

Women and justice

Third annual review of the Commission on Women and the
Criminal Justice System

July 2007

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Foreword

In September 2002 the Fawcett Society launched its unique Commission on Women and the Criminal Justice System. The Commission, expertly chaired by Vera Baird QC MP until 2006, carried out a thorough examination of women's experiences in the criminal justice system, as victims, as staff and as suspects, defendants and offenders.

In 2004, the Commission published its groundbreaking report, which concluded that women face systemic discrimination in a system designed for men by men. Since then the Commissioners have worked to ensure the report's recommendations are implemented and have published two annual reviews which track progress made. Following the publication of the latter of these, *Justice and Equality*, in March 2006, Vera stepped down as Chair following her appointment as a minister in the Department for Constitutional Affairs. I am delighted to have been asked to take on the Chair of this important Commission and to produce this, our third annual review.

Baroness Jean Corston

Chair, Commission on Women and the Criminal Justice System

List of Commissioners

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Labour Party

Jenny Watson (Vice-Chair)

Chair of the Equal Opportunities Commission

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Former Governor of Holloway Prison and Former Prisons Inspector

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Executive summary

The Fawcett Society's Commission on Women and the Criminal Justice System examines the experiences of women in the criminal justice system as victims, as staff, and as suspects, defendants and offenders. Three key messages emerge from this report, the Commission's third annual review:

1. Prison is overused, ineffective and often damaging for many women offenders. Community provision which meets the needs of women must be developed nationally to replace an over-reliance on the use of custody.
2. Improvements have been made to national policy on violence against women, but implementation remains inconsistent and the availability of services varies between areas. A national strategy to tackle all forms of violence against women is urgently needed to address this.
3. The implementation of the gender equality duty must be prioritised across the criminal justice system to ensure that all criminal justice agencies provide a suitable working environment for female staff and improve the services provided to women victims and offenders.

We welcome the Government's work towards ensuring that the criminal justice system meets the needs of women, but the pace of change is slow and more resources are required. Under a new Prime Minister and Home Secretary, and following the creation of the Ministry of Justice, the Government has a unique opportunity to create a new direction in criminal justice policy. They must seize this opportunity and ensure that women's needs are placed at the heart of a criminal justice system that treats women fairly, whether as victims, offenders or staff.

Suspects, defendants and offenders

Female suspects, defendants and offenders are in the minority across the criminal justice system. It remains vital that their particular needs are considered and met by every criminal justice agency.

The rise in the women's prison population has slowed in the last five years, following a decade of rapid growth. Despite this, the rising number of male prisoners is putting severe pressure on the National Offender Management Service and this has led to two women's prisons being converted into men's prisons during 2006. This has, in turn, put increased pressure on the resources of the women's prison estate, and the Commission

is particularly concerned that five women have committed suicide in prison in the first six months of 2007, compared to three in the whole of 2006 and four in 2005. Addressing this must be a priority for the Prison Service.

The Commission continues to argue that there are too many women in prison and that more use must be made of community penalties. As well as better meeting women's needs, this would benefit the families of women offenders, as nearly 18,000 children are currently separated from their mothers by imprisonment every year. Reducing the use of custody is particularly important given that the reoffending rates for women leaving prison are substantially higher than they used to be. 64% of women released from prison in 2004 reoffended within two years, compared to 38% of women released in 1992.

To complement a reduction in the use of custody, the development of a national network of specialist community services designed specifically for women must be prioritised. The Government has funded the Together Women Programme, which provides specialist community services for women offenders, but this only covers two areas at present and an urgent expansion is now required to ensure that community provision that is suitable for women offenders is available in all areas. A shift away from the use of custody and towards the use of community penalties has public support, with 86% of the public supporting community alternatives to prison for non-violent women offenders.

"The development of a national network of specialist community services designed specifically for women must be prioritised."

In addition, improvements need to be made to the treatment of women suspects and defendants. Police stations, where the majority of staff and suspects are male, can be intimidating for female suspects and court facilities are often ill-suited to women's needs. Defence lawyers also need to be aware of the issues that may disproportionately affect women, for example a history of abuse, and in this context proposed reforms to legal aid which may compromise the legal representation available to women are of particular concern.

Victims

The Government has prioritised work in recent years to improve certain services for victims of rape and domestic violence, for example through substantially increasing the number of Sexual Assault Referral Centres and developing specialist domestic violence courts. Despite this, there are a number of areas of considerable concern. Services for victims of gender-based violence remain geographically varied, while there is insufficient funding for local voluntary sector services for victims of sexual violence. As a result, victims face a postcode lottery in the services available to them and even in areas where there are voluntary sector services, there are often long waiting lists for the long-term support that they provide.

