serving sentences of two years or more.

The Government Working Group on small custodial units noted that some of the women prisoners consulted expressed concerns about the increased likelihood of bullying in a smaller environment. Bullying is a common occurrence among female prisoners. However, rather than being cited as a justification for not moving towards smaller custodial units, steps should be taken to tackle bullying across the piece. Arguably, such steps would be more effective in small custodial units, with staff better able to monitor prisoner interaction in an environment which is less based on control and with studies demonstrating that bullying actually decreases as a sense of community develops.<sup>102</sup>

The Commission recommends that alongside the pilot at Bronzefield, a pilot of a small custodial unit (of approximately 70 prisoners) is trialled in the Bristol area, working in partnership with Eden House.

#### **Good Practice Example: The Dóchas Centre**

The Dóchas Centre in the Republic of Ireland holds women on remand, women awaiting sentencing, sentenced prisoners, and women detained under immigration legislation. The women are accommodated in the prison in seven separate houses, each house accommodating ten to twelve people except Cedar House, which can accommodate eighteen women, and Phoenix, the pre-release centre, which accommodates women in private rooms or in self-contained studio apartments. The rooms in the Dóchas Centre all have en-suites and each woman has a key to her room so that she can move freely about the house during the day. The Centre also has a Health Care Unit staffed by nurses and a gym and a comprehensive sport and fitness programme. The women prepare their own breakfasts and eat lunch together in the dining room with prison staff. During the day they attend school or one of the workshops with courses including woodwork, IT, English and maths, cookery, art, photography, group skills, drama, physical education and creative writing. There is a beauty salon/hairdressing salon and a craft room. An evening meal is served in the dining room around 5 pm and after the meal the women have free time to socialise in the garden or the sitting room or to watch television until 7.30 pm when the houses are locked for the night.

#### **Good Practice Example: The Boronia Pre-Release Centre**

The Boronia Pre-Release Centre in Western Australia opened in May 2004 with 70 places. Women are offered opportunities to make choices relating to their education, employment, health, family and personal development. All women in this centre are employed and employment and training is linked with real jobs in the community. The centre provides residential accommodation for children up to four years old as well as extended day and overnight visits for children up to twelve years. All residents are encouraged to take part in community activities outside of the prison. Accommodation is provided as domestic style housing with each having a household budget that must be taken care of. There are two female G.P.s in attendance.

# Chapter Four:

## Women Need Justice - Women as Victims of Crime

Figure 6 – VAW Services in Britain

*Violence against women cannot be tolerated, in any form, in any context, in any circumstance, by any political leader or by any government. The time to change is now.*

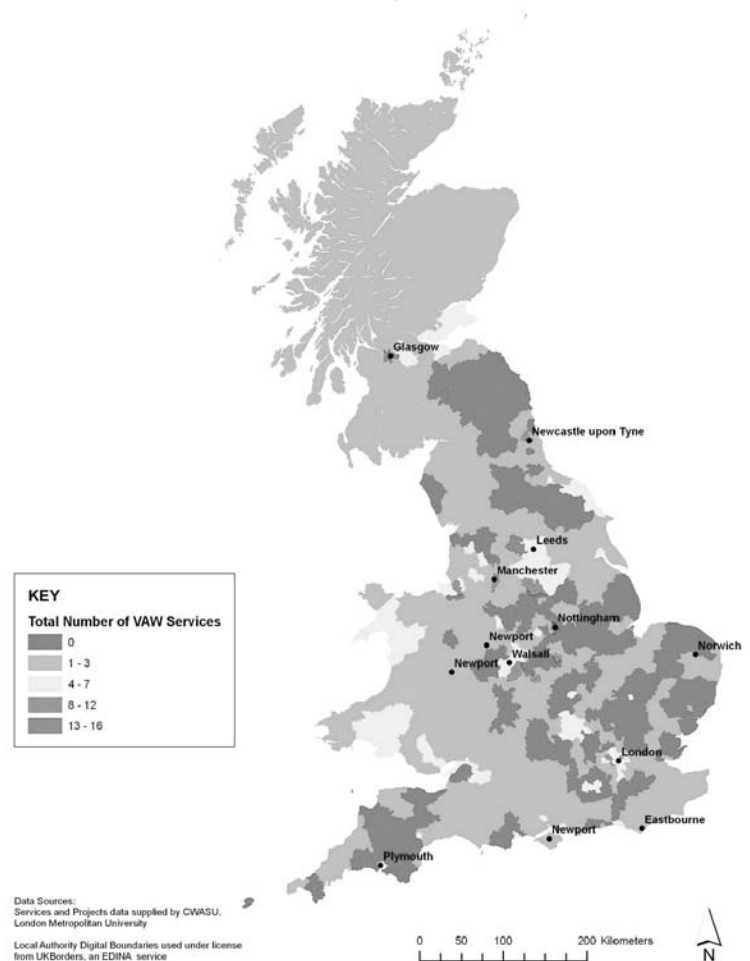
*U.N. Secretary-General Ban Ki-moon, 5 March 2009*

The Commission's work since its inception has considered the experiences of female victims of crime.<sup>103</sup> Given the nature of evidence received by the Commission over the last five years and the pressing concerns surrounding gendered crime, the Commission's primary focus has been on violence against women.

Violence against women [VAW] has continued to be a low priority both within government and within society at large because of the widespread belief that women have achieved equality. An independent review of the Government's work on violence against women gave them a score of just 2.18 out of 10 in 2007. Notably, this was even lower than that given in 2006.<sup>104</sup> VAW remains a problem of pandemic proportion. It is estimated that 3 million women across the UK experience rape and sexual assault, domestic violence, sexual harassment, forced marriage, trafficking, or other forms of violence each year.<sup>105</sup>

Criminal Justice agencies have continued to make advances at the policy level. However, policies will not have impact on the ground unless they are rights-based, victim centred and lead to societal recognition that women have the right to live their lives free from violence. During this final phase of its work, the Commission has received evidence from female victims of crime and organisations working with female victims. This evidence has demonstrated that the criminal justice system continues to fail to provide women with the support, safety and justice they need.

The statistics paint a similar picture of a system which is failing women. It is estimated that only 15 percent of serious sexual offences against adults are reported to the police and of the rape offences that are reported only 6.5 percent result in conviction. An estimated 66,000 women living the U.K. have undergone FGM and 21,000 girls under 16 are



Source: *Map of Gaps 2: The Postcode Lottery of Violence against Women Support Services in Britain*, End Violence Against Women and Equality and Human Rights Commission, January 2009.

currently at risk.<sup>106</sup> However, there has not been a single prosecution under the Female Genital Mutilation Act 2003. British crime figures indicate there are 12.9 million incidents involving domestic violence against females annually.

High profile cases such as the murder of Sabina Akhtar in 2008 by her abusive husband after the case against him was dropped by the CPS and the case of the taxi driver rapist, John Worboys, who was convicted of 19 charges of drugging and sexually assaulting 12 female passengers and is reported to have attacked up to 100 women after complaints made by women to police were not properly investigated, expose a system which is not working in practice. Violence against women continue to be crimes which are not treated with the professionalism or vigour devoted to other crimes. While there have been some

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important steps in the development of policy and increased acknowledgement of the existence of violence against women as a significant issue, frontline staff continue to doubt the credibility of victims and society continues to 'judge' the victim rather than the perpetrator. As one victim told the Commission, *"I felt that I had to defend my actions rather than him having to defend his. I often felt like the perpetrator and not the victim."*<sup>107</sup>

Support for women who experience violence is also lacking. Currently, there is inconsistent provision of violence against women services across England and Wales, particularly in rural areas. The recent *Map of Gaps 2* report produced by EAW in partnership with the EHRC, revealed that over a quarter of local authorities across Great Britain have no specialised VAW support service.<sup>108</sup> Significantly underserved regions were identified as the East of England and the South East. This remains a major concern for the Commission.

The Report also found that just one in 10 of all local authorities in England, Scotland and Wales has a specialised service for BME women, nearly one in three local authorities has no specialised domestic violence service, less than two-thirds of local authorities have a women's refuge; and only one in four local authority areas has a sexual violence service. Victims just cannot access the services they need. As one young survivor of rape told the Commission, *"Having tried services in my area and found them unavailable, my mother drives me a 72 mile roundtrip for counselling."*<sup>109</sup>

While the Government commitment to setting up Sexual Assault Referral Centres (SARCs) in each police area, as discussed later in this Chapter, is commendable, there is also a need for the difference between SARCS and Rape Crisis Centres (RCC's) to be taken into account. While the growth in SARCS is necessary, RCCs are equally valuable and need to receive equal attention and funding. In 2008, 69 percent of Rape Crisis Centres reported they lacked sustainable funding.<sup>110</sup> The growth of SARCS and the relatively even distribution across England and Wales has shown what a clear Government commitment can achieve. This now needs to be extended to the provision of rape crisis centres and other specialist provisions for victims of violence. In April 2008, the Government announced funding of £1 million to fund rape crisis centres. This

funding, when it was finally delivered in November 2008, was welcome but it was a stop-gap measure sufficient only for averting the closure of eight centres rather than allowing investment in any additional provision. The announcement of further funding in March 2009, of £1.6 million is encouraging. However, a long term funding solution is yet to be identified.

The Government has also announced funding for a domestic violence helpline (there is a DV helpline currently run by Women's Aid and Refuge) and this is welcomed. However, there is also a need for a national helpline for sexual violence. The Government committed to the establishment of this helpline in the Sexual Violence Action Plan and this should be progressed as a matter of urgency.

## Cross Government Strategy on Violence Against Women

The Commission has consistently recommended that a Cross-Government strategy to end violence against women is urgently needed. In 1999, the CEDAW Committee, called on the United Kingdom to adopt and implement a unified and multi-faceted national strategy to eliminate violence against women and girls, which would include legal, education, financial and social components. However, no action was taken. In 2008, the CEDAW Committee again urged the United Kingdom to give priority attention to a national strategy on VAW.

The Commission is encouraged by the work of the Home Office in leading on a long over-due Cross-Government Strategy on VAW. The consultation on the development of the strategy was launched on 9 March 2009 and represents an important opportunity to ensure all government departments take responsibility for tackling VAW issues, with a focus on prevention and elimination of VAW.

However, the strategy will only succeed if there is real cross-government commitment and an understanding

that VAW is a relevant issue for every department. The 2007 independent review of the Government's VAW work revealed that many departments just do not recognise the relevance of VAW to their remit. There is a legal requirement under the Gender Equality Duty to promote change - each department is required not just to have due regard to the need to eliminate unlawful sex discrimination and harassment but also to promote gender equality between women and men. This requires recognition of VAW as a manifestation of gender inequality and a consideration of the impact of policies on VAW.

Important developments such as the Cross- Government Action Plan on Sexual Violence and Abuse (April 2007); the National Domestic Violence Delivery Plan; the Prostitution Strategy (January 2006); Tackling Violent Crime Action Plan (February 2008); and the UK Action Plan on Trafficking (23 March 2007) have all been welcomed by the Commission over the past two years. However, the VAW Strategy presents the opportunity to integrate work rather than the current fractured approach. This will allow for the prioritisation of a comprehensive funding strategy for the provision of services for women who have experienced violence and will also enable the intersection between violence against women and other inequalities, such as ethnicity, age, sexuality, social class and religion, to be identified.

The Commission was also encouraged to see the publication of a strategy paper by the Conservatives in December 2008.<sup>111</sup> This demonstrates that VAW is being recognised as an important issue across the political spectrum.

## The Police – Reporting & Investigation

It is clear that at the highest levels of the police force, there is recognition of the need for changes in practice and in some areas of the country, police investigation has markedly improved in recent years. However, there remains a need for consistency in investigation across police areas and more importantly, a shift in attitudes and culture.

### The Decision to Report

If victims do not have confidence that the criminal justice system will provide them with support, safety and justice then they are unlikely to make the decision to report an offence.

Evidence shows that women may choose not to report domestic violence to the police either because they feel excluded from the criminal justice system by virtue of their gender, ethnicity or class, or because they doubt the efficacy of this route for dealing with domestic violence.<sup>112</sup> Vulnerable and intimidated women, particularly from marginalised communities, may also feel a mistrust of authorities or pressure for violence, particularly within the domestic context, to be resolved within their community. Additionally, women who are trafficked for sexual exploitation or domestic labour may be prevented from reporting their situation because of barriers such as restrictions to their movement, intimidation, a lack of understanding of the UK legal system and language difficulties.

Crimes of rape and domestic violence have particularly low reporting rates. On average, it is estimated that just 10 percent of survivors who are supported by Rape Crisis Centres report their experience(s) to the police.<sup>113</sup> Women in domestic violence situations often fear retaliation from the perpetrator for themselves or their children, have difficulties leaving the abuser because of financial dependence or fear of being judged or even blamed by the authorities or society. As one woman told the Commission:

*Domestic violence is not a one off event and yet the police react on what they see at the time. I felt the police saw it as 50:50 when I was being terrorised on a daily basis... it is easy for a charming perpetrator to get two blokes 'on-side', she's always nagging and so many people including police officers buy into this being a legitimate excuse for violence.<sup>114</sup>*

There should be continued evaluation of the impact of the Domestic Violence Crime and Victims Act 2004 to ensure measures do not have a detrimental effect on reporting rates. For example, the criminalisation of breach of non-molestation orders may lead to women being less willing to lodge a complaint against a violent partner. A

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reported decrease in the number of women seeking non-molestation orders since the implementation of the Act suggests that there may be some basis for this concern. However, this decrease may also be attributable to the reduction in solicitors undertaking legal aid family law work and increased restrictions on legal aid. The effects of the Act should be carefully monitored going forward. There is also the need for continued awareness raising and training within the police to ensure that a national approach is adopted in relation to the enforcement of non-molestation orders, so that women receive consistent messages.

The myths and stereotypes surrounding rape affect the willingness of victims to report the crime. They fear that they will be blamed for the attack or disbelieved, particularly if alcohol is involved or if the rape was committed by someone known to the victim. Significantly, the majority of rapes are committed by a perpetrator who is known to the victim.

Even when a woman makes a decision to contact the police, she may be discouraged from pursuing the case or the police may make the decision to classify the allegation as no/not crimed. The 2005 study, *A Gap or a Chasm? Attrition in reported rape cases* found that there was an over-estimation of the scale of false allegations in rape cases by both police officers and prosecutors which fed into a "culture of scepticism."<sup>115</sup> The Commission was told during evidence from Rape Crisis about examples of women who had attended the police station to report being raped only to be told that as there was little chance that their case would

lead to conviction there was no point in reporting it. ACPO acknowledged to the Commission that there were certainly problems with an initial 'brush-off' and that further training of frontline staff was required. Training for initial response officers is also needed on behaviour which rape victims could potentially exhibit which may be misinterpreted as unreliability.

A 2007 Review which looked at 677 rape allegations reported to the Metropolitan Police Service in April and May 2005, revealed police are more likely to no/not crime cases where the victims have specific vulnerabilities such as being under eighteen, having mental health issues, being in an abusive relationship or if alcohol was involved.<sup>116</sup> As Table Two below illustrates, more than one in three allegations where the complainant had a mental health issue were classified as 'no-crime' or 'not crimed'; and more than one quarter were classified as 'no crime' or 'not crimed' when alcohol was involved. This reveals worrying attitudes surrounding whether an individual will be considered a credible witness.

Training should be implemented for all frontline staff in relation to the myths and stereotypes surrounding rape, including different responses to trauma which may result in delays in reporting, memory loss or an appearance of detachment. Victims should be provided with support and not discouraged from continuing, notwithstanding the involvement of alcohol, any mental health issues, whether the violence occurred in a domestic context or the age of the individual.

**Table Two - Outcome of rape allegations by type of vulnerability<sup>117</sup>**

Type of vulnerability (not mutually exclusive)	No / Not Crimed (without false allegations)	False Allegations	Crimed, not charged	Charged, not convicted	Convicted Total
<b>Mental Health Issue</b>	<b>44</b>	<b>25</b>	<b>44</b>	<b>9</b>	<b>2</b>
<b>Domestic Violence</b>	<b>28</b>	<b>16</b>	<b>91</b>	<b>21</b>	<b>6</b>
<b>Alcohol</b>	<b>63</b>	<b>28</b>	<b>100</b>	<b>31</b>	<b>12</b>
<b>Under 18</b>	<b>41</b>	<b>21</b>	<b>113</b>	<b>33</b>	<b>12</b>



Women also need to have clear information about their options and what the criminal justice system entails. Resources such as *From Report to Court*, a book published by Rights of Women, are important resources and should be made widely available.

### Investigation

The 2008 domestic violence arrest rate was only 30.1 percent which was 1.3 percent down on the previous year and varies across police force areas.<sup>118</sup> In rape cases, the conviction rate from complaint to conviction is only 6.5 percent while the conviction rate from point of charge to conviction is 37 percent. A significant number of rape allegations do not proceed beyond the investigation stage. The support for victims and expertise of staff involved in the investigation of cases of VAW is therefore crucial.

Testimony of victims provided to the Commission revealed that an inconsistent approach to the needs of female victims continues across the country. Women's experience is very much dependent upon the individual officers' reaction to their initial complaint and follow-up care. As one victim of rape in 2008 told the Commission "*The attitude of the investigating officer was one of dismissal and non-belief. She gave the impression that she could not be bothered and that she believed the perpetrator over me.*"<sup>119</sup> If victims of violence are faced with disbelief from the outset they are unlikely to feel encouraged to follow through their complaint once a report has been made.

*...it will take only the raising of one skeptical eyebrow by a police officer in interview, or a single gesture of impatience by the prosecutor, and she [the victim] will lose courage and withdraw.*

*Vera Baird QC MP, Solicitor General, March 2008*

Attitudes and expectations as to how a 'proper victim' should behave continue to shape the Police response to VAW. For example, the Commission was told that police routinely fail to identify victims of same sex domestic violence, often arresting both parties. Eaves also told the Commission that few victims of same sex violence are asked about sexual violence which leads to incomplete risk assessments. Respect, an organisation working to increase the safety of those experiencing domestic violence

through promoting effective interventions with perpetrators, highlighted to the Commission that there is a lack of understanding concerning the use of violence by women against male primary aggressors. Violence can be used by women as self-defence or retaliation and a failure by the police and other criminal justice agencies to understand this reaction, is often used by the perpetrator to his advantage, leading to cases being discontinued.<sup>120</sup>

The victims' first point of contact with the police needs to be one of reassurance and support. The Commission is encouraged that facilities available to female victims appear to be improving. One woman told the Commission that "*the special unit had sofas and a shower and felt very warm and safe.*"<sup>121</sup> However, this is again not consistent across the country with another recent victim of rape describing how "*The police station was too open. Too many people. People looking at me because of the state that I was in – emotional, confused, shaking, unstable, cold. The station or officers didn't make me feel comfortable or secure.*"<sup>122</sup>

*I was taken to the Topaz centre in Nottingham... On the outside it looks like a normal building - a house. Once inside it is just like being in someone's front room, big comfy chairs, a coffee table, TV... I was left to watch TV whilst they prepared for my forensic examination... This was just like a doctor's surgery so not too intrusive, although there did seem a lot of people present. Once in my actual interview, it was like going from the living room into the dining room, sat on more settees with neutral décor... It was nice that it was like being at somebody's house, it made it a lot less daunting than being in an office or something. And as stressful and upsetting as it was to tell what had happened, the surroundings did make it easier.*

*Female rape victim, Questionnaire Response, January 2009*

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There is also a need for female officers to be available, particularly when this has been requested by a victim. One victim described how:

*They [the police] came to my house. Since I had been threatened with rape by a guy who told me he worked for the police, I specifically requested a female officer. They sent two huge men who then refused to show ID...I was terrified.<sup>123</sup>*

Women who do not speak English as their first language must be provided with the necessary interpretation support by the police and funding must be allocated for this purpose. The Commission was told of instances where police have asked voluntary organisations to provide and fund interpreters as they do not have the funding to do so.<sup>124</sup>

The Project Sapphire units within London were commended to the Commission on a number of occasions for their professional approach to victims of sexual violence. These units are based in each London borough and aim to provide victims with a specialised service from officers who are appropriately trained to deal with cases of rape and sexual assault and to provide appropriate support to victims

including referral to partner organisations. As one police officer commented, "I think that Sapphire is the best thing that happened to the MPS in terms of professionalising investigations of rape and sexual offences."<sup>125</sup> However, even among specialist Sapphire units, victims also reported some worrying attitudes among frontline staff, indicating a need for ongoing training and this was particularly highlighted by the two recent cases of sexual offenders where Sapphire teams failed to investigate effectively. What has emerged in the aftermath of these cases is that too many staff in Sapphire are inexperienced and untrained, and that performance in rape cases has not been given priority.<sup>126</sup>

*They were professional and calm and kept me updated at all times. They emphasised the seriousness of the crime and the seriousness with which it was treated by police... The particular officers who helped me definitely made things better and gave me a greatly increased level of confidence.*

*Female rape victim describing the Hammersmith and Fulham Sapphire team, Questionnaire Response, January 2009*



Jacky Fleming ©

Victims reported telling their story to the police at least three times with some having to do so five or six times. This re-telling can have a traumatic effect and can also impact on the confidence of the victim. Reforms which were introduced in November 2007 to allow video recordings of statements by rape victims to be used as their evidence-in-chief in court are welcomed by the Commission. However, it is important to ensure that victims understand what the video evidence will be used for and that the giving of video evidence does not create additional trauma for the victim. One woman described how *"It took me five hours to do my video interview. They interviewed the perpetrator for 36 minutes."*<sup>127</sup> Further, the video evidence needs to be put in context in the courtroom for the jury.

