

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.