The conviction rate in rape cases, for which the latest published figure is 5.3%, is unacceptable. Significant improvements in the investigation and prosecution of rape cases by the police and the Crown Prosecution Service are required if victims' experiences of the criminal justice system are to improve and the conviction rate is to increase. More work is also needed to tackle other forms of violence against women, for example forced marriage, trafficking and female genital mutilation. While the Government has focused on rape and domestic violence, many of these issues have received considerably less attention and resources.

Most importantly, however, it is essential that an integrated strategy on tackling all forms of violence against women is developed which puts prevention at its heart and brings together the many existing strands of work on violence against women. It is also essential that this strategy recognises that many women offenders are simultaneously victims of violence. More than half of women in prison having experienced domestic violence and a third have experienced sexual abuse and an effective strategy must address the needs of this often-forgotten group.

"It is essential that an integrated strategy on tackling all forms of violence against women is developed."

Staff

Women remain underrepresented in many criminal justice agencies and in senior positions across the criminal justice

system. The creation of the Judicial Appointments Commission (JAC) is a crucial step forward in addressing diversity in the judiciary and we are encouraged by its work since its launch in April 2006. Diversity elsewhere in the legal profession is also improving, although there is still scope for further progress. However, even if the JAC is successful in increasing the number of women who successfully apply to become judges, this will take a long time to have a significant effect on the gender balance of the judiciary. Similarly, the number of female Queen's Counsels is very low and even if the new applications procedure is successful in increasing diversity, it will take a long time for it to have a substantial effect. These reforms to introduce fairer selection procedures are important, and will have positive effects in the long term, but the pace of change is slow.

"Reforms to introduce fairer selection procedures are important, and will have positive effects in the long term, but the pace of change is slow."

The Prison Service is male dominated throughout and the Commission remains particularly concerned about sexual harassment. The Equal Opportunities Commission (EOC) recently launched and then immediately suspended an investigation into sexual harassment in the Prison Service. The Prison Service must now take forward the actions agreed with the EOC to address this important issue. Work also needs to be done to make the police more representative and to address cultural problems within the police that may negatively affect women police officers. In contrast, both the Crown Prosecution Service and Probation Service employ more women than men, and both are making progress in improving the number of women in senior positions.

The gender equality duty

The gender equality duty was the overarching recommendation of the Commission's initial report in 2004 and we are delighted that it was introduced in April 2007. It represents a radical change in discrimination law and can play a vital role in addressing many of the challenges for the criminal justice system that are set out in this report. However, for it to be effective, strong leadership from the Government is required to establish the importance of the

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gender equality duty and ensure that it is fully implemented. There are already some examples of good practice and it is essential that these are built on to ensure that the gender equality duty is successful in tackling the structural inequalities in the criminal justice system.

“Strong leadership from the Government is required to establish the importance of the gender equality duty and ensure that it is fully implemented.”

Recommendations

This report sets out six recommendations for the future. They are:

1. The new Ministry of Justice must set out and implement, along with relevant Government departments and agencies, a coherent action plan to implement the recommendations of the *Corston Report* in full.
2. All Government departments and agencies with responsibilities for women offenders and victims must address the particular needs of these groups in carrying out their responsibilities under the gender equality duty.
3. The Government must link together the many strands of work on violence against women into a coherent integrated strategy.
4. Addressing violence against women must be a priority for the new Commission for Equality and Human Rights (CEHR).
5. Employers across the criminal justice system should undertake positive action initiatives to encourage women, and in particular ethnic minority women, to move into areas of the system in which women are underrepresented.
6. The Ministry of Justice must publish comprehensive statistics on women and the criminal justice system on an annual basis.

In addition, Section 2 of this report includes a detailed examination of the progress made on the 35 recommendations set out in last year's Commission report, *Justice and Equality*, concluding that while much progress has been made, there is still a great deal to be done. Further specific recommendations have been made where new evidence has emerged and they are listed in Section 3 of this report.

Section 1

Introduction

The last 12 months have seen significant and welcome developments for women in the criminal justice system.