*I felt the police were extremely helpful and made me feel very supported. I did have to repeat what happened to me around six times though, to various people. Also I was told I had to give video evidence the last time which was damaging to the case I think. The defence barrister pointed out that I wasn't crying and nobody explained to the jury that I was in shock and had told them what happened several times by then.*

*Female rape victim, Questionnaire Response, January 2009*

It is crucial that contact is maintained with the victim throughout the investigation and stages of the criminal justice process. While some individuals reported a good level of contact with the police others felt uninformed. Women are more likely to withdraw their complaint if they do not feel it is being treated as a priority. *"The first two or three days the police maintained contact, then nothing/infrequent for two months until we told them that we strongly felt uninformed."*<sup>128</sup>

It is essential that this contact and information-sharing with the victim involves providing sufficient notice if a defendant is being released on bail. Victim Support told the Commission that currently, under the Code of Practice for Victims of Crime, the police are required to inform victims where a defendant has been released on bail within five working days or one working day if the victim is identified as vulnerable or intimidated. This lack of warning can result in additional distress and increased risk, particularly in a domestic violence situation. As one female victim described

to the Commission:

*The police didn't maintain contact with me. After my partner was arrested I had no idea what was happening. I was left home alone. I finally got his solicitor to tell me he had been bailed. In this respect I don't think that the police took it seriously.*<sup>129</sup>

The Commission recommends that the Code of Practice for Victims of Crime is amended to require the police to inform vulnerable or intimidated victims if a defendant has been released on bail or had his bail conditions altered before the defendant leaves the premises of the court.

*As time went on I was less likely to report it [domestic violence] as I knew the police would remove my partner (as I own the house) and lean on me to press charges. When I agreed to this course of action my partner was bailed and told not to come to the village I lived in. He ignored this and the next day broke into my house with a crow bar whilst I was inside the house. I phoned the police and he was arrested again. I lived in absolute fear each day...I was so scared of what he might be capable of, based on past events, that I dropped the charges...I felt very alone. It was easier to have him back and have some control of my life again.*

*Female domestic violence victim, Questionnaire Response, January 2009*

The Commission heard evidence from ACPO and were encouraged that progress has been made in some areas with specialist investigation and co-ordination measures being put in place. All forces now have a Rape Champion and Domestic Violence Champion and forces are encouraged to ensure this position is held by an officer with a rank of Chief Officer or Senior Detective. These individuals are an important means of sharing best practice between forces and are linked up electronically. A specialist team of expert advisors on rape has been set up and has visited every police force in the country to assist in producing a local action plan. Sexual offences training for police officers has also been introduced and specialist rape investigation officers are now in every area together with sexual offence officers to provide support during the investigation.

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The Commission commends these steps but is also concerned at the continuing inconsistencies between forces. The Commission recommends that rather than the development of local action plans, a national action plan is developed which sets out minimum standards which can then be applied and adapted locally. This should result in a more consistent national approach which will enable more effective monitoring of performance and coordination with the national structure of the CPS.

The Commission was particularly concerned to learn earlier in 2009 that the Cross-Criminal Justice System Rape Performance Group monitoring which has been operating for the last two years was to be discontinued. Their work was crucial in monitoring the performance of forces nationally, and comparatively, including with respect to reporting and no/not-crime rates. We also commend the practice of the top and bottom quartiles being followed up with a letter in order to share good practice, whilst focusing other Chief Constables' minds on poor performance. The Commission is encouraged by the announcement on 15 April 2009, that a Rape Performance Group led by Her Majesty's Inspectorate of Constabulary and the CPS will be established to continue assessment of performance and urge this Group to adopt, and build on, the successful practices of its predecessor.

The Commission is also concerned that data on rape and sexual assault offences is not readily available. The Fawcett Society has experienced lengthy delays when information as to the number of notifiable offences and number of persons prosecuted, tried and convicted for rape offences in England and Wales broken down by police force area was requested under Freedom of Information. This information should be made routinely available to the public by the Government and the problems accessing the information suggest this is not currently happening.

In December 2008, there were 24 SARCs in England and Wales. The government is committed to developing a SARC in every police force area by 2011 and this is welcomed by the Commission.<sup>130</sup> These centres allow for the collection of forensic medical evidence by specialist medical staff and also provide the potential for victims to be referred to support services and for specialist police officers to provide support and expertise for the victims at this early stage. The Commission is disappointed that there has

been no independent evaluation of the recently established SARCs, especially in so far as they are providing not just high quality forensic examinations, but also the pro-active follow up support and advocacy which we know makes a difference in the aftermath of sexual assault. All SARCs should be independently evaluated to ensure they meet the minimum standards set by the Home Office. Input should also be sought from the voluntary sector as to how to improve support services within SARCs and to develop good partnership working. Derby is an example of good practice in this regard, with effective communication and cooperation on training and data sharing between the police, the SARC and Rape Crisis. The Commission is also encouraged that the Department of Health is now developing a new Diploma for doctors and nurses to improve clinical standards of forensic examiners.

However, while the development of forensic medical skills, specially trained officers in sexual offences and the introduction of a network of SARCs are an important step in the right direction, all staff that victims come into contact with should be responsive to their needs. Eaves told the Commission that *"Women often report that whilst their SOIT officer (usually female) is very supportive, they feel afraid of the investigative officer in their case (usually male)"*.<sup>131</sup> Victim sensitivity among all staff should be prioritised with senior frontline police staff leading by example and initiatives such as specialist helplines should be widely implemented. As one police officer told the Commission *"We have recently set up an Honour-based Violence hotline [in Cambridgeshire] which is a dedicated secure line where victims of this type of abuse can be dealt with by trained staff that have an understanding of the issues."*<sup>132</sup> It is also important for the police to think about different ways of using resources to achieve the best results. For example, Rape Crisis told the Commission that it would be more appropriate if adult survivors of childhood abuse were dealt with by the Child Protection Unit, with their expertise in cases of child abuse, rather than the Criminal Investigations Department.

### Redress for Female Victims of Crime

An important means of improving performance as well as increasing confidence in the criminal justice system is to take seriously and investigate complaints made by victims about their treatment in the criminal justice system.

However, Rights of Women told the Commission that the forms of redress currently available to victims are limited and it is difficult to hold the police to account.<sup>133</sup>

Since April 2004, complaints made against the police can be handled through a process of Local Resolution, which involves resolving complaints at the local level rather than having them formally investigated by the Independent Police Complaints Commission ('IPCC'). Local resolution of complaints cannot lead to disciplinary action against individual officers. While, an individual must agree to their complaint being dealt with by local resolution, evidence suggests that individuals making complaints often do not understand what this process involves, think that local resolution is their only option and are frequently dissatisfied with the result.

The Commission recommends that complaints concerning, or in the context of, the investigation of an allegation of rape or sexual assault, should never be dealt with through the local resolution process. Independent investigation is vital to ensure public confidence in the complaints process and to ensure individual police officers can be held to account.

When the local resolution process is not used, a police investigator will be appointed or for more serious matters the complaint will be referred to the IPCC. It is essential that the complainant understands how the complaint will be investigated and that contact is maintained throughout the investigation. One woman described to the Commission how, *"when I placed a complaint an inspector was dealing with it. I had to write to him as I heard nothing from him. I received nothing in writing, even though I wrote to him asking how my complaint would be dealt with."*<sup>134</sup>

Research commissioned by the IPCC in 2007, demonstrated that there is a lack of clarity as to what behaviour is acceptable from the police, a lack of understanding as to how a complaint can be made and the potential outcomes.<sup>135</sup> Information should be made readily available in relation to the procedure (including how to preserve anonymity as a complainant) and potential complaint outcomes. This information should be widely available in the community, such as at Citizen Advice Bureaus and voluntary sector organisations.

## The Crown Prosecution Service – Prosecuting Violence Against Women

*It is so demoralising to have your case dropped. You just feel like yet another thing is stolen from you.*<sup>136</sup>

Women who are the victims of crime need to have confidence in the Crown Prosecution Service before they can be confident in reporting crime and continuing a legal case. While, as discussed later in this Chapter, there are other factors to consider when measuring the success of the criminal justice system, conviction rates remain important in that they may deter perpetrators and encourage victims to have confidence in the delivery of justice.

In terms of policy development, the CPS is a leader among the criminal justice agencies. This was recognised by EVAW's third annual independent analysis of UK Government initiatives on VAW in 2007, in which the CPS was ranked top among Government departments.<sup>137</sup> There has been real progress made with a new Violence against Women indicator introduced to monitor CPS performance on domestic violence, rape and sexual offences in April 2008. By 2010, the VAW Indicator is planned to expand to include performance monitoring of forced marriage, honour-based crimes, child abuse, crimes against older persons, prostitution and trafficking.<sup>138</sup> The CPS launched its Violence against Women Strategy and action plans in June 2008. The strategy is commendably underpinned by an equality and human rights framework which significantly recognises the fact that *"violence against women is rooted in the inequalities found throughout society between men and women"*<sup>139</sup> and occurs within a *"context of power and control used by men against women."*<sup>140</sup>

The Commission welcomes this policy development, particularly the extent to which the CPS have taken into account the views and knowledge of stakeholders, including through their external consultation group with third sector agencies. However, there still remains a gap between policy and implementation, particularly in relation to the lack of communication with victims surrounding the decision to charge.

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### The Decision to Charge - Cases of Rape and Sexual Assault

*It's all boring run-of-the-mill stuff to them. They were over-confident that we would 'win'. I felt that I was perceived as rather stupid. They didn't really see me.<sup>141</sup>*

A large number of victims of rape and sexual assault who shared their views with the Commission, commented that they were disappointed with the level of contact maintained with them by the CPS, particularly at the point in time when the decision was made not to proceed with the prosecution of their case. As one victim said:

*The initials seem to stand for Criminal Protection Agency. Victims don't seem to come into it. Although the notification letter said to contact them if I wanted to discuss their decision [not to prosecute] I could not talk to anyone at their office. I tried several times and no one returned my calls.<sup>142</sup>*

*I feel that to the CPS I was just another case, I was another statistic, and they didn't take my case to court because if it didn't get a conviction then they wouldn't be meeting their targets. But, for me personally, I felt like I needed it to go to court, I needed something to show me that people out there care. That men can't just get away with these things...as if the whole thing of reporting rape isn't bad enough.. To have to sit there and graphically relive every moment of the most terrifying night of your life... To then have it dropped when you have so much evidence against the perpetrator is completely heartbreaking! I feel that the CPS's attitude towards rape victims isn't what it should be. I think they need to be a lot more involved with the victim, because they judged me from pieces of paper, they had no idea what impact it was going to have on me to have my case dropped.*

*Female rape victim, Questionnaire Response, January 2009*

Following the implementation of the Code of Practice for Victims of Crime, the CPS is obliged to tell a victim if the Prosecutor has decided that there is insufficient evidence to charge (where there has been a full evidential report from the police); a case is dropped; or it is necessary to substantially alter charges. In addition to writing to the

victim to explain the decision, the CPS is also required to offer a meeting to explain the reasons for the decision. However, the CPS does not have this obligation to inform and meet with victim if there is a meeting between the police and the CPS and no full evidential report has been provided to the CPS. It is the responsibility of the police to inform the victim in these circumstances.

Victims commented to the Commission that they found being notified by letter from the CPS that their case had been dropped very impersonal. As one victim said, *"The CPS letter was overly blunt and read like they were on the side of the Defendant."*<sup>143</sup> Others reported no contact from the CPS at all with information being provided by the police instead. This leaves victims feeling marginalised and powerless. As a victim of rape stated:

*The CPS did not maintain contact with me and there was no explanation of steps that would be taken in making any decision. My mother was informed in the first week of December 2008 that CPS had dropped the case. She was told police officers would call to explain. 14 January 2009 still waiting...I feel they [the CPS] owe me an explanation of their decision.<sup>144</sup>*

*I came away with the impression [after meeting with the CPS] that the police had done loads of work on the case because they knew me and believed me, but that the CPS lawyer had never met me before deciding. So his decision was maybe made with less thought. I was nothing to him, he was more interested in chances of conviction in the abstract, and I feel this is part of the problem. It does not seem fair that the defendant can meet with his legal team and craft a defence, whereas I can't present my human face to the people whose job it is to see that I get justice.*

*Female rape victim, Questionnaire Response, January 2009*

Given the unique challenges involved in rape cases, the Commission recommends that the CPS should extend an offer of a meeting to a victim in circumstances where the Prosecutor has concerns regarding the evidence meeting the evidential test and is therefore minded not to charge, or, subsequently, to discontinue proceedings. Such a meeting would enable the Prosecutor to consider potential evidential weaknesses first hand and secondly, involving the victim

in the decision-making process is likely to result in a more positive perception of the CPS and the criminal justice process (even if the decision is subsequently made not to charge). The recent relaxation of the prohibition on CPS pre-trial witness interviews, announced by the Attorney-General, should permit this to occur. However, the effect of such meetings will need to be carefully monitored to ensure that they do not become another barrier to the progression of cases to court. Area rape coordinators should also be given the ability to continually review the quality of decisions to charge in rape cases.

Care should also be taken to notify the victim immediately if a decision is made to charge and that cases are sent forward for listing at court. One victim told the Commission how her case went to Crown Court: *"The CPS failed to notify me though. Instead I found out because a letter was sent to my brother asking him to appear in court as a witness but the envelope had the rapist's name on rather than my brother's."*<sup>145</sup>

### Joint Working on Rape – the Police and the CPS

Cooperation between the CPS and the police is crucial if the prosecution of rape cases is to improve. The Commission is encouraged that a Protocol between the Police and the CPS in the investigation and prosecution of allegations of rape was signed in March 2008 with the aim of ensuring the adoption of the recommendations in *Without Consent*; improving performance; and increasing confidence in the Criminal Justice System for victims of rape.<sup>146</sup> The protocol sets out how cases will be handled from first response, through the investigation, including forensic examinations, early consultation with the CPS, charging, case preparation, dealing with victims and witnesses, to the trial and sharing any examples of lessons to be learned. The CPS and ACPO are also due to publish a joint guidance on the investigation and prosecution of rape before the end of June 2009.

Limitations to cooperation result from the different approaches taken by the two agencies. The CPS has a national approach while the police operate under different models across the country. The Commission recommends that joint targets are developed at the national level, which can then be applied locally by police forces. These joint measures need to be made meaningful with successful as

well as unsuccessful outcomes measured. CPS told the Commission that lessons can be learnt from the use of targets in domestic violence cases where the use of targets has pushed through the number of cases, rather than resulting in cases being dropped to improve statistics.

### Domestic Violence

There has been a noticeable improvement in the conviction rate for domestic violence offences. This has been partly due to the implementation of specialist domestic violence training within the CPS but also due to the growing network of specialist domestic violence courts (SDVCs). There is evidence of significant increases in successful prosecutions where specialist courts are used. In 2005, while 59 percent of all domestic violence cases recorded by the CPS led to convictions,<sup>147</sup> 71 percent of cases tried in specialist courts had successful outcomes.<sup>148</sup>

The Government is to be commended on the increase in SDVCs, with an increase from 98 to 104 announced by the Ministry of Justice in October 2008. Organisations such as Eaves report that the use of SDVCs has increased access to justice for an enormous number of women who now have more confidence in the court process.<sup>149</sup> These courts allow a partnership approach to domestic violence by the Police, CPS, court staff, the probation service and victim support services. The Magistrates sitting in these courts receive specialised training in relation to domestic violence. However, distribution remains uneven in England, with three regions having more than half of the total number of courts.<sup>150</sup>

A review of the first 23 SDVCs, conducted in March 2008, demonstrated that successful prosecutions were generally higher in these SDVCs than in the non-SDVCs within the wider CPS areas.<sup>151</sup> This review also revealed that a high proportion of court users are utilising the support services available for victims. For example, 74 percent of clients involved in the court process at the 23 SDVCs were supported by IDVAs and 5,844 victim referrals were made to IDVA services over a six month period. A number of systematic weaknesses were also identified including a lower success rate in courts with a high proportion of BME defendants. This suggests there is a need for a greater focus on disproportionality. Continued analysis of the impact of SDVCs is also required through data collection

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and monitoring within each of the courts and the sharing of best practice. Criminal Justice Boards should put in place mechanisms for this monitoring, if responsibility for the SDVCs is devolved to criminal justice boards by the CPS as planned.

Despite these improvements, the current conviction rate of 68.9% of domestic violence cases recorded by the CPS is still well below the national average of 85.1% for all cases prosecuted.<sup>152</sup> 65.4 percent of DV cases brought to the CPS by police in 2007-8 were charged for prosecution but there are still significant numbers of domestic violence cases being discontinued after charge. In 2007-08, 27.9 percent of cases were dropped, with 21.2 percent of DV victims retracting their statements.<sup>153</sup>

### Forced Marriage and Honour-based Violence

Since the previous report of the Commission there have been some important developments in relation to forced marriage and honour based violence and a growing number of cases are being reported. The UK's joint Foreign & Commonwealth and Home Office Forced Marriage Unit, which was launched in January 2005, dealt with more than 1,300 cases during the first three quarters of 2008 – an increase of 79 percent on 2007. Further, the Forced Marriage (Civil Protection) Act 2007 came into force on 25 November 2008 and provides injunctive relief and damages for victims.

The CPS carried out a pilot in four CPS areas over nine months in 2007-08 in which 35 cases were identified.<sup>154</sup> This pilot, despite being limited to a small number of cases, revealed patterns including that the defendant was male in all cases; the victims were equally likely to be male or female and that it was not unusual for honour-based violence to occur outside a domestic violence situation.<sup>155</sup> A number of key recommendations for future work were made as a result of this pilot including the need for specialist prosecutors and leads, mandatory training for selected prosecutors, sharing of best practice, and multi-agency work especially with the police.<sup>156</sup>

The Commission welcomes the work of the CPS in this area. However, it is important that this initial pilot is followed through with the recommended future work, particularly in relation to training and multi-agency working. The pilot

findings also noted the need for specific support services for victims, with victim and witness difficulties responsible for the majority of unsuccessful outcomes of the small pilot sample. This support needs to extend beyond the criminal justice system to the provision of housing, welfare benefits and publicly funded services such as refuges for victims facing forced marriage.

### Trafficking

As of December 2008, there had been 92 convictions for trafficking for the purpose of sexual exploitation under the Sexual Offences Act and four convictions for trafficking for labour exploitation.<sup>157</sup> On 17 December 2008, the government ratified the Council of Europe Convention Against Human Trafficking. This is a significant step, with the Convention setting minimum standards for protecting and supporting trafficking victims. It is important that the government takes its obligations under the Convention seriously, particularly in relation to the support given to victims. Currently less than one in ten local authorities has support services for women in prostitution.<sup>158</sup>

This report has already discussed the growing problem in relation to the criminalisation of migrant women who are trafficked into the UK. However, in relation to the prosecution of trafficking offences, the vulnerability of these women, and often their families, also needs to be taken into account. Eaves told the Commission of at least one case of a woman trafficked into the United Kingdom who had family members in her country of origin seriously injured as a result of her giving evidence to the police.<sup>159</sup> The Commission was also concerned to learn that there appears to be a reluctance to pursue charges relating to trafficking for domestic servitude or labour exploitation when defendants are of a high status or wealthy, such as diplomats, where issues of diplomatic immunity also arise. A coordinated approach between the police, CPS and the Serious Organised Crime Agency (SOCA) is needed to address this.

Specialist teams with appropriate training and specific knowledge of trafficking issues and the needs of victims have the potential to make an impact and create confidence in the justice system. For example, the Metropolitan Police Human Trafficking Team was described to the Commission as excellent due to their awareness of trafficking issues, willingness to take on board advice about women's needs,



continued commitment to joint working with organisations such as the Poppy Project and their support of women after trial.<sup>160</sup>

The CPS has begun work with the UK Human Trafficking Centre to analyse data on these crimes. It is not anticipated that consideration will be given to extending the CPS VAW indicator to the crime of trafficking until 2011-12. As at December 2008, there were no systems in place to measure the prosecution outcomes for prostitution and trafficking.<sup>161</sup> The Commission recommends that data collection is finalised and the CPS VAW indicator is extended to trafficking by 2011, so that this measure is in place prior to the 2012 Olympics. International evidence suggests that demand for the sex industry can increase significantly around major sporting events. The Olympics also offers an opportunity to engage with men and boys on the issue of commercial sexual exploitation.

#### **Good Practice Example: The Poppy Project**

The Poppy Project's primary aim is to provide support and accommodation for women who have been trafficked into prostitution in the U.K. The project, established in 2003, provides accommodation and support services for up to 35 women in London, through the Eaves network. The project also provides an Outreach Service which assists women in need of short term support and advocacy as well as working to ensure the safety and well-being of women who have been trafficked throughout the U.K. The Poppy Project also works to raise awareness of the issues of trafficking and prostitution through education, training and lobbying.

Website: [http://www.eaves4women.co.uk/POPPY\\_Project/POPPY\\_Project.php](http://www.eaves4women.co.uk/POPPY_Project/POPPY_Project.php)

#### **Legal Aid**

The Commission remains concerned about the provision of legal aid in VAW cases when women are seeking injunctive relief. The cost of an injunction is beyond the remit of most vulnerable individuals. Rights of Women told the Commission that access to legal advice was a major problem for women, either because they were not eligible to receive legal aid or more frequently, because they cannot access a solicitor in their area. Injunctive relief is needed immediately, but often women have to wait two

weeks for an appointment.<sup>162</sup> Further, while women who have experienced domestic violence are exempt from the requirement to undergo third party mediation in order to access legal aid, the automatic exemption does not apply where there have not been criminal investigations or civil proceedings against a violent partner in the preceding twelve months. In these circumstances a solicitor must consider mediation which may have serious safety and security implications for already vulnerable women.<sup>163</sup>

The Commission is also concerned about the inadequate provision of legal aid in complicated VAW cases. For example, forced marriage situations, trafficking and domestic violence cases where there are immigration issues are often complex and in some instances the victim will require a translator to communicate with the solicitor. In most cases, the time limited legal aid, which has resulted from cuts to legal aid over the last few years, will be entirely inadequate.

## **The Courts and the Judiciary**

*Once solicitors and barristers were involved it was hell. It was a game to them...Most charges were dropped/negotiated or something.*<sup>164</sup>

Evidence presented to the Commission painted a picture of a court system which remains a difficult experience for women victims. As one victim described:

*I was questioned for hours and it really was horrendous...I realised that it will always be difficult to prove evidence either way with a rape case, but I don't see why I had to suffer so much in court, being accused of this, that and all the while people stared at me to work out whether I was a liar or not.*<sup>165</sup>

Special Measures, such as screening the witness off from the accused, giving evidence by live television links, excluding people from the courtroom and allowing witnesses to give evidence-in-chief by pre-recorded interviews, need to be more widely publicised and utilised

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## Women Need Justice - Women as Victims of Crime

for vulnerable victims. Facilities are being put into place to allow for these measures. For example, video links are now available in 75 percent of Magistrates' Courts and all Crown Court centres. Witness Liaison officers have also been introduced in all courts.<sup>166</sup> However, because special measures are not automatic and have to be applied for, vulnerable witnesses often do not receive special measures. Victim Support told the Commission that problems occur for two main reasons – vulnerable and intimidated witnesses are not identified (initially by the Police or later by the Witness Care Unit) and measures are not applied for on time resulting in the application not being granted or not being available at the relevant court. Cases were also noted of CPS prosecutors and barristers trying to dissuade victims and witnesses from utilising special measures on the basis that they decrease the power of testimony. Not having access to these measures or not knowing whether measures will be in place can result in additional anxiety and uncertainty for victims – the very impacts that the special measures were introduced to lessen.<sup>167</sup> The CPS needs to work to develop an approach to special measures which is more consistent and reliable.

*I went to look around the court but was not given much information. I asked to have screens put up and phoned three times to check that this would be done...when the court date came the paperwork was missing so I had to give evidence without any screens.<sup>168</sup>*

*Rape Victim, Questionnaire Response, January 2009*

The Commission was also told that in cases of domestic violence, special measures, such as the use of screens, are often denied by Judges on the basis that the parties already know each other. As Victim Support told the Commission *"This misses the point. In domestic violence situations so much as a look from the perpetrator can devastate the victim and make it extremely difficult for them to give evidence."*<sup>169</sup> It demonstrates a failure of some judges to understand the dynamics of power and control.

### **Good Practice Example: Use of Special Measures**

A woman who was a witness in a court case strongly wanted to see the man who had abused her being sentenced, but was very afraid. Her SOIT asked the Court to allow her to use a blocked off video link room so that she could observe the sentencing, but the perpetrator could not see her. She felt that this gave her a strong sense of closure.

*Eaves, Questionnaire Response, February 2009*

Many female magistrates noted that delays and long waiting times for cases to be heard was a significant issue for women, particularly those with childcare obligations. Many single parents or parents without support from family and friends have to bring their children to court. This creates additional pressure on the parent worrying about their children as well as the experience of giving evidence. While witness accommodation has improved, with 90 percent of Magistrates' Courts and Crown Courts now having some kind of separate waiting area for victims and witnesses, the waiting time in the same building as the perpetrator can be very distressing for victims. The situation is particularly difficult where cases are double-booked or listed as 'floating trials' requiring staying in the court building all day until a courtroom is allocated.

The Commission recommends that where victims have indicated that they have childcare problems, these cases should not be double-booked or listed as 'floating trials' and every effort should be made to fix the court date so that childcare arrangements can be made.

Many of the victims who shared their experiences with the Commission did not understand the Court process. As one woman told the Commission:

*Even though I work in a university and am used to formalities I felt out of my depth in court. I did not understand who was who. I was not put in a witness room which I now know exists. I was kept waiting from 9-12 and then told the court was breaking for lunch. All this time I was waiting to speak to the CPS to say I wanted to drop charges.<sup>170</sup>*

It is also important for the CPS to make certain witnesses are provided with appropriate interpretation support if needed. Further, judges must ensure that witnesses are not disadvantaged in court if they are communicating through an interpreter. Eaves told the Commission that in trafficking cases, where women do not speak English as their first language and are communicating through an interpreter, the defence often use this as a tool for their advantage.<sup>171</sup> While a Recorder commented:

*I find it quite shocking that even the basic preparation such as checking that a witness is able to give evidence without an interpreter does not take place. It is as if they do not realise that a witness statement is garnered from questions put by a police officer not a free narrative. A witness may be able to answer these questions but the complexity of cross-examination in a court room is a different matter entirely.<sup>172</sup>*

The attitudes and skills of prosecutors were highlighted to the Commission as a continuing problem. The Commission was told by Victim Support that they have found, on occasion, that prosecutors in domestic violence or sexual violence cases can be verbally aggressive to female victims. There is a need for advocates to be trained, not only in policies and procedures, but also in myths, stereotypes, and the likely distress and anxiety that victims are likely to experience during court proceedings. This training is especially necessary for barristers representing the Crown in sexual violence cases.

*I also had a terrible barrister, who failed to let me put my thoughts forward and didn't really question the defendant properly. I only met with him for about five minutes before giving evidence which I think is extremely unfair. The defendant had a fantastic barrister who he was able to choose himself and who he got to see on numerous occasions. I think that it is absolutely terrible that it is meant to be a fair trial yet I didn't have half the options that he had...As a victim you need just as much protection as the defendant but you are not given that. When giving evidence I felt I was on trial.*

*Female rape victim, Questionnaire Response, January 2009*

Many of the victims, who shared their experiences of court with the Commission, were unhappy with the performance of their barrister, particularly in comparison to the skills of the Defence barrister. Emphasis must be placed by the CPS on ensuring that barristers representing the Crown in sexual violence cases have the skills and aptitude to present such complex cases. Barristers need to be able to present a convincing narrative to the court which explains the behaviour of victims and inoculates against 'toxic evidence' presented by the Defence. This requires in-depth understanding of the realities of sexual violence. Training in the complexities of cases of domestic and sexual violence, trafficking, forced marriage and honour based violence, such as the domestic violence e-learning product which has recently been developed for the bar by the CPS, should therefore be a precondition before members of the bar can represent the Crown in these cases. Additionally, routine feedback should be sought from victims and witnesses so that any concerns regarding the performance of barristers can be followed up by the CPS.

*The prosecuting barrister said very little and apparently looked bored and disinterested throughout the trial. He was male. The defence barrister was a female QC paid for by the rapist's wealthy parents. She raised her voice to me and used vulgar expressions to describe a fictional sex scene. She laughed at my responses. She made inferences about my decision to get drunk and socialise without my boyfriend's supervision. She told the jury I was crying because my boyfriend was in the public gallery and hearing the 'truth' from her about what happened. She was very aggressive and the prosecution never objected, but the Judge did.*

*Female rape victim, Questionnaire Response, January 2009*

The extent to which jurors are affected by the myths and stereotypes surrounding gender-based violence, and particularly sexual violence, remains of concern. These attitudes, which are explored in more detail later in this chapter, can impact on the assessment of the reliability of a witness. As Eaves told the Commission, the effects of trauma upon memory recall result in women being considered as 'unreliable' witnesses, because they may have trouble recalling dates or times or if there are minor inconsistencies between their statement and testimony.

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This is often used as a weapon by the defence with no alternative explanation being provided to the jury. Dates and times are especially an issue for trafficked women and any woman who has had their access to news sources, which provide a reference point, restricted.

In rape cases, a jury is frequently required to consider whether a complainant consented and to evaluate the reasonableness of the defendant's belief that the complainant had consented. The definition of consent provided under the *Sexual Offences Act 2003* requires that an individual must have the freedom and the capacity to make a choice. No further guidance is currently provided. Recent research using mock jurors revealed that there was no consensus on the meaning of consent, particularly in relation to the level of inebriation which may be required. Worryingly, some participants indicated that they would require some evidence of resistance even when the complainant was heavily intoxicated.<sup>173</sup> It is also unclear as to the extent to which defendants pleading a consent defence, are being tested, as the law requires, on the steps they took to ensure consent was given.

The decision of the Court of Appeal in *R v Bree* considered the line to be drawn between consensual sex and rape where a complainant is heavily intoxicated. The Court of Appeal found that the jury should have been given some assistance with *"the meaning of 'capacity' . . . where the complainant was affected by her own voluntarily induced intoxication and also whether, and to what extent they could take that into account in deciding whether she had consented."*<sup>174</sup> Given the stereotypes and moral judgments which surround this issue, there is a need for clear guidance and clarity as to the instruction which should be given to jurors, in rape cases involving intoxication.

In 2006, the Office for Criminal Justice Reform published a report proposing the introduction of expert evidence in rape cases to educate juries about the potential effects of trauma and to assist in dispelling some of the myths and stereotypes which surround rape. Various arguments have been made as to whether expert testimony is appropriate. Concerns have been raised that the use of expert testimony would lead to a 'battle of experts' or may result in another barrier to reporting for those women who do not feel they meet the victim 'profile'. However, a study with over 200 mock jurors indicated that judicial instruction / expert testimony which provided explanation of behaviour resulted in participants being less likely to assume fabrication by the victim.<sup>175</sup>

The Commission welcomes the current work by the Government to explore commonly held myths and to consider appropriate judicial instruction. The recognition by the Courts of this is also encouraging, such as the Court of Appeal decision, *R v Doody*, in October 2008, when the Court ruled that judges in rape trials can give instruction to jurors that a delay in making a rape allegation, rather than indicating a false complaint, can arise from shame and guilt.<sup>176</sup> There should be greater awareness of this decision and the Commission recommends that the application and interpretation of this decision is closely monitored. In light of the results of this monitoring, the Government may need to consider further the use of expert testimony, particularly in relation to issues outside the scope of the decision. There is a great deal of expertise within this sector which could be utilised to provide independent expert evidence to juries and instil greater confidence of victims in the system. Evidence could be required by the court, rather than by either side, as is possible in childcare cases, which would alleviate the risk of a battle of experts developing.

*I'd like the CPS to stop making assumptions about what a jury would think. I'd like juries to be educated that most women who are raped know their perpetrators, that there is a big difference between submitting because you're so terrified that you'll do anything to get out of there alive and consent.*

*Female rape victim, Questionnaire Response, January 2009*

*He pleaded innocent, so I prepared myself to go to court... However the day before the court date he changed his plea to guilty. I did not have to testify. Part of me feels cheated as that meant I never had an opportunity to tell the jury how it had hurt me, or to explain exactly how I felt and what this had done to me. I attended the sentencing and was horrified by the lack of fact checking. He was treated as a juvenile because he said he was under 18 but he had no ID as he was an illegal immigrant. ...I listened to his sob story about not being able to understand subtle dating signals because he was isolated and uneducated. There was no date! He jumped on me as I walked down the street... My signals were not subtle, I bit and kicked and scratched him till he bled, but he just laughed at me. He grinned at me in the court... He got 4 years and served 1 and a half. I live with it to this day.*

*Female rape victim, Questionnaire Response, January 2009*

It is important that women also receive support if the defendant pleads guilty and after the court process has concluded. However, evidence suggests this aspect of support is often overlooked. The time after a trial can be an

extremely distressing time for victims, particularly if there is an acquittal:

*When the verdict came back two days later of not guilty it was just some man on the phone who called to tell me. He did say to me that the Judge was disappointed with the verdict, which was probably helpful to me...I wished someone trained in counselling had called to tell me the news and made me feel better.<sup>177</sup>*

The Commission is disappointed that the Government has still not implemented important provisions of the *Domestic Violence, Crime and Victims Act 2004* which would provide additional support for women, particularly in cases of acquittal. Section 12 of the Act, which extends the use of restraining orders to those convicted of any offence, and also to those who are acquitted for any offence, and Section 9 which introduces domestic homicide reviews, should be implemented as a priority. Section 12 has the potential to greatly increase the protection of victims after court and the Commission supports the recommendation of the Early Evaluation of the Act, that it be implemented as soon as possible.<sup>178</sup> This protection should also be extended to cover all violence against women offences where the parties know one another.

Jacky Fleming ©



# Chapter Four:

## Women Need Justice - Women as Victims of Crime

### Support for Victims – Building the Link

*I was told about the counselling service by South Yorkshire police but none of them had counsellors available. The shortest waiting list was estimated at 2 months. I had to borrow money from my parents for private counselling. When I lost my job I asked the GP about NHS Counselling [but] she said it was pointless even going on the waiting list and prescribed me anti-depressants.<sup>179</sup>*

Whilst links are developing between the criminal justice system and specialised support services, the dearth of such services, and their limited capacity, mean that women are not able to access support, even when, as the case above illustrates, they are aware of their own needs. The criminal justice system and community provision for victims of violence, should not be seen as two distinct systems, but should be inter-linked. As one woman who works with female victims described to the Commission:

*Some more cooperation when dealing with the victims would perhaps result in a better case being put forward as we could provide some moral support for the victim when the case is being prepared and this may result in a stronger case.<sup>180</sup>*

Victim Support told the Commission that although there was greater recognition of support services at the policy level this did not always filter down to frontline police staff and prosecutors. Women's Aid raised concern that women are being helped through the criminal justice system by Witness Care Units, which is in direct contradiction to CPS policy and leads to support being provided by individuals without specialist training in domestic or sexual violence. Criminal Justice Boards should be actively involved in ensuring specialised support is available in their area.

*I suppose an improvement would have been if someone had contacted me from the police as I was simply left to my own devices which subsequently created emotional problems which took extreme effort to finally deal with... It took a very long time for me to get back on my feet - especially as I was stupid enough to allow him to move back in, although I subsequently ended the marriage six months later. I felt enormous guilt at the time for some reason and perhaps some support/counselling would have made all the difference, and I wouldn't have gone on to waste another year of my life. I recall feeling extremely foolish and wondered if I was wasting everyone's time - that somehow I should have been able to manage the situation and his attacks by myself.*

*Female victim of domestic violence, Questionnaire Response, February 2009*

The Government has implemented a number of initiatives, designed to increase the support provided to victims. Independent Domestic Violence Advisors (IDVAs) and Independent Sexual Violence Advisors (ISVAs) have been introduced to provide support for victims negotiating the criminal justice system. 38 ISVA posts are currently funded by the Home Office in England and Wales. IDVA and ISVA posts have the potential to provide much needed support for victims. However, the Commission has a number of concerns with the existing model:

- The ISVA scheme is currently under-resourced. For example, the ISVA who gave evidence to the Commission was the only ISVA for the whole of the Eastern region and the Commission was also told about delays in funding streams which have meant services have been forced to suspend their ISVA post.
- IDVA funding is being mainstreamed to local authorities this year and it is unclear whether funding will continue and also if continuance will be at the cost of other services such as refuges.
- The ISVA training and framework is based on that developed for domestic violence and fails to address the specialist and complex issues specific to sexual violence and the crucial differences between the Magistrates Court and the Crown Court. This is amplified where IDVA and ISVA roles are merged in some regions.
- There is inconsistency between regions with ISVA posts - roles are defined differently and tools such as

risk assessments are not uniform. In one region, the risk assessment is 75 pages long.

- The acceptance of ISVAs within the court system also differs between areas, with some Courts allowing ISVAs to sit in the court while in other areas they are required to sit in the public gallery.
- In order for victims to have confidence in ISVAs, the role must be independent from the police and health authorities. However, there are plans for the managers of SARCs to be responsible for the management of ISVAs as well as some ISVAs working out of police and health settings.