- The *Corston Report*,¹ published in March 2007, sets out in crystal clear terms how to address the needs of women offenders and should provide the catalyst for real improvements for women in the criminal justice system;
- The *Cross-government action plan on sexual violence and abuse*² promises real progress on tackling rape, following the publication in January 2007 of *Without Consent*,³ a joint report by Her Majesty's Inspectorate of Constabulary and the Crown Prosecution Service Inspectorate, which outlines starkly the failures of the criminal justice system to provide consistently good treatment to rape victims;
- The Judicial Appointments Commission started work on 1 April 2006 with Baroness Prashar, a former Fawcett Commissioner, as Chair. It is a crucial step in creating a more diverse judiciary, which in turn will have benefits both for female victims and female offenders;
- The creation of a Ministry of Justice in May 2007 gives the Government an opportunity to rethink penal policy, replacing the emphasis on custody with a greater use of community penalties and fines, and give greater attention to the rights of and responses to victims;
- The Together Women Programme's two demonstration projects are now up and running and there has been further development of the National Offender Management Service's (NOMS) regional commissioning structures;
- The introduction on 6 April 2007 of the gender equality duty puts a positive obligation on all public bodies, including criminal justice agencies, to take steps to promote equality between women and men and eliminate unlawful sex discrimination and harassment. The key overarching recommendation of the original Commission report was for a gender equality duty on the public sector and we are therefore delighted that this has been introduced.

These are all extremely positive developments, and we are delighted that progress is being made in these areas. Despite this, however, two of the three key proposals to the Government of last year's Commission report, *Justice and Equality*, are as important now as they were more than a year ago. In *Justice and Equality* the Commission recommended that, alongside implementing the gender equality duty, the Government needed

to tackle the crisis in women's prisons and develop an integrated strategy to end violence against women.

Tackling the crisis in women's prisons

The crisis in women's prisons remains. While the number of women in custody has begun to stabilise after a sustained period of sharp growth, the Commission still has significant concerns about the women's custodial population. At the time of writing, in June 2007, five women had already taken their own lives in prison during 2007, more than in the whole of 2006. It is extremely worrying to see this increase, especially following two years of falling numbers. In addition, due to the spiralling male prison population, the prison service's resources are under increasing pressure. Two women's prisons were converted into men's prisons during 2006, resulting in women being kept even further from their own homes and families, while the enormous costs of keeping prisoners in police and court cells is draining NOMS' budget. Research has shown that prison overcrowding has cost almost £5 million per month since October 2006.⁴

It is clear that the current approach to the use of imprisonment is failing and a new direction is required. The *Corston Report's* recommendations set out a clear pathway to addressing the failures of the prison system to meet the needs of women offenders and reduce reoffending. Having commissioned the review, and pledged to respond by late autumn,⁵ the Government must now take action to implement its recommendations in full, prioritising the development of a national network of women-only community centres which provide a one-stop-shop for necessary services. The transition of responsibility for offender management from the Home Office to the new Ministry of Justice should not be seen as a reason to delay this area of work, especially given that NOMS remains intact despite the move, but instead be seen as an opportunity to set out a new direction in the management of women offenders.

A strategy to end violence against women

Violence against women remains at crisis levels, with nearly half of women subject to domestic violence, sexual victimisation or stalking at least once in their lifetime⁶ and 42% of young people knowing girls who have been hit by their boyfriend.⁷ *Without Consent* has again highlighted the problems with criminal justice responses to rape, while an

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independent evaluation of the Government's work on violence against women gave them an overall score of just 2 out of 10.⁸ Despite this, no further progress has been made on introducing a strategic and integrated approach to ending violence against women. We were pleased, therefore, that in a speech in the House of Commons on International Women's Day, Vera Baird QC MP, then a minister in the Department of Constitutional Affairs, announced that work would be done to 'provide a more strategic framework for addressing gender-based violence'.⁹ This must now be put into action.

Section 2

Women and the criminal justice system: Review of existing recommendations

The 2006 Commission report, *Justice and Equality*, made 35 recommendations to the criminal justice agencies, some of which were still-to-be-implemented recommendations from the Commission's initial report in 2004. In this section of the report we will examine the progress made against these recommendations.

Police

- 1) All police forces should develop policies on rape which include:
 - the allocation of a specially trained police officer to the complainant from the start who is responsible for support and liaison throughout the case
 - specially trained investigation officers
 - training on rape and sexual offences for all frontline staff

Progress report: Some progress has been made on all of these recommendations in most police forces. All forces now have a rape 'champion', and the Association of Chief Police Officers (ACPO) and the Police Standards Unit are visiting all police forces to assess their work on rape investigations. It is intended that this work will result in standardised improved responses to reported rapes. However, at present progress remains inconsistent between different forces.

- 2) A network of Sexual Assault Referral Centres (SARCs) should be established to cover every police area so that each rape victim has, without obligation to report, access to comprehensive services, including a female doctor and counselling.

Progress report: The network of SARCs is to be increased to 40 by 2008, although the locations of the new SARCs have not yet been announced. However, SARCs, which provide acute and forensic services, do not provide the longer term support that local voluntary sector sexual violence services provide. As a result, this expansion of SARCs must not be seen as a replacement for these services.