Multi-Agency Risk Assessment Conferences (MARACS) have become the cornerstone of the Government's approach to high-risk victims of domestic violence. The Government has now funded over 100 MARACS and from 1 April 2007 to 31 March 2008, almost 12,000 cases were brought to MARACS.<sup>181</sup> MARACS have the potential to assist, with preliminary data supplied by some MARAC areas in 2008 indicated a 50 percent overall reduction in repeat victimisation among cases heard at the MARAC. However, the Commission has a number of concerns about the current operation of the conferences. For example, the Commission was told that many workers connected to MARACs lack training in domestic violence issues and sensitivities. Further, there are concerns that the conferences may be frequently breaching a woman's right to privacy through defects in consent procedures and follow-ups. The Commission was told of a particular discussion within a MARAC in which it was decided that a woman would be given a warning that if she did not leave her partner, her children would be removed. This approach, rather than providing support for women, is likely to ensure they do not seek help if the violence recurs. These issues need to be taken seriously through an independent audit of MARAC processes, with priority given to the experiences of women whose cases are presented and to independent women's organisations.

The national Witness and Victim Evaluation Survey ('WAVE') measures the satisfaction of witnesses and victims but significantly excludes victims of rape, sexual assault and domestic violence. While the British Crime Survey includes some relevant questions on VAW, the current format does not allow for the collection of detailed information from VAW victims who have reported crimes. There is a need

for a national monitoring system to be developed so that the various targets of the criminal justice agencies are not purely conviction rate driven.

Steps are currently being taken to develop such a measure. The Home Office Violent Crime Unit has funded a feasibility study on surveying the satisfaction of victims of serious sexual offences within the criminal justice system. It is anticipated that a report on this study will be available in May 2009. Further, in August 2008, a steering group led by CPS was set up to lead a project to develop methodologies to measure support, safety and satisfaction of victims of violence against women in the criminal justice system. This initial work of this project, culminating in an anticipated pilot in September 2009, is promising, with detailed assessment being conducted of current national and international measurement methods.

### **No Recourse to Public Funds**

Women fleeing domestic violence, with an insecure immigration status and therefore no recourse to public funds cannot access any kind of emergency or social housing. In 2008, the CEDAW Committee singled out, protection of women with no recourse to public funds, female asylum seekers and women refugees as an issue under which the United Kingdom is failing to live up to its obligations under CEDAW. In 2006/7 within London, 18 DV refugees had to turn away 222 requests for services from women with no recourse to public funds.<sup>182</sup>

The Commission has consistently highlighted this issue and commends the work of organisations, such as Southall Black Sisters, continuing to campaign around this issue. Southall Black Sisters, have, with funds provided by London Councils and Oxfam, recently set up a small last resort fund called the 'SBS No Recourse Fund.'

Women, who are subject to immigration control, should be made exempt from the 'no recourse to public funds' rule in order to ensure there are not discriminatory responses to women suffering violence. This would enable women to leave violent situations, access support, report violence and where appropriate make use of the domestic violence and immigration concession.

# Chapter Four:

## Women Need Justice - Women as Victims of Crime

### The Criminal Injuries Compensation Scheme

The Criminal Injuries Compensation Scheme makes financial awards to individuals who have suffered harm as a result of violence crime and is administered by the Criminal Injuries Compensation Authority (CICA). The scheme can award compensation ranging from £1,000 to £250,000 depending on the nature of the injury plus additional payments to cover loss of earnings and expenses. The Ministry of Justice now has oversight of the scheme but as the House of Commons Committee of Public Accounts noted in November 2008, the low priority given to the scheme by the Ministry of Justice “believes its importance to the Ministry’s objective of putting victims at the heart of the criminal justice system.”<sup>183</sup>

In 2006, 64 percent of victims of violent crime were unaware of the scheme and only 5 percent of victims applied for compensation. Meanwhile, the average time taken to resolve a case in 2008 was 17 months and 30 percent of applicants paid to be represented by solicitors although Victim Support offers a free service.<sup>184</sup>

The Ministry of Justice and the CICA should improve the marketing of the scheme including information on: how and where to apply (such as the availability of the online application form); who is eligible; the Authority helpline number; and the free representation service offered by Victim Support. Regular monitoring of the performance of the Authority should also be undertaken by the Ministry of Justice.

The Commission was concerned to learn of instances which came to light in 2008, in which victims of rape had received a reduction in their compensation on the grounds that drinking alcohol had contributed to the circumstances which caused the rape or sexual assault. This approach worryingly reinforces the ‘blame culture’ directed at rape victims. The Authority has since acknowledged that in cases of rape and sexual assault the victim’s alcohol or illicit drugs consumption should not be presumed to be a contributing factor. The Commission recommends that clear guidance is given to caseworkers in relation to claims made by rape victims and victims of sexual assault.

## Public Perceptions and Attitudes

*...with conviction rates being so low what incentive is there for a woman to report rape? Particularly date rape or where the offender is known. Some of the comments made by Judges are also pretty disgraceful and disengage such victims. I think the services which the police provide have improved but the way victims are viewed is a different matter.*

*(Questionnaire Response, Police, December 2008)*

Amnesty’s research in 2006 highlighted the extent of public acceptance of sexual coercion. The research found that a third of people think a woman is partly responsible if she is drunk or flirting with a man who later raped her.<sup>185</sup> A survey carried out with students in the U.K. in February 2009 disturbingly mirrored the findings of the earlier Amnesty survey with results revealing that one in three students in the U.K. think a woman is responsible for being raped if she is drunk and nearly half of students believe a woman is in some way responsible for being raped if she does not clearly say no to a man.<sup>186</sup> These attitudes were also evident in the Home Office commissioned telephone survey of 915 individuals in the UK and Wales in late February 2009. One in four respondents said a woman should be held partially responsible if she is raped or sexually assaulted when she is drunk; one third thought she would be partially responsible if she flirted heavily with the man beforehand and 39 percent thought a woman was partially responsible for rape or sexual assault if she did not clearly say no to the man.<sup>187</sup> The Commission is very concerned about these persistent attitudes which will impact on reporting rates, police investigation and jury decision-making.

There is an urgent need for a Government-funded national awareness raising campaign on rape and sexual violence, similar to those used in relation to drink driving. There are numerous effective international campaigns to draw on in this area (see below). Additionally, attitudes to sexual violence are formed very early and need to be addressed robustly in schools. The Department for Children, Families and Schools should ensure that education on consent,



respect and sexual violence is a compulsory requirement within the Sex and Relationship Education (SRE) curriculum.

**'This is not an invitation to rape me'- Rape Crisis Scotland.**

This campaign challenges common-held attitudes towards rape that blame female victims. Its aim was to question victim blame by highlighting that rape was not acceptable in any situation. The campaign was based upon posters of a series of images depicting women in everyday settings captioned with taglines highlighting that the image depicted was not an 'invitation' to rape. The images were also used in campaign road shows and on a website. The campaign provoked significant debate.

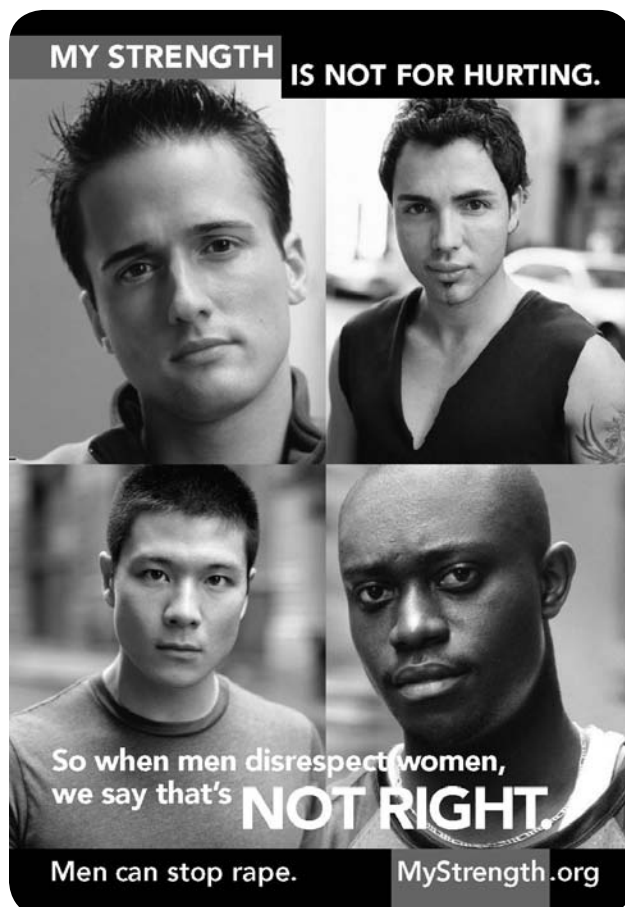
<http://www.thisisnotaninvitationtorapeme.co.uk/>

**Pause Button Campaign, 'Know when to use your pause button: sexual assault is not a game' New York City Alliance Against Sexual Assault.**

This campaign was aimed at 11- 13 year old boys to create understanding around issues of sexual assault and to encourage discussion on prevailing attitudes towards rape. The campaign used posters displaying the message of the campaign and toolkits for educators and youth workers.

The message is simple and effective: "Know when to use your pause button: sexual assault is not a game." This clearly draws the attention of the target group using an activity they can identify with to draw a clear line between playing games and the seriousness of sexual assault.

<http://www.nycagainstrape.org/pause.html>



**My Strength Campaign, Men Can Stop Rape, California**

The campaign targets young men, particularly 14 – 18 year olds and invites them to be proactive in stopping rape. The campaign ran state-wide in California utilising several media outlets including radio, print, outdoor, transit and online methods in English and Spanish to promote the message that a man's strength should not be used to violate women and providing positive examples of masculine strength and masculinity. Clubs and events were set up to bring men involved together and the campaign used activities such as an annual 'Walk a Mile in Her Shoes' march to promote the message to a wider audience.

<http://www.mystrength.org>

# Chapter Five:

## Justice Needs Women

### Women as Workers in the Criminal Justice System

*We want progress, real progress that we can believe in. Any progress also has to be maintained. The flow may start as a trickle, but it must become a regular stream.*<sup>188</sup>

*(Lady Justice Arden DBE, Address to the Association of Women Barristers, 3 June 2008)*

Gender exists as one of the main cleavages of inequality within all societies. Yet, gender is an inequality that is so 'normal' that it often goes unexamined. The structural inequalities that exist between men and women manifest themselves in relationships of power which result in women having less access to, or control over, resources and less opportunity to participate in decision making processes. The criminal justice system is no different; with women making inroads at the lower levels of each of the criminal justice agencies but with the higher positions remaining strongly male dominated. This dominance of men in the criminal justice arena leads to men defining 'the rules of the game' so that responses to female victims and offenders within the justice system and the law itself remain based on male norms and values.

The GED was seen as having the potential to transform the criminal justice sector for staff working within the system, with employers across the criminal justice system required to undertake initiatives to encourage women, and in particular ethnic minority women, to move into areas of the system where women are underrepresented. However, the Commission has found results disappointing to date. There has been some good policy development, such as the development of gender equality schemes. However, in practice, the numbers of women within criminal justice agencies in senior positions have only marginally improved over the last five years.

Therefore, while there is growing acknowledgement that female victims and female offenders require a justice system that is responsive to their distinct needs, there is less recognition that justice needs women, with a greater representation of women, particularly in high level positions, crucial to make a gender responsive criminal justice system a reality. The idea of the involvement of women as central to justice is not a new concept. Interestingly, representations of justice in the western tradition have typically taken the female form. Since the time of the ancient Greeks, the "Justice Ideal" has been depicted as a woman, usually

draped in flowing robes, with a sword in her right hand and scales in her left and sometimes wearing a blindfold.<sup>189</sup> The "idea" of justice has come to be identified with this image.

There has been much debate as to why the participation of women in the justice sector and the promotion of the rights, skills and experiences of women is important. We do not propose to explore these arguments in depth but we do wish to highlight three central premises. Firstly, women make up half of the population of the United Kingdom and as such should be fairly represented within high level decision-making roles within the justice sector. This is stipulated in Article 7 of CEDAW which provides for the elimination of discrimination against women in public and political life and in both CEDAW and the International Covenant on Civil and Political Rights which states that women shall enjoy "human rights and fundamental freedoms on a basis of equality with men."<sup>190</sup> As one female judge told the Commission:

*I think it is important for women to be seen in all areas of the criminal justice system. Until this is true the system is not reflective of society. I do not believe that there is a difference in the administration of justice because there are women doing the job but that is an argument for women to do the job not to the contrary.*<sup>191</sup>

Secondly, justice needs to be responsive and accessible to all citizens, irrespective of gender. The suspects, defendants, offenders, victims and witnesses interacting with the criminal justice system, are all of diverse backgrounds – across gender, class, race, religion, disability and sexual orientation. It is therefore important that the senior staff within criminal justice agencies are equally diverse so that the system is perceived as relevant and responsive. The increased participation of women within the criminal justice sphere is also important in breaking down gender roles more generally, as the increased visibility of women in senior positions and the emergence of female role models can re-shape gender role expectations and may also contribute to a decrease in gender-based violence.

Thirdly, women's experiences of the justice system and of everyday life, frequently differ from those of men. The participation of women within criminal justice agencies is therefore crucial in order to ensure understanding of the

different needs and experiences of women and to bring different perspectives and approaches to issues.

However, token inclusion of women within senior positions is likely to have little impact. Research suggests that a ‘critical mass’ of women is needed in order to challenge existing practices. For example, in Sweden, when women made up only 15 percent of the parliament they tended to behave more like the male members of parliament. Conversely, as their numbers increased to 45 percent, women began to advocate for changes important to Swedish women and insisted that men take on social welfare responsibilities.<sup>192</sup> Arguably, therefore, achieving gender balance is necessary for any substantial change in approaches to justice.

Whether gender balance can be achieved, particularly in senior levels, will depend on how responsive career progression and grading practices are to the needs of women and how workplaces adapt to utilise the skills and experiences of women. Adopting a gender neutral approach, which ensures the ‘playing field remains the same’ is not a solution. Rather, the participation of women should be understood as a route to challenging male dominance.

The experiences shared with the Commission by the many women working in the criminal justice sector reveal that systematic discrimination and the male dominated culture of the criminal justice agencies are still a major concern. We examine each of the agencies in turn.

## The Police

*Even in 2008 I have had very little experience of female officers being treated equally once they choose to have a family. The senior management make things so uncomfortable they are forced into a corner.<sup>193</sup>*

The proportion of women at senior levels in the police continues to be disappointing. As the table below demonstrates, in 2008, 34,404 of the 142,364 officers were women (24 percent) and at Chief Inspector grade and above 12 percent were women whilst 27 percent of constables were female.<sup>194</sup>

**Table Three – Police Officer Ranks by Gender (31 March 2008)**

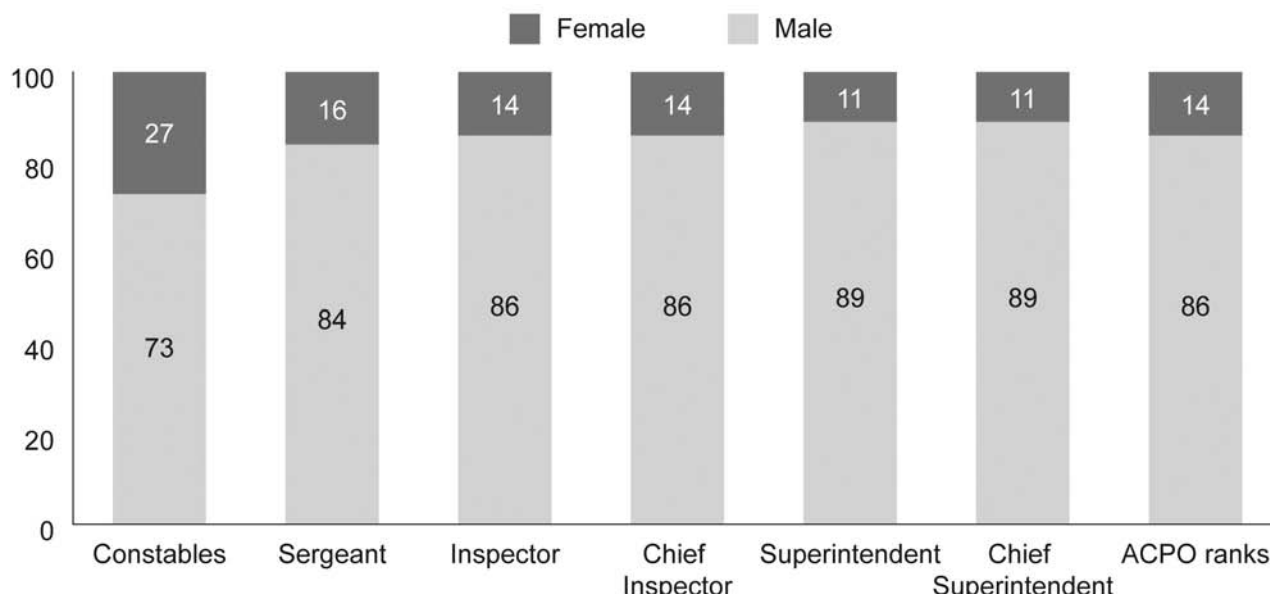
Police	Numbers			Percentages		
	Male	Female	Total	Male	Female	Total
Constables	79,658	29,390	109,048	73	27	100
Sergeants	18,779	3,569	22,348	84	16	100
Inspector	6,262	982	7,244	86	14	100
Chief Inspector	1,672	263	1,935	86	14	100
Superintendent	954	113	1,067	89	11	100
Chief Superintendent	455	58	513	89	11	100
ACPO ranks	180	29	209	86	14	100
<b>Total</b>	<b>107,960</b>	<b>34,404</b>	<b>142,364</b>	<b>76</b>	<b>24</b>	<b>100</b>

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**Figure 6 – Police Rank by Sex<sup>195</sup>**



Source: *Statistics on Women and the Criminal Justice System*, January 2009, Ministry of Justice

The Commission had a particularly high response from women working in the police force which suggests that women are interested in how the representation of women and their work roles can be improved. The Commission particularly commends the British Association for Women in Policing for their work in exposing the issues facing women in the police. Their *Gender Agenda* and more recent *Gender Agenda 2* set out the key challenges for the police service in meeting the needs and utilising the skills of women.<sup>196</sup>

From the responses received by the Commission it was evident that good policies are now developing, in relation to flexible working, equal opportunities and diversity. However, whether these policies are responsive in practice appears to be too dependent on the individual manager's interpretation and application, and evidence suggests that this differs substantially from area to area. As one woman commented, "There are strong diversity and equality ops policies in place, but I still feel managers use these subjectively."<sup>197</sup>

*I did have a successful career and what I thought [was a] future in the CID until I became the mother of twins and requested flexible working, then every corner I turned the doors were closed...*

*Female working in the Police, Questionnaire Response, December 2008*

Many responses received by the Commission highlighted the difficulties experienced by single parents (the majority of whom are women) with young children. One woman told the Commission:

*[I am] having major difficulties with work life balance as am now a single mum...I am having to work shifts and constantly juggle childcare with friends and family. I have approached SAWP/Federation/Command Team who all state they cannot accommodate my requirements. A demotion may be an option.*<sup>198</sup>

Rostering often occurs at short notice which can make the arrangement of childcare difficult, particularly within the context of shift work or being on-call. Further, situations such as working overtime to process an arrest can be extremely difficult for anyone with young children. However, addressing childcare responsibilities again appears to be dependent on the approach of individual line

managers. *“Sometimes childcare issues can be difficult to manage but I find this mostly depends on your line manager, most are excellent but there are still others who have a poor attitude to working women.”*<sup>199</sup> Good flexible working practices are in place but these will only work in practice if individual line managers respect and implement policies in order to maximise the contribution that women can make to policing. All line managers must be trained in responding to the needs of individuals with childcare obligations.

*The age old problem of child care doesn't go away... shift work is difficult and on call responsibilities are hard. You are off duty, so therefore no child care arranged, then the phone goes and you are expected to drop everything and attend calls*

*Female working in the Police, Questionnaire Response, December 2008*

Other women experienced problems returning to work from maternity leave: *“Taking and coming back from maternity leave was quite hard with little support and lack of consideration especially while pregnant. Loss of skills whilst off was not addressed on return.”*<sup>200</sup> It is important to ensure that women returning from maternity leave are provided with appropriate training and flexible working support. Research should also be conducted into the feasibility of establishing a ‘bank’ of skilled officers who could be deployed nationally to assist in time of staff shortage, due to maternity leave or gaps due to part-time working.<sup>201</sup>

It was also apparent in evidence presented to the Commission that there are issues surrounding how part-time/flexible working is perceived. Care needs to be taken that policies are understood by all workers and that women without children or men do not feel disadvantaged. As one woman commented, *“In fact I believe the force has gone so far in the opposite direction that we are so flexible, occasionally it does become a nonsense.”*<sup>202</sup> A communication strategy should be developed within all police forces to educate staff and officers as to the reasons for initiatives such as flexible working. The option of flexible working should also be actively promoted among male staff.

*As a woman who doesn't have children, I get frustrated when certain women get preferential treatment because they have children*

*Female working in the Police, Questionnaire Response, December 2008*

While the GED requires the distinct needs of women and men to be taken into account when developing staff policy, too often gender equality is interpreted as requiring the treatment of staff as ‘genderless.’ The police force uniform provides a very clear example of this. The Commission was told in evidence that rather than police uniforms being designed for male and female officers, the same male-designed uniform, based upon a 1950s military uniform, is issued for both men and women in some forces. Given the different male and female body shapes, this uniform results in a very uncomfortable and impractical uniform for women officers. Within some forces, shirts are male in design and are ordered by collar size and stab vests also have no shaping which can result in discomfort for larger women. Some forces have tailors to modify uniforms to fit officers, while other officers undertake their own alterations or put up with wearing an ill-fitting and often uncomfortable uniform.

*I am a woman and it needs to be recognised, because I have skills as a woman that a man hasn't got and vice versa. I don't want to be recognised as equal, I want to be recognised for what I am and we are almost going too far the other way they have made us all PCs and you can't recognise if it is a man or a woman coming to see you because they have changed our numbers.*

*Respondent in study by Janet Astley on West Mercia Constabulary, February 2007*

The Commission is concerned at the changes which have been made to the selection process for promotion to Sergeant. Instead of a written exam, an area in which women have excelled, there is now a work based assessment. Promotion based on workplace assessment is likely to disadvantage part-time workers who spend less time in the workplace. The need to spend time away from home to attend courses necessary for promotion will also disadvantage individuals with children or other caring responsibilities. As one woman commented:

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*I do feel there is a disadvantage for progression to senior uniformed ranks. I feel sure there must be other ways of assessing officers rather than having to spend weeks away from home on the Strategic Command Course.<sup>203</sup>*

The long working hours culture was perceived as an implicit requirement for promotion by many respondents and was also viewed as disadvantaging women. One woman told the Commission:

*I feel that for some women working long hours is fine if they do not have home commitments or they have families which can help with things like child care. If you are not in that position, then the Force can be a difficult place to work.<sup>204</sup>*

This culture of 'presenteeism' and long working hours is actually detrimental to all officers and staff, but may particularly disadvantage individuals with caring responsibilities. Management should lead by example in working appropriate hours.

*...the long hours culture that seems to be encouraged especially if you are wanting promotion is a disadvantage, as we aren't so willing to do those hours just to be seen here...I also think that is a common misconception that you do more if you are here longer. Far from it, if you manage your time effectively it should be achievable within our contracted hours.*

*Female working in the Police, Questionnaire Response, December 2008*

At lower ranks there are more opportunities to be promoted but there is a perception that promotion can only come about with recent operational practice and that it may involve de-skilling. For example, some departments do not contain sergeant ranks and therefore in order to be promoted officers will have to move to another department, often with operational duties and therefore shift work.<sup>205</sup> Women may also be 'siloe'd' into particular departments because they offer the opportunity to work more flexibly. For example, there are a high proportion of women working in neighbourhood teams and in the Child Protection Unit.<sup>206</sup>

*I think the promotion system within the police is flawed. It is not enough to be very good at your job, you have to provide evidence of 'extra' work and responsibilities that you have taken on - not easy when you are doing a full time job and thinking about collecting kids from nursery and what to cook for tea...*

*Female working in the Police, Questionnaire Response, December 2008*

The Commission received evidence from both police staff and police officers. Police staff provide the organisational capacity for the police service performing more than 200 different roles including training and recruitment, dealing with 999 calls and preparing case papers. The Commission is concerned, especially given the high proportion of women among police staff, that there are fewer opportunities for promotion and career development for police staff in comparison to those offered to police officers.<sup>207</sup>

Some specialist roles continue to be male dominated. The use of fitness tests for particular roles may be one barrier. Fitness tests are still typically based upon a male standard, such as requiring upper body strength.<sup>208</sup> Fitness tests should be designed according to the actual tasks required for the role.

A number of respondents who shared their views with the Commission suggested that having women on the selection panel for specialist roles may increase the number of female applicants. As one woman told the Commission:

*I feel that women who want to move into specialist, male dominated roles feel more relaxed and perform better where a woman is on the interview panel and advertising the fact in advance increases female applicants. Women's networks also improve confidence.<sup>209</sup>*

Female-only training may also encourage women to attend specific training courses. For example, West Midlands Police force offered a standard motorcycle evaluation course for female officers only. The Commission also welcomes the development of training which specifically targets the development of women, such as the Springboard programme (see box). The development of women's networks within forces is also encouraging. Mentoring schemes should also be considered within each

local area, with women who have reached senior positions providing guidance to women considering promotion.

#### **Good practice example: Springboard**

Springboard is a personal and professional development programme designed and developed by women for women to enable women to gain greater influence and to achieve their potential both at work and in their personal lives. It is comprised of four workshops and a workbook spread over three months. This programme has been utilised by a number of police forces including Thames Valley, Dorset, South Wales, Nottinghamshire, West Midlands and the Metropolitan Police Service.

It is important that the contribution of women to the police force is recognised. The specific skills which women can bring to a situation were noted by many respondents.

*At public order situations a female officer can quite often calm things down. The offenders are irate and quite often wanting to fight the world, if they see a male officer they see another challenge but not with a female officer.<sup>210</sup>*

Female police officers also noted that from their experience, that female victims of abuse often appear more comfortable with a female officer. As one officer remarked:

*I have found that being a female, and also possibly my age, women in domestic violence situations open up to me and put their trust in me. I feel this is because they believe I can identify with them. Having said that however, I would never assume that just because a victim of sexual assault or violence is female that she would automatically want to speak to a female...Each incident is different.<sup>211</sup>*

As many women working in the police noted, the important thing was for victims of crime or offenders to have the choice of having access to a female officer and also that women needed to be equally represented in the police force so that it is seen as being representative of the community.

Change is happening slowly and the Commission commends the work of the police force, the British Association of Women in Policing and the women themselves, for creating the beginnings of a shift in mindset. As one member of the Metropolitan Police Service commented:

*I think the increase of women within the service and rising through the ranks is changing the outlook of the organisation, away from being a macho culture to one that is more responsive and thinking, yet robust.<sup>212</sup>*

## **The Legal Profession**

A Law Society survey published in May 2008 found that male solicitors earn on average £19,000 more than females, with a median yearly salary for males of £60,000 compared to £41,000 for females. This represents a pay gap of 32 percent. Even after factors such as grade, post-qualification experience, region, size of firm, breaks taken, hours worked and area of law, were taken into account by the survey, female solicitors still earned on average 7.6 percent less than their male counterparts.<sup>220</sup> This pay gap is worrying, not only because it demonstrates women are not receiving equal pay for equal work, but also because it highlights that barriers still very much exist in relation to women's progression to the senior levels of the profession.

There is no shortage of women entering the law. In 2007, Women made up 61.3 percent of students accepted into law courses and in the year up to 31 July 2007, 7,121 of the 11,351 students enrolled with the Solicitor's Regulation Authority (SRA) were women. During this same period, 6,012 new traineeships were registered with the SRA, of which 61.5 percent were women. As at 31 July 2007, 44.3 percent of solicitors on the roll were female.<sup>221</sup>

However, the numbers of women markedly decrease in senior positions. Ratios at UK firms are slowly starting to improve, with 19.6 percent of partners in the top 100 firms now women. However, this is only a slight increase on 2006, when the figure was around 19 percent. This percentage further decreases within the top tier firms. In 2008, just over 14 percent of partners in the top four firms were female and 15.9 percent of partners in the UK's ten largest firms were women.<sup>222</sup>

Evidence suggests that the long hours culture, inflexible hours and lack of family friendly policies make it very difficult for women to progress to partnership. Maternity leave or career breaks also impact on opportunity for promotion.

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Notably, women make up a high proportion of senior lawyers within the Government legal service, where greater emphasis is placed on flexibility.

Interestingly, law firms are not immune from outside pressure, particularly when it comes from one of their own clients. General Counsels have at times used their influence to push diversity up the agenda. For example, BT has built diversity into their selection processes for outside law firms. While, Tyco International went so far as to set staff diversity targets (and a bonus if they were met) to its law firm, Eversheds.<sup>223</sup> The Commission commends this practice.

At the top 30 sets of the UK bar, there are only 42 female compared to 479 male silks.<sup>224</sup> In 2008/9, 87 men were appointed as Queen's Counsel compared to 16 women. Of particular concern to the Commission, as Table Five reveals, is that the number of women applying for QC is at its lowest level for ten years. It was hoped that the changes to the QC selection process in 2006 which introduced a more transparent process, would lead to an increase in female applicants, particularly now that the initial self assessment filter has been removed and diversity is a competency in its own right within the selection framework. However, while the success rate for female applicants is improving, the small pool of applications from women needs to be addressed. The Queen's Counsel Appointments Selection Committee should work with the Judicial Appointments Commission to share best practice and methods for

increasing the pool of women applicants.

This inequality in outcome (such as the small numbers of women applying for silk) which continues to exist can be attributed to historical inequalities as well as the high attrition rate among female barristers. The bar continues to be a male-defined environment with implicit and explicit institutional structures and practices which have the effect of disadvantaging women. Women now join the Bar in roughly equal numbers to men. However in 2007, 30.94 percent of self-employed practitioners were women whilst only 19.5 percent of self employed practitioners with over 15 years experience were women.<sup>226</sup> Further, an unpublished report dated May 2008 based on a survey of more than 3,600 barristers showed that on average men earn almost £100,000 (gross billed income) more than women per annum.<sup>227</sup>

Barriers to progression to the senior levels of bar can be found in the culture of the profession. For example, the self employed bar involves expectations to work long hours; travel on short notice, a lack of flexibility including no provision for maternity or caring leave and financial risk. These expectations adversely impact on women and single parents resulting in many leaving the profession. A Bar Council study of barristers ceasing self-employed practice, found that the number of women who began a tenancy between the years 1988 and 1998, and who ceased to practise between the sixth and tenth years of call was nearly twice that of men.<sup>228</sup> Even the process for appointing Silks will disadvantage women who have taken a break(s) in

**Table Five – Queen's Counsel Statistics, 2009<sup>225</sup>**

	1998	1999	2000	2001	2002	2003	2006	2007/08	2008/09
<b>Total applicants</b>	511	553	506	456	429	394	443	333	247
<b>Total awards</b>	60	69	78	77	113	121	175	98	104
<b>Male</b>									
<b>Applicants</b>	465	504	453	405	385	355	374	276	215
<b>Awards</b>	50	60	68	67	101	112	141	78	87
<b>Female</b>									
<b>Applicants</b>	46	49	53	51	44	39	68	51	29
<b>Awards</b>	10	9	10	10	12	9	33	20	16



her career, as these women may find it harder to meet the requirements for judicial and other references. The cost of the Silk application may also preclude some women with the application fee for the third competition currently £2,500 plus VAT and a further fee of £3,500 plus VAT payable by successful applicants on appointment.

## The Courts and the Judiciary

The lack of diversity in the Judiciary has remained a major concern for the Commission since its inception. Justice needs to be accessible and responsive to all citizens, irrespective of gender. As Lady Brenda Hale, the first female Judge to be appointed to the House of Lords, when asked about the lack of female judges, commented:

*This matters because democracy matters . . . We are the instrument by which the will of the Parliament and Government is enforced upon the people. . . Judges should be no less representative than the politicians and civil servants who govern us.*<sup>231</sup>

Judges should more accurately reflect the diversity of society in order to ensure that there is public confidence in the system particularly from the female population. Further, women can bring new and unique perspectives to the bench based on their experiences, concerns and interests. As Lady Justice Arden, stated in her address to the Association of Women Barristers *"It is that potential for different perspectives that men and women often have that in my view has the potential to enrich judicial decision-making."*<sup>232</sup>

In April 2008, of the 3820 Judges in England and Wales, just under 20 percent were women.<sup>233</sup> The EHRC report into Sex and Power in 2008, revealed that women represented only 9.6 percent of the senior judiciary (high court judge and above) and that at this current rate of progress it would take another 55 years to achieve an equal number of senior female and male judges.<sup>234</sup> According to the most recent figures currently available, just over ten percent of the 109 High Court Judges are women and just over eight percent of the 37 Court of Appeal Judges are female.<sup>235</sup> This represents particularly poor progress, especially in comparison to the proportion of female judges in other international senior courts (see Table Six). As Justice Lady Arden stated:

*There are far fewer woman Judges in England and Wales than in many other jurisdictions throughout the world...*<sup>236</sup>

*...When I was at the bar I did feel that I was discriminated against. After having my first child I returned to chambers on a part time, three days a week basis. After I had my second child, when I came back from maternity leave the clerks had done absolutely nothing to get me any work (they had not even written to solicitors to tell them that I was returning, although the date had been fixed for some months). I complained about this but little was done. I then requested to be allowed to pay my chambers rent on a pro rata basis as I was only in three days a week but received the response that my desk was available to me five days a week and there was no reason why members of chambers should have to subsidise me because I choose to stay at home for some of the time. I left practice shortly thereafter. My general experience at the Bar was that there appeared to be no discrimination against women who did not have children, or who did have children but were prepared to return to work without making any adjustment to the way in which they worked, but those who wished to work part-time, or had geographical or time restrictions because of their childcare commitments, were effectively written off.*

*Former Female Barrister, Questionnaire Response, February 2009*

Women are also often pigeonholed into practising within the stereotypically 'acceptable' areas for women, such as family law. As one woman told the Commission, *"my clerk... pushed me into family work when my background was civil/commercial."*<sup>229</sup>

The Commission supports the recommendation made by the Entry to the Bar Working Committee in relation to retention, including that equality and diversity training should be made compulsory for all barristers as part of their continuing professional development requirements and that a mentoring policy, particularly for women who take maternity leave or career breaks, is adopted by Chambers and relevant employers.<sup>230</sup>

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However there is progress. Five of the High Court Judges recommended for appointment by the Judicial Appointments Commission in October 2008 were women which will raise the number of female High Court Judges to 17 out of 100<sup>237</sup> (15.5 percent). It is a start but change is still not happening quickly enough. Significantly, less than ten percent of the entire field of candidates for High Court appointment in 2008 were female. This low application rate will obviously have a significant impact on the pool of females available for selection for judicial appointment. As the Lord Chief Justice remarked, *“What we want, and what the Commission wants, is the widest possible choice of candidates from which to make selections based purely on merit. And this is the way in which diversity and merit will operate together.”*<sup>238</sup>

The Judicial Appointments Commission (JAC) should be commended on the progress it has made in improving the judicial appointments process. However, much work is still required for the JAC to fulfil its statutory responsibility of encouraging diversity in the range of persons applying for appointment.

*I think the JAC are doing a good job. I applied to become a District Judge at the age of 34, having sat as a Deputy only for some 9 months and having left the Bar to lecture on the Bar Vocational Course, so did not fit the typical profile of someone to be appointed, but I was successful.*

*Female Judge, Questionnaire Response, February 2009*

The advertising and targeted outreach events conducted by the JAC were recognised by a number of respondents as being effective:

*I was under the mistaken belief that all judges had to be barristers and older with lots more experience. Various adverts / marketing caught my eye and made it clear that it was in fact much more open.*<sup>239</sup>

The Commission also welcomes JAC engagement with groups such as the Association of Women Barristers, the Association of Women Solicitors and groups representing BME lawyers. However, more evaluation should be carried out on advertisements and outreach events to ensure the JAC is reaching its intended audiences.

The appointments process needs to tackle the substantial disadvantage faced by women both within the judiciary and within the legal profession to have any real impact on the number of women applying for appointment. As one female

Judge commented, *“A problem for many women is the overwhelmingly male culture and conversation of most Judges.”*<sup>240</sup> While, the gender responsiveness of the judiciary should gradually begin to change with the appointment of more female judges, it is also crucial for all Judges to be trained in equality and diversity. This will require partnership working between the JAC and the Judicial Studies Board. It is also important to consider what support is available for women after they enter the judiciary. As a Recorder told the Commission:

**Table Six – International Examples of Proportion of Female Judges (2008)**

Court	Percentage of Female Judges
European Court of Justice	17%
High Court of New Delhi, India	18%
Federal Constitutional Court of Germany	19%
Constitutional Court of South Africa	27%
High Court of Australia	29%
NSW Court of Appeal, Australia	30%
European Court of Human Rights	31%
Supreme Court of Canada	44%

*The key issue in my view is that the JAC's concern with encouraging diversity ends with the appointment process. There seems to be no body charged with responsibility for supporting such individuals after appointment. This is a serious shortcoming. The judicial environment can be intimidating and off-putting to outsiders – if not actually hostile.<sup>241</sup>*

The Commission is encouraged that the Judicial Studies Board has set as one of its 2007-2011 key milestones, the development, promotion and delivery of a programme of equality and diversity training for the Senior Judiciary.<sup>242</sup> This needs to be implemented urgently, and should deal with equality and diversity issues within the workplace as well as the specific needs of women, both as victims and offenders. The existing Equal Treatment Bench Book deals with Women and Equality at Chapter 6. However, this Chapter is disappointingly out-of-date and also fails to cover important research which has developed over the last few years such as the benefits associated with community alternatives to custody when considering the sentencing of women offenders. It would also be useful for a short reference book to be developed for each court house, so that Judges were aware of the specific facilities available at each court for women and problems which may be encountered.

A recent report by Professor Dame Hazel Genn DBE QC into the attractiveness of senior judicial appointment to highly qualified practitioners, stated that the chief concern raised by women was that the predominantly male environment of the judiciary might “*actually be hostile to women, let alone supportive.*”<sup>243</sup> The report noted that some female barristers saw the bench as merely an extension of the male-dominated bar, while female partners in city commercial law practice showed reluctance to struggle to prove themselves all over again “*in a world they perceived to be even more antediluvian than city commercial law practice.*”<sup>244</sup> The requirement to undertake a part-time judicial appointment to be eligible for senior judicial appointment was also seen as extremely difficult by female partners juggling private practice and family responsibilities.<sup>245</sup> The JAC has commissioned further research into barriers for barristers and solicitors to applying for appointment. The results of this research are due later in 2009.

In October 2006, the JAC adopted qualifying tests as an alternative method for taking shortlisting decisions. As one female judge commented:

*I am concerned that the sift by examination alone might discourage the very people the system is designed to help. I am concerned that some may be deterred from making a second or third application and that some good candidates will not be prepared to put themselves through the ordeal.<sup>246</sup>*

Non-statutory eligibility criteria, such as the expectation that candidates for salaried posts will have fee-paid experience, may constitute a barrier for women candidates. Significantly, in 42 out of 59 selection exercises launched since April 2006, non-statutory eligibility criteria were used.<sup>247</sup> We are concerned that the effect of the recession, with increasing applications, may lead to a greater focus on efficiency resulting in more reliance on criteria such as fee paid experience. The Commission recommends that fee-paid experience should not be used as an essential criteria. Allowing Government lawyers to apply for the judiciary would also assist in widening the pool of female lawyers, given the high proportion of female lawyers within the Government Legal Service.