- 3) The Government should make a commitment to long-term funding for local sexual violence services to operate in conjunction with SARCs. Once this infrastructure of support is in place alongside SARCs, it should be linked into a 24-hour rape helpline.

Progress report: Funding for voluntary sector sexual violence services has been extended for 2007-8 through a competitive bidding process. However, decisions were made very late and there are not enough grants available to fund all the needed services. As a result, there are still areas without any services and services which provide long-term support, especially rape crisis centres and survivors groups, are massively under-resourced and continue to close. Long-term funding at a higher level to stabilise and strengthen the sector is needed. No progress has yet been made on establishing a 24-hour rape helpline.

Good practice example

South Essex Rape and Incest Crisis Centre

The South Essex Rape and Incest Crisis Centre (SERICC) provides services to women and girls over 13 years old who have been raped, sexually assaulted, experienced child sexual abuse, sexual harassment or who have experienced any form of sexual violence or attempted sexual assault. As a voluntary organisation, the services are confidential and independent from social services, the police and other official agencies. SERICC, which is a women-only centre, offers telephone counselling and 'one to one' counselling, emotional support and practical information. It provides sexual violence counsellors who are all women; counselling sessions in a comfortable environment; free, short term or long-term 'one to one' and telephone counselling; appointments with the same counsellor; sexual health information; support when attending appointments for sexual health checks; support for victims and their families through court cases; and support in making contact with other official people, for example police, doctors or social workers.

- 4) Guidance and training on domestic violence should be implemented fully by all police forces.

Progress report: The *National Domestic Violence Delivery Plan Annual Progress Report 2006/07* reports that 'since 2005, ACPO's guidance has been being promulgated throughout forces in England and Wales through a modular Centrex training package for all police officers and support staff. This is due to be completed by 2008.'¹⁰

Section 2 continued

Women and the criminal justice system: Review of existing recommendations

5) The Government should immediately ratify the Palermo Protocol and sign the Council of Europe Convention on the trafficking of human beings. It should ensure that a full range of services and provision is available to victims of trafficking.

Progress report: The Government ratified the Palermo Protocol in February 2006 and signed the European Convention on the trafficking of human beings in March 2007. An Action Plan has also been published. However, services remain limited, and the POPPY Project is the only Government-funded specialist accommodation and support service in the UK. Both pieces of legislation give rights to victims and policy now needs to recognise this.

Good practice example

The POPPY Project

The POPPY Project provides support and housing to women who have been trafficked into prostitution, combining direct services, support and advocacy with research, development and lobbying. The POPPY Project, funded by the Home Office and the Association of Local Government, provides high quality supported accommodation and support services for up to 35 women in Eaves supported housing accommodation across London. Women must meet the Home Office's criteria, which are that she was brought to the UK; that she has worked as a prostitute in the last 30 days (in the UK); that she has been forcibly exploited; that she has come forward to the authorities; and that she is willing to co-operate with the authorities. POPPY aims to establish safe re-integration and resettlement programmes for women who have been trafficked.

6) Women suspects in the police station should have immediate access to a female member of staff who is not involved in the case.

Progress report: This is not the case at present, with some forces reporting that they do not have enough female custody staff to carry this out. However, the Commission welcomes the fact that a template gender equality scheme produced for the police recommended that 'custody policies may need to be reviewed to ensure that female staff are available on all shifts'.¹¹

7) Custody welfare checklists should include a question about the care arrangements of suspects' dependants.

Progress report: No consistent progress has been made on this recommendation.

8) The Home Office should carry out research on the differential treatment of male and female suspects.

Progress report: The Home Office has not carried out any research on this issue, although the template gender equality scheme produced for the police suggested that chief officers and police authorities should conduct research on the needs of women as suspects.¹²

9) Plans to restructure police forces must ensure that progress on equality in employment is built upon.

Progress report: The plans to restructure the police were abandoned and there are currently no plans for any major reforms to the police. The police must now develop mechanisms within the existing structure to prioritise improving gender equality.

Good practice example

Some police stations now have hygiene packs available for the use of women in the police station, whether they are there as victims, witnesses or suspects. The packs typically include sanitary products for women who are menstruating, as well as items such as tissues, lip-salve, combs and toothbrushes. This lessens any potential embarrassment for officers and police staff when offering these items and for women when asking for them.

10) Positive action schemes to ensure the recruitment and promotion of talented women should be rolled out nationally across all police forces.