The unavailability of part-time working also narrows the pool of women who may consider applying for a judicial position. For selection exercises since 2006, only 49 percent of posts were open to part-time working. Responses from female judges also suggested that part-time working was not something that was actively encouraged within the courts:

*If I was a District Judge then I would be interested in working part time or perhaps a job share – I do not believe that these are widely available and the vibes that I have picked up from other judges are that it is seen as second best and not really the done thing. One full time District Judge told me that unless I had small children I would not have a chance of even being considered for part time.<sup>248</sup>*

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## Justice Needs Women

### Women as Workers in the Criminal Justice System

*I work four days a week as a District Judge. It is reasonably easy to do at the District Bench because most cases are short. I gather that it is very difficult if not impossible to work less than 5 days a week at the higher end of the judiciary, although personally I cannot see why if someone is a circuit judge, for example, they cannot sit for 4 days a week with cases lasting longer than 4 days having a day off on the Friday.*

*Female Judge, Questionnaire Response, February 2009*

Judges were also concerned about how individuals were simply allocated to a particular location without consultation and the problems this could present for women with young children:

*I do think that a more transparent system for allocating judges to particular locations and areas of work and so on would be an improvement, so that one could actually look at the criteria being applied and assess for oneself whether they are fair or not.<sup>249</sup>*

While another Judge told the Commission:

*It would be much more helpful if on first appointment more regard was had to childcare commitments and so on, with a dialogue about where one would prefer to sit rather than just being told where it was to be.<sup>250</sup>*

*I can see that it causes problems with those who have younger children and who may be sent to a distant court on a regular basis. Appointing women with children closer to home if they desired would assist.*

*Female Judge, Questionnaire Response, February 2009*

The JAC has much work to do. For as Dame Hazel notes, the perception of the judiciary as a male-dominated environment with limited support and female role models is unlikely to change until women are appointed to the High Court in sufficient numbers.<sup>251</sup>

#### Magistrates

The Commission received some important input from women volunteering as Magistrates. Given the voluntary nature of this commitment, issues such as career

progression are not relevant. However, the responses revealed a number of key themes which reflected the concerns of women working within other criminal justice agencies.

Time-based concerns were common for Magistrates with children, especially in relation to late sittings. As one Magistrate told the Commission:

*I feel that the pressure to attend bench meetings, chairman's meetings and training sessions on top of my sittings shows a failure to recognise the demands already made on my time as a busy working wife and mother.<sup>252</sup>*

It was also noted that the change from half day sitting allocation to an all day allocation basis in some court areas made it more difficult for parents needing to pick children up from school. This is exacerbated by the inability to predict finishing time:

*I am sure that females with children or carers find it difficult to predict home time. Courts are also so busy with so much extra reading to do for staff and so much change that a day is often too intense to fit into reduced hours.<sup>253</sup>*

There were also concerns that given childcare and employment obligation restrictions, there were far more JPs of retirement age than of working age. Many respondents recommended that there was a need for childcare reimbursement (which is provided by the Courts) to be more widely publicised beyond the website and the application form, so that young women are aware of this benefit and might be more likely to apply.

*When I first entered the community room it was like going back 100 years, there was from the very start a feeling of discrimination against female magistrates and the "jobs for the boys" mentality. I felt like a second class citizen, still do, and nothing seems to have changed since I was appointed almost three years ago. I still feel apprehensive when entering the room hoping there are other friendly female magistrates there. You are sometimes completely ignored on the bench, especially when sitting with two male colleagues when trying to discuss a case.*

*Female Magistrate, Questionnaire Response, March 2009*

Some magistrates noted that they felt as females that they were treated differently by male colleagues and often afforded less respect. As one described:

*On one of my early sittings I was handed paperwork (pre-sentence reports, means forms, court listings, etc.) by the (male) chairman of the bench to carry for him. I reminded him that they were his papers, since I already had my own set – he said ‘No, I want you to give them to the Clerk. I had the distinct impression I was being treated as his secretary because I was female and relatively young.’<sup>254</sup>*

However, most responses indicated that females were treated on an equal footing with their male counterparts and that there had been a definite improvement over the years.

*I think the opinion of female magistrates, as being “twin set & pearls” that had to “do” something no longer exists as it did... 16 years ago. I feel completely equal to my male colleagues – whether they like it or not.<sup>255</sup>*

The gender balance within the Magistracy allows for women to be well represented on the bench and this was considered important by most magistrates who shared their views with the Commission. The challenge is for this female representation to be replicated in the judiciary.

## Probation

Although the probation service is a female dominated profession and has a significantly better gender balance at senior levels than other criminal justice agencies (67.53% of probation service staff are women and 19 out of 40 chief officers of probation are women)<sup>256</sup>, female employees still experience discrimination. For example, women told the Commission that they had felt disadvantaged after taking career breaks due to caring responsibilities. Additionally long working hours, particularly evening work, also impacted on family life.

However, there was recognition that the probation service was fairer towards women than many other professions. As one case administrator remarked, *“I have worked for Probation for seventeen years, I worked part-time when*

*my children were young and at school...any family crisis would be accommodated by probation.”<sup>257</sup>* Many probation services provided the Commission with examples of their gender equality schemes.

A recent study by the Centre for Crime and Justice Studies concluded that although in real terms the budget of the probation service has increased more than other criminal justice agencies, the notable decline in qualified staff and trainees and the significant structural changes has seen the workload of qualified probation officers and all main grade officers increase by 28 percent and 35 percent respectively in the period 2002-2006.<sup>258</sup> The stresses associated with an increased workload are likely to particularly impact on women with caring responsibilities and this should be carefully monitored.

Given the female-dominated nature of the probation service, there has been less research around discriminatory practices. However, women working in the probation service told the Commission that they faced obstacles due to the male-defined nature of the criminal justice system. As one senior probation officer remarked, *“the criminal justice system and probation is very male orientated and macho with more value placed on male macho/male qualities.”<sup>259</sup>* This male-defined culture is also reflected in the nature of programmes which are available to female offenders, as noted in Chapter Three.

Respondents also commented that the particular skills they brought to their role in the probation service as women were often not acknowledged. As one probation officer stated concerning what she would change about the system *“Recognition that both male and female workers have an important role to play in the probation service because of their differences and not despite them.”<sup>260</sup>*

HM Inspectorate of Probation should carry out a thematic inspection on sex equality to help pinpoint discriminatory practices and cultures that female employees experience.

# Chapter Five:

## Justice Needs Women

### Women as Workers in the Criminal Justice System

## Prison Service

*...there is a need to constantly have to prove oneself to avoid criticism from my male peers who appear very quick to judge and very slow to forget.*<sup>261</sup>

As the Prison Service has itself acknowledged the resourcing problem in some women's prisons has resulted in a shortfall in the number of women in uniformed grades available to undertake tasks which have to be carried out by women staff, including tasks such as full body searching, rub down and pat down searching of women (including visitors) and supervision of showering, bathing and changing.<sup>262</sup> As one prison worker stated:

*Where only women are able to do the searching on the female prisoners there should also be some jobs therefore that are specifically assigned to men to balance this as at this time women are able to do everything and are therefore required to whereas it is easier for male officers.*<sup>263</sup>

While another officer commented:

*I don't think we've got enough female staff. Some women wouldn't feel comfortable talking to a man; some are even scared of them. I've been told by some women that they don't even want them unlocking their cell.*<sup>264</sup>

The number of female staff should be increased through the use of the genuine occupational qualifications exception in relation to recruitment, training, promotion or transfer under section 7(2) of the Sex Discrimination Act. Part-time working and job-sharing and positive action measures, such as the special measures under CEDAW, would also be valuable.

As Table Seven demonstrates, there is also a lack of women at senior management levels with less than a quarter of prison governors being women. However, it is encouraging that four out of the ten newly appointed Directors of Offender Management are female.<sup>265</sup>

As a recent report noted "government policy on prisons is mired in contradiction."<sup>266</sup> Staffing levels have increased but at a slower pace than the growth in prisoner numbers

and meanwhile the budget in real terms has decreased by 7 percent since 2001. This is placing real strain on prison staff.

Sexual Harassment has been a persistent problem within the prison service. In 2007, the Equal Opportunities Commission (EOC), embarked on a formal investigation of the frequency and persistence of sexual harassment against women and men working for HMPS. However, this investigation has been suspended on the basis of an agreement between HMPS and the EOC (and now its successor EHRC) on an action plan to prevent and deal effectively with sexual harassment. This agreement lasts until 30 November this year, by which time HMPS should have implemented its action plan and put monitoring into place.

The Commission welcomes the action plan. However, responses from females working within prisons reveal a culture of institutional sexism. As one prison officer commented, "I feel if I don't partake in sexual banter I get left out and am not one of 'the boys'."<sup>267</sup> Many responses also revealed that women working within the prison service feel that this culture is the standard against which they are assessed. As one woman remarked, "You feel that you have to prove yourself a bit more and constantly answer questions on your capability."<sup>268</sup>

*I am aware of the measures [equality and diversity] in place I am also aware of many staff that will not follow those measures for fear of future reprisal. Unfortunately the more it is highlighted, the less people are honest and decisions are then made based on how we can make this appear fair and equitable.*

*Female in the prison service, questionnaire response, December 2008*

Workers also told the Commission that the prison working hours make it very difficult for women with children to maintain employment. "There should be more family-flexible hours for women with children. I reckon shifts of eleven and a half hours are too much."<sup>269</sup> A number of respondents were also concerned that women with caring responsibilities would be unable to fulfil the initial residential training requirements for the prison service. In addition, it was highlighted to the Commission that it was also difficult

for women to access development opportunities which required work away from home:

*In addition there are a number of secondments and development opportunities that come up from time to time that cannot be accessed without difficulties for women with family commitments. Standard Audit unit, PPO's [Prisons and Probation Ombudsman's] office and the HMCIP [Her Majesty's Chief Inspectorate of Prisons] team are good examples where staff are required to work away from home for long and regular periods.<sup>270</sup>*

*I strongly believe that the prison service alienates a group of women that care for children and/ or elderly relatives that could make excellent officers by the initial training being residential and therefore away from home*

*Female in the prison service, questionnaire response, January 2009*

The Commission is also concerned that there has been a tendency for equality and diversity issues and anti-discrimination practices to be focused on within the female estate and largely ignored within the male estate. Policies also need to be promoted within the male estate to ensure practices of sexual harassment and discrimination are tackled.

**Table Seven – Prison Service (March 2008)**

Prison service	Numbers			Percentages		
	Male	Female	Total	Male	Female	Total
Prison Officer grades	19,710	5,793	25,503	77	23	100
Governor grades & equivalent new Prison Service grades	1,170	348	1,518	77	23	100
Other grades	11,926	12,292	24,218	49	51	100
<b>Total</b>	<b>32,806</b>	<b>18,433</b>	<b>51,239</b>	<b>64</b>	<b>36</b>	<b>100</b>

Source: *Statistics on Women and the Criminal Justice System*, January 2009, Ministry of Justice

## PART TWO:

Engendering justice:  
roadmap for future reform

### ➤ A Vision for a Gender Responsive Criminal Justice System by 2020

The criminal justice system will provide female victims with support, safety and justice.

The criminal justice system will be responsive to the needs of female offenders and their families.

Women working in the criminal justice system will be free from discrimination and harassment and will have equal opportunities to progress at all levels of the various criminal justice agencies.

Policy and practice of all criminal justice agencies will be informed by gender analysis so as to meet the diverse needs of both men and women.

The Judiciary and the senior levels of the legal profession, the police, the CPS, the prison service and the probation service will be broadly representative of a society with a balance of women and men and recognition of the skills and experiences of women.





*Organisations sharing their views with the Commission on a 'wish-list for future reform*

## **PART TWO:** Continued.

Engendering justice: roadmap for future reform

### **➤ The Criminal Justice System will provide female victims with support, safety and justice**

*The Commission has a vision of a criminal justice system which is accountable to the needs of victims with performance measured, not just by conviction rates, but also by the support, safety and satisfaction experienced by victims. Effective and frequent communication will be maintained by the police and the CPS with female victims and the court system will respond to the needs of female victims and witnesses with the consistent provision of special measures and court listings which take into account caring responsibilities. Victims will have confidence in the system to meet their needs and support services will be closely linked with the justice system to provide information and support throughout the justice process. Support services will be available for all women, including those who choose not to report to the police or pursue legal processes.*

*We will have worked towards societal awareness as to the myths and stereotypes surrounding violence against women and public awareness campaigns will have resulted in a society which no longer condones violence against women. Education on consent, respect and violence against women will be a compulsory requirement within the school curriculum. There will be recognition of violence against women as a cause and consequence of inequality and the Government will be actively working towards the prevention and elimination of all violence against women.*

## Institutional change needed:

- A cross-government integrated and strategic approach to ending VAW.
- Recognition within every Government department of VAW as a manifestation of gender inequality and a consideration of the impact of policies on VAW.
- Introduction of a national public awareness-raising campaign to target myths and stereotypes surrounding VAW.
- Training of all frontline police staff and prosecutors on the myths and stereotypes surrounding VAW and the potential effects of trauma on a victim.
- Implementation of an annual monitoring system which measures the support, safety and satisfaction of victims.
- The introduction of a national indicator on VAW, across the criminal justice system, following the CPS model, with performance independently monitored.
- Active referral of women to appropriate support services by the police and CPS.
- Access to an independent adviser to provide support and attend court with all female victims.
- Effective and frequent communication maintained by the police and the CPS with female victims and special measures publicised and used consistently.
- Training for solicitors, barristers and Judges on the myths surrounding VAW and the likely trauma victims may face during the trial.
- Instruction to juries in relation to the potential effects of trauma and the inaccuracy of myths and stereotypes surrounding rape and other forms of VAW.
- A Government commitment to long term funding for VAW service provision, including services for BME women.

*“That a woman does not deserve what she gets, by how she dresses, acts or drinks when out or at home.”*

Female victim

## **PART TWO:** Continued.

### Engendering justice: roadmap for future reform

#### **Key targets / indicators of success:**

- Annual monitoring and reporting of progress by every Department on the cross-government strategy for the elimination of VAW.
- A sexual assault referral centre and a rape crisis centre in every local authority area, including specialist services for BME women.
- A Government-funded 24 hour helpline for VAW.
- Specialist VAW investigators in every police area.
- The CPS and the Police meeting their joint VAW targets (which take into account the support and safety needs of victims) and releasing annual up-dates on progress.
- Independent monitoring showing increased reporting rates, reduction in number of victim withdrawals and reduction in the number of cases being classified as no-crime.
- By 2020, a commensurate increase in rape conviction rates to reflect the improvements in the reporting, processing and treatment of rape cases.
- Women who have experienced violence are able to access high quality specialist independent services, 24 hours a day, 7 days a week.

“*That they take the crimes more seriously and are more sensitive to the needs and feelings of female victims of crime. That rape and sexual assault aren't trivialised.*”

Female victim

## International example of good practice - Denmark's legal representative for rape victims

When a victim reports a rape to the police, they have a legal duty to inform her that before she makes a statement regarding the attack, she has the right to legal representation.

It is the responsibility of the legal representative to ensure that the interests of the victim are being protected throughout the investigation and prosecution process. The legal representative liaises with police to ensure that the victim is informed of any progress of the investigation and also has sight of any evidence ascertained prior to arrest which can then be discussed with their client.

The legal representative will attend trial with the victim and may intervene during their oral evidence to object to questions being put to them and may also ask that

special measures, such as video-links, are used. At sentencing, the legal representative may call witnesses and introduce evidence about the impact that the crime has had on the victim and address the court on the issue of compensation.

To ensure there is no “double prosecution” the representative may only be heard on matters that directly affect their client, therefore they cannot cross-examine the accused or ask for additional witnesses to be called.

*\* Please note: Denmark operates under a civil law system and so transposing this example in its entirety to the UK common law system may pose difficulties. Additionally, public funding would need to be available for this legal representation.*

“It would be for defence barristers not to rely on rape myths as a ‘failsafe’ to win cases or for special witnesses to inform jurors so that these tactics would not work.”

Female victim

## **PART TWO:** Continued.

### Engendering justice: roadmap for future reform

#### **International good practice example - India's women-only police stations**

In 1992, India's first female chief minister implemented the first all-women police station to facilitate the reporting of violence against women. This pilot was successful and there are now all-women police stations in 14 States across the country.

The female staff in these police stations have been trained to field complaints ranging from sexual assault and violence through to neglect and dowry harassment. The effect has been to mitigate the fear of the social stigma of confessing one's family/marital problems to

a male stranger. These stations have also created a space where victims are comfortable to come forward and report crime. This scheme has also encouraged other women to apply to become police officers and the number of women police officers has increased, as a result, over the last 10 years.

In addition to this initiative, India has also introduced crimes against women cells, which are attached to police stations.

“A fair trial, and put everything on the table for both sides. At the moment it is very one sided and the victim doesn't have a chance!”

Female victim

➤ **The Criminal Justice System will be responsive to the needs of female offenders and their families.**

“Respect. Take us seriously and understand the trauma that we have been through.”

Female victim

*The Commission has a vision of a criminal justice system which recognises that equality does not require that women offenders should be treated the same as male offenders but rather that women offenders should be treated appropriately according to need. There will be respect for the rights of women in custody, including their dignity, privacy and access to legal advice. Women with mental health problems will be diverted from the criminal justice system into health and social care at their initial stage of contact with the justice system. Non-violent female offenders will not be given custodial sentences but will be diverted towards services in the community to address the causes of their offending behaviour, and to ensure they can continue to parent their children.*

*Sentencers, and the wider community, will have confidence in the community alternatives to custody in their local area. The current female prison estate will be phased out and replaced with small custodial units, designed specifically for the needs of female offenders and their families, in each county area. These small custodial units will operate alongside a network of gender specific community provision.*

## **PART TWO:** Continued.

### Engendering justice: roadmap for future reform

#### **Institutional change needed:**

- Clear national direction introduced on minimum local police force requirements in relation to offenders with dependent children and hygiene facilities for women.
- NHS responsibility for the provision of healthcare in police stations, including the provision of psychiatric assessment screening, to improve healthcare standards and diversion for treatment.
- Criminal Justice Liaison and Diversion Schemes working in partnership with the police and courts to divert offenders with mental health needs away from the criminal justice system.
- Alternatives to remand available to the judiciary including bail hostel provision, intensive supervision and electronic surveillance.
- Comprehensive pre-sentence reports which analyse the harms likely to result from incarceration for each individual.
- Sentencing of offenders taking into account the particular harms resulting from custody on women and their families.
- Mechanisms put in place by the Sentencing Council to collect information about sentencing practices in relation to female offenders, to allow annual data to be published and sentencing practices analysed.
- Training in place for Judges, Magistrates and Legal Advisers on the specific needs of female offenders.
- Sentencers visiting community alternatives to custody on a bi-annual basis and attending training with providers of community services.
- Long term funding for community provision and development of a national network of gender specific community provision with accommodation facilities and small custodial units, including provision for children to remain with their mothers.
- Community provision which take into account the distinct needs of BME women and foreign national women.

“*To treat everyone as individuals and not to have preconceived ideas about female victims.*”

Female victim



## Key targets / indicators of success:

- The number of non-violent female offenders receiving custodial sentences should have decreased by 50 percent from 2009 levels (from 4,300 to 2,150).
- The number of foreign national women in UK prisons should have decreased by 50 percent.
- The number of women on remand in UK prisons should have decreased by 50 percent.
- Dedicated 'one-stop shop' women-only provision for female offenders in all county areas, including accommodation / hostel provision.
- Services that meet the needs of BME women introduced in each county area.
- Small custodial units operational, alongside community 'one-stop' shops in all county areas.
- Decrease in incidences of self harm and prevention of deaths in custody.
- Decrease in the number of women separated from their children or losing their homes as a result of custodial sentences.
- Community orders which effectively meet the needs of women offenders are available in every court area resulting in a subsequent decrease in breaches of such orders.
- Decrease in the re-offending rate for female offenders receiving community sentences.

*“To be kept in a prison near home and have all my needs for release met there.”*

Female Offender

*“I would like to see interventions delivered to women in an informative and relaxed atmosphere to help them to deal with their everyday problems.”*

Probation Worker

## **PART TWO:** Continued.

### Engendering justice: roadmap for future reform

#### **International good practice example - Keeping children with their mothers whilst in prison**

At Ringe State Prison, Denmark, the decision about whether to have children living in prison with their mother is not made by the prison but by the local authority and the mother. If the local authority deems the mother fit to look after her child then it is her decision whether to have her child with her or not.

After that decision is made in the affirmative, all efforts are made to ensure mother and child are not separated until the child reaches their third birthday. Once old enough, the child is sent to a nearby nursery during the day, allowing the mother to access the support available

such as education, workshops and drugs-rehabilitation.

The architecture and atmosphere at Ringe prison is radically different to UK Prisons, as it consists of small bungalow-type units housing 10 people, all serviced by a communal kitchen and living area. The idea is that prison existence should approximate normal life where possible. The prison also works in partnership with a halfway house in Copenhagen and if possible, depending on the length of sentence, a mother and her child can be transferred there.

“Ensure women prisoners are located close to home in order to keep in contact with children [and] to aid housing and employment on release.”

Prison Workerr

➤ **Women working in the criminal justice system will be free from discrimination and harassment and will have equal opportunities to progress at all levels of the various criminal justice agencies**

*The Commission has a vision of a criminal justice system culture which reflects and values the needs, experiences and skills of both women and men. Career progression and grading practices will be responsive to the needs of women and workplaces will change their practices to utilise the skills and experiences of women. Women will receive equal pay for work of equal or equivalent value. The institutionalised nature of sexism within criminal justice agencies will be openly acknowledged and sex discrimination, including discrimination on the grounds of pregnancy, and sexual harassment will no longer be tolerated.*

*“Prison could be an effective environment in which women could address their issues, link in with relevant agencies and gain new skills but this just isn’t happening.”*

St. Giles Trust

## **PART TWO:** Continued.

### Engendering justice: roadmap for future reform

#### **Institutional change needed:**

- Extensive research into sexism, sexual harassment and discriminatory practices, including pregnancy discrimination, in the police, probation service, prison service and legal profession undertaken by the EHRC in partnership with the relevant authority / inspectorate and the results widely publicised.
- An explanation of the benefits of part-time working and flexible work practices and the availability of these initiatives for male and female employees widely promoted within the police force, probation service, CPS, the legal profession, the judiciary and the prison service.
- An appeal system within the police, CPS, probation service and prison service to allow employees to appeal decisions in relation to flexible working beyond local managers.
- Methods for promotion and locations for prerequisite training which take into account caring commitments of staff as well as any disadvantage for part-time or flexible workers in assessment methods chosen.
- Equal pay audits conducted by all criminal justice agencies and public authorities.
- Part-time working available to all levels of the judiciary.
- A programme of equality and diversity training in place for all levels of the judiciary, including the senior judiciary.

“Support services for women who have experienced domestic violence to be delivered by specialist service providers in every women’s prison in the country, as well as being provided with ongoing advocacy support upon release.”

Organisation working with Offenders

## Key targets / indicators of success:

- Sex discrimination, including discrimination on the grounds of pregnancy, and sexual harassment is not tolerated within criminal justice agencies and robust reporting and monitoring mechanisms are in place.
- Flexible and part-time working is common practice and welcomed among all levels of the police force, the probation service, the CPS, the legal profession, the judiciary and the prison service.
- There is a decrease in the pay gap between men and women within criminal justice agencies and public authorities.
- Workplace policies, such as uniforms, which take into account the needs of women.

## International good practice - International Law Firm, Debevoise & Plimpton LLP

This law firm was ranked no.1 in the 50 Best Law Firms for Women Survey 2008 by Working Mother Magazine due to its commitment to catering for working mothers' needs. The creation of a Women's Resource group has ensured that professional/life issues are discussed and dealt with within the firm. The firm's policies for working mothers include not side-lining employees who reduce work hours because of personal commitments,

evidenced by the promotion of a worker whilst on maternity leave to an equity partner position, and also compensating those who work over their salaried hours with accrued holidays and bonuses. Further, to aid those employees who wish to remain working, but from home, a technology reimbursement has also been created.

*“We would also like to see women who have children in care because of their prison sentences made a priority on the housing waiting list and also be eligible for applying for houses with the appropriate number of bedrooms.”*

Together Women Programme

## **PART TWO:** Continued.

Engendering justice: roadmap for future reform

### **International good practice - Abu Dhabi Judicial Department's Creche Facilities**

Abu Dhabi Judicial Department is about to launch a crèche within its premises to provide baby-sitting facilities to women employees and customers. This nursery will begin taking children in the first quarter of this year. It will employ trained childcare staff and it is hoped will be used by the 22 percent female staff working in the department.

### **International good practice - The Delhi High Court's Crèche Facilities for staff**

The Delhi High Court is planning to open a crèche for the day-care of women lawyers' and employees' children aged up to three years. Once this has been established, it is hoped that similar crèches will be set up in four trial courts in different parts of the city to combat the lack

of child care available to working mothers. A further aim of this pilot will be to combat the concerns that the lack of crèches in particular, had resulted in a skewed male-female ratio in the Indian legal profession.

**“***To maintain and increase the number of women appointed and to support applications by offering deferments and regular reviews of locations and sitting packages.* **”**

Judge

➤ **Policy and practice of all criminal justice agencies will be informed by gender analysis so as to meet the diverse needs of both men and women**

*The Commission has a vision of a criminal justice system in which all organisations providing a public service take a proactive and positive approach to addressing discrimination and promoting gender equality through the gender equality duty. Gender equality is mainstreamed into all policies and processes, with mechanisms in place to monitor outcomes and ensure accountability. There is public understanding that equality requires appropriate treatment according to need and both women and men will see gender equality as beneficial for society and for themselves as individuals.*

*“I would like to see women included equally as men in terms of assignments. If a woman is pregnant she should be offered the same assignment as a male officer on light duty with the same limitations. Our male officers are assigned to manage cases with investigators while our female officers are assigned to data entry and answering phones.”*

Patrol Officer, Police

## **PART TWO:** Continued.

### Engendering justice: roadmap for future reform

#### **Institutional change needed:**

- Statutory guidance delivered by the Government, to all public authorities on the obligations imposed by the gender equality duty.
- Gender awareness training rolled out to all public bodies, including local authorities and those commissioning services at the local and regional levels, on the meaning of substantive equality and the obligations imposed by the gender equality duty.
- All criminal justice agencies should have in place training to ensure staff understand their obligations under the gender equality duty and have the ability to undertake gender analysis.
- Monitoring and evaluation mechanisms should be in place to ensure gender equality policy is translating into practice.

#### **Key targets / indicators of success:**

- All criminal justice agencies and public bodies, including local authorities, will have completed gender impact assessments on all policies, including a comprehensive needs assessment and follow-up monitoring and evaluation tools.
- Widespread recognition among staff that gender equality does not mean that women and men must always be treated the same but means that women and men should be treated appropriately according to need.
- Gender analysis informs all policies and practice of government departments, criminal justice agencies and local authorities.



➤ **The Judiciary and the senior levels of the legal profession, the police, the CPS, the prison service and the probation service will be broadly representative of a society with a balance of women and men and recognition of the skills and experiences of women**

*The Commission has a vision of a criminal justice system which is representative of society with a balance of men and women in senior positions within the judiciary and the criminal justice agencies. There will be recognition that an equal representation of women, particularly in high level positions, is crucial to make a gender responsive system a reality, making justice more representative of society and therefore more accessible to all and also ensuring widespread understanding of the different needs of men and women. The increased participation of women in public life and the emergence of female role models will also have contributed to the breaking down of gender roles more generally.*

*“We need to put a great deal of effort into supporting, mentoring and encouraging people after appointment or in a few years time, we may well be wondering why those appointed did not progress!”*

Recorder

## Institutional change needed:

- Active promotion of the importance of the participation of women in the Justice sector, especially in senior positions.
- Noticeable shift in outlook of all organisations in the Justice sector, away from the valuing of male-defined skills and experiences to a culture which reflects and values the needs, experiences and skills of men and women.
- Criminal justice agencies should take into account the unique needs of female staff in the development of policy.
- The number of women applying for QC and the pool of applicants for the judiciary substantially increased through outreach, a redefinition of 'merit' and acceptance of part-time and flexible working.

## Key targets / indicators of success:

- The police service should have doubled the number of women in grades of chief inspector and above (from 12 percent to 25 percent).
- The prison service should have increased the proportion of women in prison officer grades by 50 percent (from 25,500 to 38,500) and the proportion of women in governor grades (and equivalent) by 50 percent (from 348 to 522).
- The CPS should have achieved gender balance in legal grades of level D and above.
- UK law firms, particularly the top ten firms, should have increased their proportion of female partners by 50 percent.
- The number of female judges should have increased to more than 20 percent in the House of Lords; 25 percent in the Court of Appeal; 35 percent in the High Court; 35 percent of Circuit Judges and 50 percent of District Court Judges.
- Revised definitions of merit and capabilities across the criminal justice system to remove gender biased requirements.

## International good practice - The Canadian Judiciary

The Supreme Court of Canada has a female Chief Justice and four out of the nine judges are women, making it the most gender-balanced highest court in the world.

This has been achieved by a three-agency approach by the Government, the Commissioner for Federal Judicial Affairs (FJA) and the judicial profession itself. The Government, in partnership with the FJA, has actively sought to attract and appoint women to judicial roles. This work has been supported by the efforts of the judicial profession to accommodate women and remove barriers that make it difficult for them to excel

as compared to their male colleagues, so that they may more easily join the front ranks of practice from which judges are typically drawn. However, the fundamental change that has engendered women's progress has been a different approach to the selection criteria or "merit" principle. The "merit" principle is broken down into Professional Competencies (where it clearly states that a lack of court room experience is not a barrier to appointment) and Personal Characteristics. These include: an ability to listen, an awareness of racial and gender issues, tact, humility, reliability, tolerance and consideration of others.

# Appendix A

## COMMISSIONERS:

**Baroness Jean Corston (Chair)**, Labour Party - Jean was Member of Parliament for Bristol East from 1992 to 2005 and chair of the Parliamentary Labour Party from 2001 until stepping down as an MP in 2005. Between 2001 and 2005 she was also Chair of the Joint Committee on Human Rights. In 2006-07, she completed a review of vulnerable women in the criminal justice system for the Home Office.

**Colin Allen**, Former Governor of Holloway Prison and Former Prisons Inspector – Colin worked for many years as a prison governor before becoming Deputy Chief Inspector of Prison for England and Wales in 1989-2002. He joined the International Centre for Prison Studies as an Associate in April 2003 and has worked for ICPS on projects in Brazil, Libya and China. He is also a Trustee of the Prison Reform Trust and the Prisoners Advice and Care Trust.

**Liz Bavidge OBE**, Magistrate – Liz co-chaired the Women's National Commission from 1995-1997 and was awarded an OBE in 1997 for services to women. She is an organisation development consultant, and chairs the Fair Play Partnership specialising in equality and diversity. Liz was appointed a magistrate in 1979. She chaired the Lord Chancellor's Advisory Committee for Calderdale from 1997 – 2008.

**Ruth Bunday**, Solicitor, Harrison Bunday Solicitors - Ruth though primarily a criminal defence solicitor has developed expertise in providing advice, assistance, and representation at Coroner's Inquests, in particular for families struggling to cope with the death of a relative in custody, whether in a police station or a prison. She is a board member of INQUEST and a member of Justice for Women West Yorkshire.

**Mr Justice Calvert-Smith**, High Court Judge – David was Director of Public Prosecutions of England and Wales from 1998 to 2003 and is now a High Court judge. He was called to the bar in 1969 and was appointed Queen's Counsel in 1997. He was knighted in 2002 and became a High Court judge in 2005.

**Malcolm Dean**, former assistant editor and social affairs leader writer for the Guardian – Malcolm was a member of the editorial staff of the Guardian for 37 years and was the founding editor of Society Guardian 26 years ago, which has specialised in covering public services. Between 1996

and 2003 he was the editorial representative on the Scott Trust board, the owners of the Guardian and Observer newspapers. He retired from the *Guardian* in 2006 and is now a fellow at Nuffield College, Oxford.

**Lord Navnit Dholakia OBE DL**, Liberal Democrats – Navnit is a Deputy Leader and Home Affairs spokesperson of the Liberal Democrats in the House of Lords. He is President of Nacro, the crime reduction charity and has been a council member of the Howard League for Penal Reform since 1992 and a member of the editorial board of the Howard Journal of Criminology. From 1992-1996 he also served as a member of the Ethnic Minority Advisory Committee of the Judicial Studies Board.

**Deputy Assistant Commissioner Cressida Dick**, Metropolitan Police Service – Cressida has undertaken a variety of operational roles in the Met and in Thames Valley Police. She has previously been in charge of Cross-Border and Organised Crime in the MET and has headed the Diversity Directorate, where her responsibilities included domestic violence and hate crime.

**Mrs Justice Linda Dobbs DBE**, High Court Judge - Linda is the first person from an ethnic minority to be appointed a judge of the High Court of Justice of England and Wales, a post to which she was appointed in September 2004. She has since been appointed as chair of the Magisterial Committee of the Judicial Studies Board and is the senior liaison judge for diversity.

**Mitch Egan CB**, NOMS advisor and former North East Regional Offender Manager – Mitch began her career as a Prison Officer in 1976, becoming a Governor in 1980, and has held a number of roles within the Home Office and Ministry of Justice. She is a Churchill Fellow of 1993, and spent her Fellowship working with the Polish Prison Service. She recently retired as North East Regional Offender Manager.

**Professor Liz Kelly CBE**, Roddick Chair in Violence Against Women at London Metropolitan University. Liz is also Director of the Child and Woman Abuse Studies Unit, Chair of the End Violence Against Women campaign and Women's National Commission Commissioner. Liz is also involved in regular consultancy with the Metropolitan Police and various government departments, and is an academic

# Appendix A

## COMMISSIONERS:

adviser to the European Women's Lobby Action and Research Centre and to the CPS on their violence against women strategy

**Karon Monaghan QC** Barrister, Matrix Chambers – Karon is a member of the Equal Treatment Advisory Committee of the JSB. She is regularly instructed by the Equality and Human Rights Commission. She is a founder member and ex Chair of the Discrimination Law Association.

**Baroness Gillian Shephard**, Conservative Party - Gillian entered the House of Lords in June 2005. She was previously MP for South West Norfolk from 1987. She has held many seats in the Cabinet including Secretary of State for Education, from 1994- 1997. She became Shadow Leader of the House of Commons in 1997, then opposition front bench spokesman on the environment, transport and the regions, 1997-1999 and was Deputy Chairman of the Conservative Party, 1991-1992 and 2002-2005.

### **Previous Commissioners:**

Vera Baird QC MP (until 2006)

Angela Deal, Head of Prosecution Policy Division, CPS (until 2005)

Cheryl Gillan MP (until 2004)

Heather Hallett DBE, High Court Judge (until 2004)

Dr Kate Malleson, LSE (until 2004)

Fiona Morton, former Senior Probation Officer (until 2007)

Baroness Usha Prashar (until 2005)

Hannana Siddiqui, Co-ordinator, Southall Black Sisters (until 2004)

Anna Southall, Chair, Barrow Cadbury Trust (until 2004)

Baroness Vivien Stern (until 2004)

Professor Robert Stevens, Barrister (until 2004)

Monica Townsend, Assistant Chief Crown Prosecutor (London) (until 2003)

Jenny Watson, Chair of the Electoral Commission and former chair of Equal Opportunities Commission (Vice Chair until 2008)

### The Gender Equality Duty

- Clear guidance should be issued to local authorities to ensure they fully understand their obligations under the GED in relation to the provision of services addressing violence against women and the provision of services for female offenders and women at risk of offending.
- All public bodies should be assessing the needs of both women and men and taking action to meet those needs.
- Public bodies should be setting themselves pay related objectives that address the causes of any differences in pay between men and women that are related to their sex.
- The Government should develop and implement an education and awareness raising campaign in the public sector (with a particular emphasis at the local authorities level) to increase understanding of the need to promote and achieve substantive equality and the practical implications of the GED.

### Women Accused or Convicted of Crime

#### Female Suspects:

- Facilities at police stations, including washing and toilet facilities, should be clean and available to suspects, particularly prior to court appearances, and hygiene products (such as sanitary protection) should be offered to all female suspects.
- All female suspects should have access to a female member of staff to discuss needs.
- All staff should be trained to deal with women who have experienced abuse, including training as to whether it may be appropriate for the woman to be interviewed by a female officer.
- The number of women working as police officers in the custody area should be increased through use of the genuine occupational qualifications exception in relation to recruitment, training, promotion or transfer under section 7(2) of the Sex Discrimination Act; part-time working and job-sharing or others positive action measures such as the special measures under CEDAW. Outsourcing contracts should also stipulate a minimum number of female staff per shift.
- Nationwide guidance on the procedure which should be followed when an individual is arrested with dependents should be introduced, including

the mandatory inclusion of questions relating to care arrangements for dependents in the initial risk assessment.

- Police must be adequately trained in identifying mental illness and psychiatric assessment schemes at police stations should be funded by health authorities to divert mentally disordered offenders into health and social care at their initial stage of contact with the justice system.
- National Health Service ('NHS') standards should apply in all police stations and medical staff should be available around-the-clock in every police station (such as a full-time custody nurse). These staff must be trained to deliver professional standards of medical care to female offenders.
- The impact of the new conditional cautioning scheme for female offenders should be carefully evaluated and monitored before being rolled out on a national scale.
- Detailed research into women's experiences of custody should be carried out by the Ministry of Justice in partnership with the Home Office.

#### Female Defendants:

#### Entitlement to Legal Advice:

- All suspects should be provided with an information sheet which sets out their entitlement to legal advice and custody staff should ensure suspects understand this entitlement. This information should be available in different languages.
- Urgent attention should be paid to analysing the length of time that suspects have to wait for a Duty Solicitor to attend with a view to this being within two hours of being remanded into custody.
- Defence lawyers must make enquiries as to whether there is any credible material showing their client may have been a victim of trafficking, and support services, such as the Poppy Project, should be involved at an early stage.

#### Courts and Sentencing:

- Courts should provide childcare services and probation staff or a specially designated member of court staff should be able to assist the mother with arrangements for her children if she is given a custodial sentence.
- The new Sentencing Council must be adequately resourced and mechanisms put in place to collect

# Annexure B

## Summary of Recommendations of the Commission

and analyse information about sentencing practices including the gender and ethnicity of the accused, previous convictions, mitigating circumstances and aggravating factors.