Progress report: The National Policing Improvement Agency runs the *Leadership Development for Senior Women Programme*, which is designed to support the career development of women by enhancing their leadership and management skills and helping them develop strategies to support future career aspirations. It also runs the *Positive*

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Women and the criminal justice system: Review of existing recommendations

Action Leadership Programme, which is the first inclusive national positive action initiative to be made available to all officers and police staff from underrepresented groups, including women. We were pleased to see that Durham constabulary was successful in gaining funding from the Quality Part Time Work Fund to help create more quality part-time jobs for women at a senior level.¹³ Lessons learnt from this initiative must be rolled out nationally. However, while there are some areas of good practice, not every force yet has its own positive action scheme.

Crown Prosecution Service

11) In cases of rape and serious sexual offences the Crown Prosecution Service (CPS) should only instruct advocates who have undergone accredited training.

Progress report: CPS accredited training for the independent Bar has begun and will continue on a rolling basis. All advocates will have to have received training by October 2007 in order to be instructed by the CPS, and the quality of their work will be monitored on an ongoing basis.

12) The CPS should develop mandatory accredited training for all domestic violence and rape specialist co-ordinators and prosecutors and carry out an evaluation of this scheme.

Progress report: The CPS is developing a comprehensive manual and an e-learning package for all specialist rape prosecutors. For rape co-ordinators, there will also be a two-day course which will deal with victim care and case building skills. A training manual for prosecuting domestic violence cases was launched in February 2005, with a target to train all CPS prosecutors and caseworkers by April 2008. By May 2007, over 2,800 CPS staff, including all domestic violence co-ordinators and lawyers who prosecute in specialist domestic violence courts, had been trained to handle domestic violence cases. All domestic violence co-ordinators have also qualified as trainers to deliver the programme on an ongoing basis. The training manual has now been developed into an e-learning format, for use by staff waiting for face-to-face training. The e-learning format is also being piloted by the Bar, with a view to it being rolled out more widely.

Legal Profession

13) An audit process of the new system of Queen's Counsel Appointments should be put in place.

Progress report: An assessment of the success of the first round of applications has been carried out and some welcome changes have been made to the procedures for the current application exercise. However, an independent, external audit of the process has not been set up.

14) Resources should be made available to allow Queen's Counsel Appointments to reach out to engage with underrepresented groups.

Progress report: No progress has been made on this recommendation.

15) Confirmation is sought that Queen's Counsel Appointments will be subject to the gender equality duty.

Progress report: Although, as a private body, Queen's Counsel Appointments are not subject to the gender equality duty, as an organisation which aims to promote fairness and diversity, they intend to comply with the provisions of the general duty as a matter of good practice.

16) The Bar Council should continue to take all steps necessary to ensure its members fully comply with the Equality and Diversity Code.

Progress report: The Bar's Professional Code of Conduct requires barristers to have regard to the guidance in the Equality and Diversity Code for Chambers and to ensure proper arrangements are made for addressing equal opportunities issues. At the end of 2005, the Bar Council surveyed all chambers and only a few small chambers have not responded positively. The Bar Council is now considering the best way to ensure they comply. The Bar Standards Board (BSB) was established in January 2006 as the independent regulatory board of the Bar Council. The BSB is responsible for regulating barristers in England and Wales and the Equality and Diversity Code. Its Monitoring Committee is currently putting into place a regular chambers

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monitoring procedure that will check chambers' compliance with the requirements of the Equality and Diversity Code.

17) Regulatory bodies should be subject to the gender and other equality duties.

Progress report: Regulatory bodies are subject to the gender and other equality duties in relation to their public functions.

18) Front Line Regulators should ensure that gender equality objectives are mainstreamed by requiring licensed firms properly to promote and respect a gender equality agenda in relation to their staff, lawyers and service users.

Progress report: The *Legal Services Bill*, which will reform the way legal services are regulated, is still making its way through Parliament, and the Commission continues to make this recommendation.

Courts and judiciary

19) Specialist Domestic Violence Courts should be extended to all areas.

Progress report: Specialist Domestic Violence Courts have been expanded, with an increase from 49 to 64 announced by the Home Office in December 2006. However they will still not be available in all areas.

Good practice example

Cardiff Specialist Domestic Violence Courts

There are now specialist courts in Cardiff within both the Magistrates and Crown Courts. They aim to hold more perpetrators to account and to increase public confidence in the criminal justice system as it relates to domestic abuse. All domestic violence cases are flagged, sent to the same court and reviewed pre-trial on the same day each week. All victims are supported by a member of the Cardiff Women's Safety Unit (CWSU) and a member of the CWSU attends pre-trial review each week to offer advice and information about domestic violence cases. As a result, domestic violence cases are processed in Cardiff with a timelier and more consistent approach.¹⁴

20) The Home Office should carry out a pilot gender impact assessment on Custody Plus before it comes into force.

Progress report: Plans for Custody Plus have been abandoned. Given its potential to lead to a rapid increase in the prison population, this decision is welcome.

21) The Sentencing Guidelines Council and the Home Affairs Committee should take account of gender differences when drafting and reviewing sentencing guidelines.

Progress report: The Sentencing Advisory Panel and Sentencing Guidelines Council are subject to the general gender equality duty and routinely address gender (and other equality) issues on a case-by-case basis in the context of each consultation paper or guideline. Separate gender impact assessments will not be published, as any relevant information will be included in the core material. Responsibility for reviewing sentencing guidelines has moved to the Constitutional Affairs Committee with the creation of the Ministry of Justice, and we now recommend that they should take account of gender when reviewing guidelines.

22) The Sentencing Advisory Panel should undertake a thematic review of women and sentencing.

Progress report: Although this was on the Sentencing Guidelines Council and the Sentencing Advisory Panel's work programme for 2006-7,¹⁵ it has yet to be carried out. However, their current intention is produce an occasional paper on this topic later in 2007.

23) Psychiatric and voluntary agencies should work with local courts to provide fast-track assessment and community treatment packages.

Progress report: The Department of Health and Home Office (now the Ministry of Justice) have jointly funded a research project to evaluate Criminal Justice Liaison and Diversion schemes for female defendants. The results of this research have not yet been published, but the *Corston Report* shows that provision of these schemes remains patchy and often under-funded, while the schemes are still not mandatory and ring-fenced funding is still not provided.

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Women and the criminal justice system: Review of existing recommendations

Good practice example

Sussex Mentally Disordered Offender Assessment and Diversion Scheme

This scheme aims to provide a prompt and timely assessment of offenders' mental health needs; provide information for the court and criminal justice services; and make referrals to appropriate services. Funding is provided by the National Health Service. The scheme is well supported in Sussex with a management panel that includes a variety of stakeholders from probation, the courts, the CPS, police, Serco Prisons, health commissioners and providers, social services and HMP Lewes. In 2006, 16% of referrals to the scheme were women. The vast majority of referrals (70%) are made by the police, with a number of later referrals at court from court custody staff, crown prosecutors, probation and the defence (19%). Magistrates accounted for 6% of referrals to the scheme.

24) Where the defendant or offender has caring responsibilities, they should not be remanded or sentenced to prison without a probation report on the impact of incarceration on their dependents.

Progress report: No progress has been made on this recommendation.

25) 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 prison without a medical report on the impact of incarceration on their health.

Progress report: No progress has been made on this recommendation.

26) Defendants or offenders who appear to the court to have mental health problems should not be sent to prison in order to obtain a psychiatric report.

Progress report: Anecdotal evidence suggests that this is still happening. For example, the *Corston Report* says that

one magistrate had been told that 'remanding a woman in custody for psychiatric reports would speed up the process'.¹⁶ This is a wholly unacceptable use of custody and must not be allowed to continue.

27) The Judicial Appointments Commission must be adequately funded in order to establish a new and credible system. It must operate freely and independently from the Department for Constitutional Affairs.

Progress report: This appears to be the case. However, it is of concern that the Lord Chancellor can reject the Judicial Appointments Commission's recommended candidates. Should this situation arise, the reason for doing so would need to be made clear in order to retain credibility.

Prison

28) The new Criminal Justice Inspectorate must be required to hold regular thematic inspections on women in the criminal justice system and must be able to respond immediately to assess how a prison is performing in its care-taking role.

Progress report: Plans to merge the criminal justice inspectorates were abandoned, following strong opposition, particularly in the House of Lords and among penal reform charities. Consequently, the existing inspectorates must instead work together to ensure that criminal justice agencies are meeting the needs of women.

29) The Prison Service and Prison Officers Association should fully address sexual harassment, proactively challenge discriminatory practices and support individual women who complain of discriminatory treatment.

Progress report: The Equal Opportunities Commission (EOC) has launched, and then immediately suspended, a formal investigation into sexual harassment in the Prison Service. The investigation is suspended on the condition that the Prison Service fulfils a two-year agreement with the EOC on tackling sexual harassment and the action plan it includes. The Prison Service's *Single Staff Diversity & Equality Scheme* also includes an action point to 'Assess impact of sexual

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Women and the criminal justice system: Review of existing recommendations

harassment by developing and delivering a sexual harassment survey; and reporting on findings so as to inform policy and decision-making'.¹⁷ These are positive steps in addressing this important issue.

Probation

30) Specialist community provision should be available to female defendants and offenders in all parts of the country.