- In the short term, the National Offender Management Service should be tasked with compiling information which is currently available such as offence type and sentencing outcome.
- The new Sentencing Council must conduct a thematic review into female offenders.
- A Pre-Sentence Report (PSR) should always be obtained before sentencing a woman offender to custody. This PSR should be in writing, should include community sentence options for non-violent offences and an assessment of the impact of incarceration on any dependents and give an explanation of all sentencing options which were considered including those which were not recommended and the reasons why.
- Judges should be required to give reasons for not following the recommendation in the PSR (if there is a recommendation).
- Mandatory report writing training should be rolled out across probation areas to ensure quality and consistency of reports across areas. The quality of all reports should be monitored at the regional level.
- Where a defendant appears to the court to have mental health problems, but does not justify admission to hospital, they should not be remanded or sentenced to imprisonment without a medical report on the impact of incarceration upon their health.
- Sentencers must have sufficient information about community drug and mental health services so that they do not see custody as the main solution for detoxification.
- Mental health services, particularly psychiatric services, need to be linked more closely into all courts across England and Wales.
- Funding must be ring-fenced for Criminal Justice Liaison and Diversion Schemes to allow for greater resourcing, partnership working and publicity in police stations and courts together with clear performance targets and monitoring by the Department of Health.
- The training of judges and magistrates should be thoroughly reviewed to ensure that sentencers understand the specific needs of women offenders and the causes of women's offending and the effectiveness

of existing training should be monitored.

- The training provided to Legal Advisers by the Judicial Studies Board should also include training on the specific needs of women offenders and the harms likely to result from incarceration.
- Judges, sentencers and legal advisers should be encouraged to visit community alternatives in their area on at least a bi-annual basis. The Judicial Studies Board and the new Sentencing Council should work together to ensure this becomes a mandatory requirement for all sentencers.
- Research must be conducted into whether the available requirements of the Community Order are effectively meeting the needs of women offenders and magistrates should be consulted as part of this research.
- The restrictions placed on sentencers for breaches of community orders should be made more flexible as a matter of urgency.

### Remand:

- Adequate and robust alternatives to remand must be made available to the judiciary, such as adequate single-sex bail hostel provision which is appropriate for women with or without children, intensive supervision, electronic surveillance and transportation to court.
- If women are unavoidably placed on remand, this time should also be used to properly inform the sentencing process through a compulsory assessment of the needs of each individual woman.
- All prisons holding women on remand should also have a fully functioning bail information scheme.

### Female Offenders:

- Criminal Justice Liaison and Diversion Schemes should develop relationships with teams in female prisons so that support can be provided to offenders with mental health needs.
- Training should be provided to prison staff in relation to mental health needs and qualified mental health professionals should be recruited to provide this training and to offer around-the-clock guidance for staff. At the very least, one trained mental health nurse or social worker should be on duty at all times.
- Public funding must be provided for bereaved families to cover legal representation at inquests relating to deaths in state custody and travel, accommodation and subsistence to attend the inquest. This funding should

- not be means tested.
- First night in custody initiatives such as that run by the Prison Advice and Care Trust should be introduced across the female prison estate.
  - Regular children and family visits should be allowed and the cost of phone calls from prison should be reduced in line with standard call costs.
  - Improvements should be made to visiting halls to create a more welcoming environment for children and the booking system should be improved to allow visits to be booked online or for the next visit to be booked during each visit.
  - Support should be provided to female offenders to assist them to engage in care proceedings.
  - Pre-natal and post-natal care for pregnant women including ongoing support to breastfeed where appropriate, should be available in all women's prisons.
  - Prison staff assigned to women who are giving birth should be made clearly aware of privacy requirements as well as what food and clothing arrangements are allowed for mother and baby and should ensure provision is made for this.
  - Childcare, parent training and counselling and toys and learning materials should be made available in all Mother and Baby Units.
  - A staff camera should be kept in each MBU to allow mothers to take photos of their babies under supervision. Women should be provided with copies of these photos during their time in prison and a disk of these photos upon release.
  - Evidence-based intensive programmes should be designed specifically for offenders serving sentences of less than twelve months by the Department for Innovation, Universities and Skills, the Learning and Skills Council and NOMS in partnership.
  - A core curriculum of courses should be delivered throughout the prison estate and providers should be required to transfer information about an offender's learning progress when transfer occurs or upon release into the community.
  - Female offenders serving life sentences should have access to a range of accredited programmes which reflect the different learning styles of women and these should be accorded the same status as traditional male accredited programmes.
  - Research should be conducted into the distinct needs of ethnic minority women and their patterns of offending.
  - The use of interpreters and the employment of staff who speak the languages of ethnic minority women should be implemented throughout the female prison estate. Staff should also be trained in some basic words from the most common languages.
  - An urgent review is needed of the complex issues surrounding foreign national female offenders and an examination of alternative options to lengthy sentences.
  - The monthly free call allowance of 5 minutes for foreign national prisoners should be increased to 20 minutes a month.
  - If prison staff become aware, or have a suspicion, that a woman has been a victim of trafficking, she should be referred immediately to support services such as the Poppy Project.
  - In cases where an appeal against a custodial sentence on the grounds that an individual has been trafficked is underway, and the individual's sentence expires, the woman should not be automatically be sent to a detention centre but should be released into the care of an appropriate support service, pending the outcome of the appeal.
  - Staff who work in women's prisons and probation services should be trained to address the needs of female victims of violence, including screening, risk assessment, safety planning and referral to specialist services.
  - The probation and prison service should take a lead role in coordinating the contributions of specialist and voluntary sector agencies in order to help women deal with past violence and abuse within the prison system and funding should be allocated to these programmes.
- Resettlement:**
- Women who have children in care as a result of their prison sentence should be made a priority on the housing waiting list and should also be eligible to apply for housing with an appropriate number of bedrooms upon social services confirming the number of children.
  - Well in advance of release, women should be assisted by prison staff, or voluntary sector agencies should be funded to assist these women, to complete the required application for benefits.
  - Women should be provided with sufficient quantities of any prescription medication to allow time to register with a G.P.

# Annexure B Continued.

## Summary of Recommendations of the Commission

- Gender specific community provision should be available to all female defendants and offenders in all parts of the country.

### **Towards Community Provision:**

- The development of a national network of women-only community-based centres, which provide a 'one-stop shop' for necessary service for women offenders, must be prioritised.
- Women-only bail hostels, with provision for children to stay with their mothers, should be provided in small, local centres. As a national network of women-only community centres are developed, consideration should be given to the provision of accommodation within or close to these centres.
- Further research should be undertaken by the Ministry of Justice into the feasibility of small custodial units with capacity for up to 70 prisoners in each county area.
- Alongside the pilot at Bronzefield, a pilot of a small custodial unit (of approximately 70 prisoners) should be trialled in the Bristol area, working in partnership with Eden House.

### **Female Victims of Crime**

- The Cross-Government Strategy on Violence against Women must be grounded in an equalities framework with real commitment from all Government departments.

### **Support Services:**

- VAW support services should be available in each local authority area, including specialist provision for BME women.
- A Government commitment should be made to long term funding for a national network of Rape Crisis Centres.
- A Government-funded 24 hour helpline for victims of sexual violence should be introduced as a matter of urgency.
- All SARCs should be independently evaluated to ensure they meet the minimum standards set by the Home Office and input should be sought from the voluntary sector. This evaluation should cover medical and support provision.

### **Reporting / Investigation:**

- The Government must ensure there is continued evaluation of the impact of the criminalisation of breaches of non-molestation orders, under Section 1 of the Domestic Violence Crime and *Victims Act 2004*, to ensure this measure does not have a detrimental effect on reporting rates.
- Specific training aimed at frontline staff to change attitudes towards rape, and improve initial responses to women reporting and early evidence collection must be rolled out across all forces.
- A female officer must be made available if requested by a victim.
- Funding must be allocated to provide women who do not speak English as their first language with the necessary interpretation support by the police.
- Guidance should be produced to ensure that victims understand the aim of compiling video evidence.
- The Code of Practice for Victims of Crime should be amended to require the police to inform vulnerable or intimidated victims if a defendant has been released on bail or had his bail conditions altered before the defendant leaves the premises of the court.
- A national police action plan should be developed which sets out minimum standards on rape and sexual violence which can then be applied and adapted locally through priorities and targets for local forces.
- The monitoring of police force performance in relation to rape cases must continue. The proposed Rape Performance Group, led by her Majesty's Inspectorate of Constabulary and the CPS should adopt and build-on the successful practices of its predecessor, the Cross-Criminal Justice System Rape Performance Group.
- Data on rape and sexual assault offences, including reporting and conviction rates, should be made routinely available to the public by the Government.
- Information should be readily available in relation to how to complain to the IPCC (including how to preserve anonymity as a complainant) and potential complaint outcomes and should be widely available in the community such as at Citizen Advice Bureaus and voluntary sector organisations.
- The police and CPS should cooperate to ensure victims are kept fully informed in relation to the investigation progress and decision to charge.
- The CPS should extend an offer of a meeting to a victim



in circumstances where the Prosecutor has concerns regarding the evidence meeting the evidential test and is therefore minded not to charge, or, subsequently, to discontinue proceedings.

- Area rape coordinators within the CPS should continually review the quality of decisions to charge in rape cases.
- Joint targets for the CPS and the police should be developed to incentivise them to work together and develop a national strategy towards rape and other serious sexual violence offences.

#### **The Court Process:**

- The CPS should actively raise awareness about the range of special measures available and special measures meetings should be a mandatory requirement.
  - Where victims have indicated that they have childcare problems, these cases should not be double-booked or listed as ‘floating trials’ and every effort should be made to fix the court date so that childcare arrangements can be made.
  - The automatic exemption from mediation as a requirement to access legal aid for women who have experienced domestic violence should apply to all women who have experienced domestic violence regardless of whether there have been criminal investigations or civil proceedings against a violent partner in the preceding 12 months.
  - Barristers and solicitors should be trained, not only in policies and procedures, but also in the myths and the likely trauma that victims may undergo during court proceedings. This training is especially important for barristers representing the Crown in sexual violence cases.
  - Emphasis should also be placed by the CPS on ensuring that barristers representing the Crown in sexual violence cases have the skills and aptitude to present such complex cases and appropriate training should be a precondition.
  - Feedback should be sought from victims and witnesses so that any concerns regarding the practical performance of barristers can be followed up by the CPS.
  - The necessity of guidance to jurors on the definition of consent within the *Sexual Offences Act 2003* should be reviewed.
- There should be a greater awareness of the Court of Appeal decision of *R v Doody* and the application and interpretation of this decision should be closely monitored. In light of the results of this monitoring, the Government may need to further consider the use of expert testimony.
  - The CPS, or the criminal justice boards if responsibility is devolved, should continue to analyse the impact of SDVCs through data collection and monitoring within each of the courts.

#### **Building the Link – Support, Safety and Justice:**

- The CPS’ forced marriage pilot should be followed through with future work in relation to training and multi-agency working.
- Support for victims of forced marriage and trafficking should extend beyond the criminal justice system to the provision of housing, welfare benefits and publicly funded services, such as refuges.
- Section 9 and Section 12 of the *Domestic Violence, Crime and Victims Act 2004* should be implemented as a priority.
- Criminal justice agencies should actively refer women for support and firm policies should be put in place in this regard.
- Funding for IDVA posts should be continued by local authorities and funding should not be at the cost of other services such as refuges.
- Funding should be allocated to ensure appropriate resourcing of the ISVA scheme and training which is focused on the complexities of sexual violence, as distinct from domestic violence should be developed.
- Clear guidance for the ISVA role should be introduced including a specific role description, uniform risk assessment procedure and guidance to the Courts and criminal justice agencies on the role of ISVAs.
- There should be an independent audit of MARAC processes, with priority given to the experiences of women whose cases are presented and to independent women’s organisations.
- Women, subject to immigration control, who are victims of violence and abuse, should be made exempt from the ‘no recourse to public funds’ rule in order to ensure that there are not discriminatory responses to women suffering violence.
- The marketing of the Criminal Injuries Compensation scheme should be improved and regular monitoring of

# Annexure B Continued.

## Summary of Recommendations of the Commission

the performance of the Authority should be undertaken by the Ministry of Justice.

- The Government should fund a national awareness raising campaign on rape and sexual violence, similar to awareness raising campaigns in relation to drink driving.
- The Department for Children, Families and Schools should ensure that education on consent, respect and sexual violence is a compulsory requirement within the Sex and Relationship Education (SRE) curriculum.

### Female Workers in the Criminal Justice System

#### Police:

- All line managers must be trained in responding to the needs of individuals with childcare obligations.
- Women returning from maternity leave must be provided with appropriate training and flexible working support.
- A communication strategy should be developed within all police forces to educate staff and officers as to the benefits of initiatives such as flexible working. The option of flexible working should also be actively promoted among male and female staff.
- Research should be conducted into the feasibility of establishing a 'bank' of skilled officers who could be deployed nationally to assist in time of staff shortage, due to maternity leave or gaps due to part-time working.
- A police uniform designed for female officers should be introduced, in consultation with the British Association of Women in Policing.
- The selection process for promotion to Sergeant should be reviewed to ensure it is not disadvantaging women or part-time workers.
- A review should be conducted on the opportunity for career progression and development for police staff in order to ensure consistency with opportunities available for police officers.
- Women should be included on the selection panel for specialist roles.
- Fitness tests should be designed according to the actual tasks required for the role.

#### CPS:

- An appeal procedure should be put in place to allow employees to appeal decisions in relation to flexible and part-time working beyond local managers.
- A communications strategy should be developed to ensure that flexible working arrangements are carefully managed and explained, so that women and men without children do not view flexible working as a negative aspect of the workplace.

#### Legal Profession:

- Equal pay audits should be conducted by all top tier law firms.
- Maternity leave or career breaks should not impact on career progression.
- Flexible working practices should be implemented and promoted among female and male employees.
- The Queen's Counsel Appointments Selection Committee should work with the Judicial Appointments Commission to share best practice and methods for increasing the pool of women applicants.
- Equality and diversity training should be made compulsory for all barristers as part of their continuing professional development requirements and a mentoring policy, particularly for women who take maternity leave or career breaks, should be adopted by all barristers' chambers and relevant employers.

#### The Courts and the Judiciary:

- Further evaluation should be carried out on advertisements and outreach events to ensure the JAC is reaching its intended audiences.
- All Judges, including the senior judiciary, should be trained in equality and diversity. This will require partnership working between the JAC and the Judicial Studies Board and should deal with equality and diversity issues within the judicial workplace as well as the specific needs of women, both as victims and offenders.
- Fee-paid experience should not be used as essential criteria for judicial positions.
- Application for the judiciary should also be open to Government lawyers which would assist in widening the pool of female lawyers, given the high proportion of female lawyers within the Government Legal Service.
- Part-time working should be available to all levels of the judiciary.

- Allocation to a particular court location should be discussed with the individual before a final decision is made.
- Court areas which have introduced all-day sitting allocation should ensure that magistrates with caring responsibilities are not being disadvantaged.

**Probation:**

- The stresses associated with an increased workload for probation staff are likely to particularly impact on women with caring responsibilities and this should be carefully monitored.
- HM Inspectorate of Probation should carry out a thematic inspection on gender equality to help pinpoint discriminatory practices and cultures that female employees experience.

**Prison:**

- The number of female staff should be increased through the use of the genuine occupational qualifications exception in relation to recruitment, training, promotion or transfer under section 7(2) of the Sex Discrimination Act; part-time working and job-sharing; and positive action measures (such as the special measures under CEDAW).
- The initial residential training requirement for the prison service and development and secondment opportunities should be carefully evaluated to ensure they take into account caring responsibilities of staff.
- The EHRC should carefully monitor the implementation of the HMPS action plan on sexual harassment, and in particular whether there has been any real change in practice in the working culture of HMPS.
- Policies also need to be promoted within the male prison estate to ensure practices of sexual harassment and discrimination are tackled.

# Endnotes

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- <sup>6</sup> Committee on the Elimination of Discrimination against Women, *Concluding Observations: United Kingdom of Britain and Northern Ireland*, Forty-first session, CEDAW/C/GBR/CO/6, 18 July 2008, p.6
- <sup>7</sup> The Howard League for Penal Reform, *Weekly Prison Watch*, 2009 Updates, <http://www.howardleague.org/index.php?id=783>
- <sup>8</sup> Bromley Briefings, December 2008, op cit.
- <sup>9</sup> Questionnaire Response, Female Offender, January 2009
- <sup>10</sup> Bromley Briefings, December 2008, op cit.
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- <sup>12</sup> Questionnaire Response, Female Offender, January 2009
- <sup>13</sup> Ministry of Justice, *Arrests for Recorded Crime (Notifiable Offences) and the Operation of Certain Police Powers under PACE England and Wales 2006/2007*, published July 2008, p.5
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- <sup>15</sup> See discussion J Corston, *Corston Report*, Home Office, 2007
- <sup>16</sup> Questionnaire Response, Female Offender, December 2008
- <sup>17</sup> Questionnaire Response, Rokaiya Khan, *Together Women Yorkshire and Humber-side (TWP)*, January 2009
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- <sup>19</sup> Questionnaire Response, Female Offender, January 2009
- <sup>20</sup> Ibid.
- <sup>21</sup> Questionnaire Response, Female Offender, December 2008
- <sup>22</sup> Questionnaire Response, Anawim, January 2009
- <sup>23</sup> Questionnaire Response, Female Magistrate, March 2009
- <sup>24</sup> R v O [2008] All ER D 07 Sept – as cited in Questionnaire Response, Eaves, 5 February 2009
- <sup>25</sup> Questionnaire Response, *Together Women Yorkshire and Humber-side*, op cit.
- <sup>26</sup> Lady Justice Brenda Hale DBE, Lord of Appeal in Ordinary, Longford Trust Lecture: *The Sinners and the Sinned Against*, 5 December 2005
- <sup>27</sup> Bromley Briefings, December 2008, op cit.
- <sup>28</sup> Questionnaire Response, Prison worker, January 2009
- <sup>29</sup> *Statistics on Women and the Criminal Justice System*, Ministry of Justice, January 2009, op cit.
- <sup>30</sup> Questionnaire Response, Female Offender, January 2009
- <sup>31</sup> Questionnaire Response, Female Magistrate, February 2009
- <sup>32</sup> G Hunter, I Boyce, L Smith, *Criminal Justice Liaison Schemes: A Focus on Women Offenders*, Mental Health Briefing, Nacro & King's College London, September 2008
- <sup>33</sup> For further discussion see Ibid.
- <sup>34</sup> Esmee Fairbairn Foundation *Rethinking Crime & Punishment: The Manifesto*, 3 July 2008, p.9
- <sup>35</sup> <http://www.sentencingguidelines.gov.uk/docs/Consultation%20paper%20on%20overarching%20principles%20of%20sentencing.pdf>, p.106
- <sup>36</sup> S Patel & S Stanley, *The Use of the Community Order and the Suspended Sentence Order for Women*, Centre for Crime and Justice Studies, May 2008
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- <sup>42</sup> Ministry of Justice, "Population in Custody Monthly Tables: February 2009, England and Wales", *Statistics Bulletin*, 31 March 2009
- <sup>43</sup> Bromley Briefings, December 2008, op cit.
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## About Fawcett

The Fawcett Society is the UK's leading campaign for gender equality. When individual women are able to realise their potential, the benefits will be felt across society.

The Fawcett Society makes a difference by campaigning for legislative change, influencing practice, and empowering women and men to affect change at a grassroots level.

### We campaign for:

#### **Economic rights:**

women's right to fair pay and fair treatment in the workplace

#### **Political rights:**

women's right to a powerful voice in decision making

#### **Social rights:**

women and men to break free from stereotypes

#### **Bodily rights:**

women's freedom from violence, harassment and objectification

For more information on Fawcett and our work visit [www.fawcettsociety.org.uk](http://www.fawcettsociety.org.uk)

Fawcett Society  
1-3 Berry street  
London EC1V 0AA  
Tel: 020 7253 2598  
Fax: 020 7253 2599

Email: [info@fawcettsociety.org.uk](mailto:info@fawcettsociety.org.uk)