Progress report: The Together Women Programme's two demonstration projects are now fully functioning, and a recent report commissioned by the Gender and Justice Policy Network has shown the range of other community provision that is available.¹⁸ However, specialist community provision remains limited and patchy, and an expansion of the Together Women Programme is urgently required to provide full national coverage.

Good practice example

Calderdale Women's Centre

Calderdale Women's Centre is a source of support and information for any woman, including women who offend and women at risk of offending. The centre (which also has Healthy Living Centre status) has provided a one-stop shop service for over two decades and has robust signposting and referral policies and procedures and an information sharing agreement with a range of health, social care and criminal justice agencies. It has strong strategic and operational links with statutory and third sector partners.

The project, which is women-only and is sited in the town centre, receives over 14,000 contacts each year. Current services include domestic violence intervention and support, 'Evolve' working with women offenders, counselling and therapies, an Asian Women's Support Service dealing with forced marriage, domestic violence and mental health, a registered crèche, children's domestic violence services and a wide range of learning and training opportunities, from confidence building through to Level 4 NVQ in Health and Social Care Management.

The Centre is open daily with drop-in social times four days a week. Outreach services are delivered from a range of flexible community locations throughout the district. The centre is a membership organisation and women accessing services or opportunities are supported to become members, which reinforces their status as stakeholders who have rights and responsibilities. The Centre employs over 40 paid staff and has a team of 50 volunteers, many of whom have formerly accessed services at the Centre.

31) Regional Offender Managers should ensure that they contract with providers who can demonstrate that they will promote equality in delivering services and this must be written into the contract.

Progress report: The *National Commissioning Plan 2007/2008: Commissioning Framework* states that providers should 'deliver greater equality of access to services provided for offenders in prisons or supervised in the community, irrespective of their race, gender or other characteristics to achieve greater parity of outcomes, where this is not the case'.¹⁹ This is reflected in the commissioning plans of the nine regions and Wales. As commissioning is developed within the National Offender Management Service (NOMS), it will be important to monitor the attention given to equality.

32) There should be a diversity lead at the highest level of NOMS who provides guidance to Regional Offender Managers on delivering services to minority groups of offenders.

Progress report: Julie Taylor, who is Director of Commissioning and Partnerships for the National Offender Management Service (NOMS) and sits on the NOMS Board, is executive lead for equality and diversity. NOMS has set up a Stakeholder Engagement Board on equality and diversity to provide a forum to discuss equality and diversity and give advice, and an Equality and Diversity Taskforce to deliver urgent work on equality and diversity.

33) Private and voluntary bodies carrying out public functions need to begin preparing for their legal obligation under the gender equality duty.

Section 2 continued

Women and the criminal justice system: Review of existing recommendations

Progress report: While the work of all voluntary and private bodies is extremely difficult to assess nationally, it is the responsibility of the contracting body to ensure that if it does contract services to a private or voluntary organisation, they meet their responsibilities under the gender equality duty. Work has been done by the Equal Opportunities Commission, among others, to raise awareness among voluntary sector organisations of their responsibilities, including the publication of guidance for the voluntary and community sector on the duty.²⁰

34) The Probation Service should consider how it can introduce job-sharing and flexible working for those working at senior levels.

Progress report: The Probation Service has policies in place to allow for job-sharing and flexible working for those working in all positions. Monitoring of uptake is not carried out centrally at present, although their systems for collecting data centrally are currently being improved, which will provide further information.

35) The Probation Inspectorate should carry out a thematic inspection on sex equality.

Progress report: No progress has been made on this recommendation.

Overall, some significant progress has been made in some areas, but other key recommendations have not been implemented. As a result, the Commission urges the criminal justice agencies to review the above recommendations and take action where necessary.

Section 3

Women and the criminal justice system: New recommendations

At the present time, with many of the Commission's recommendations from *Justice and Equality* still outstanding and a significant amount of change ongoing in the criminal justice system, we do not think that a large number of further recommendations to the already overburdened criminal justice agencies are appropriate.

Consequently, the Commission makes the following key overarching recommendations.

1) The new Ministry of Justice must set out and implement, along with relevant Government departments and agencies, a coherent action plan to implement the recommendations of the Corston Report in full.

As we will express in this report, the Commission remains concerned about the high numbers of women in custody and the inappropriate use of custody for some women, particularly non-violent offenders, mothers, pregnant women and women with mental health problems. The comprehensive *Corston Report* sets out a viable blueprint for an improved system and this should now be implemented.

2) All Government departments and agencies with responsibilities for women offenders and victims must address the particular needs of these groups in carrying out their responsibilities under the gender equality duty.

The gender equality duty is of fundamental importance to addressing structural inequalities in the criminal justice system. However, the implementation of the duty and the acceptance of its underlying principles are crucial to its success and it is essential that work on the duty is prioritised and that women victims and offenders are considered in developing gender equality schemes.

3) The Government must link together the many strands of work on violence against women into a coherent integrated strategy.

The Commission is delighted that the Government has prioritised work on rape and domestic violence. However, to maximise effectiveness and ensure that work covers all forms of violence against women and to meet the Government's obligations under the UN Beijing Platform for Action, it is essential that an integrated strategy is developed, with prevention as a key element. In order to

ensure that the issue is prioritised across Government, addressing violence against women must be included in the Government's new Public Service Agreements, which are currently being developed.

4) Addressing violence against women must be a priority for the new Commission for Equality and Human Rights (CEHR).

Violence is a major issue for women and affects women across the equality strands. Addressing it, and ensuring that victims have the right to support and redress, must be a priority for the new CEHR when it opens in October. In this work, research has shown that a human rights approach can assist the CEHR in developing a more holistic approach to addressing violence.²¹

5) Employers across the criminal justice system should undertake positive action initiatives to encourage women, and in particular ethnic minority women, to move into areas of the system in which women are underrepresented.

This report shows that women continue to be underrepresented in some agencies and in senior positions in the criminal justice system, and that the current rate of progress is very slow. Positive action training and encouragement, such as 'taster' days for women, which are allowed under the *Sex Discrimination Act 1975*, are now essential in creating a more representative criminal justice system.

6) The Ministry of Justice must publish comprehensive statistics on women and the criminal justice system on an annual basis.

It is essential that comprehensive and up-to-date statistics, disaggregated by gender, race and disability, are available on women as staff, victims (including all forms of violence against women) and suspects and offenders, including data on Asbos and other civil orders. Indeed, under the gender equality duty, all listed bodies have a legal obligation to collect information on their employees and service users. The most recent statistics²² published on women and the criminal justice system under Section 95 of the *Criminal Justice Act 1991* are incomplete, and there are no statistics on women in the criminal justice system scheduled for publication in 2007-8.²³

In addition, the Commission also makes the following specific recommendations. The reasons for these recommendations are examined in depth in the following sections.

Female offenders, defendants and suspects

- The Government should amend the *Corporate Manslaughter Bill* to include deaths in custody (see page 18).
- Research should be carried out into the needs of women on community sentences and whether the available requirements of the Community Order meet these needs (see page 20).
- The Constitutional Affairs Committee should include a particular focus on sentencing of women in its inquiry on effective sentencing (see page 20).
- An Inter-Departmental Ministerial Group should be set up to co-ordinate the work of Government departments on women who offend or who are at risk (see page 20).

Female victims

- Minimum standards should be set for Sexual Assault Referral Centres (SARCs) to ensure that they provide holistic services (see page 22).
- The use by the Crown Prosecution Service (CPS) of specialist medical evidence collected by SARCs and the outsourcing of the provision of forensic physician services should be reviewed (see page 23).
- The Government must ensure that funding for sexual violence services is compliant with the voluntary sector compact, which states that funding should be allocated on a three year cycle (see page 23).
- Further funding should be allocated to local voluntary sector sexual violence services from the £8 million available from the increased revenue from fines (see page 24).
- A joint target, or complementary targets for the two agencies, should be developed for the police and the CPS to ensure that resources are focused on targeting rape and other serious sexual offences (see page 25).
- The Government should take the lead in improving public understanding of rape (see page 25).
- The no recourse to public funds rule for victims of violence against women who have insecure immigration status should be abolished (see page 26).

Female staff

- The work of the Judicial Appointments Commission to advertise vacancies to underrepresented groups should be evaluated to ensure that it has been successful in reaching the intended audiences (see page 27).
- All potential judges must be made aware of available flexible working arrangements, such as salaried part-time working, career breaks and mentoring schemes (see page 27).
- Research should be done into why more women are not applying to become QCs (see page 28).
- The Prison Service should ensure that training for staff in women's prisons is made appropriate for working with women prisoners, and must address violence and abuse in detail (see page 30).
- More probation staff must be recruited to reduce pressures on existing staff (see page 31).⁷⁷

Section 4

Women and the criminal justice system: Analysis

The Fawcett Society launched the Commission on Women and the Criminal Justice System in September 2002 to investigate what we suspected were severe disadvantages that women faced in the criminal justice system. Our initial investigation confirmed this systemic disadvantage, finding that women as workers, as victims and as suspects, defendants and offenders have been shoehorned into a system designed primarily for men and by men. Since then, there have been some improvements in women's experiences, but much still needs to be done.

Suspects, defendants and offenders

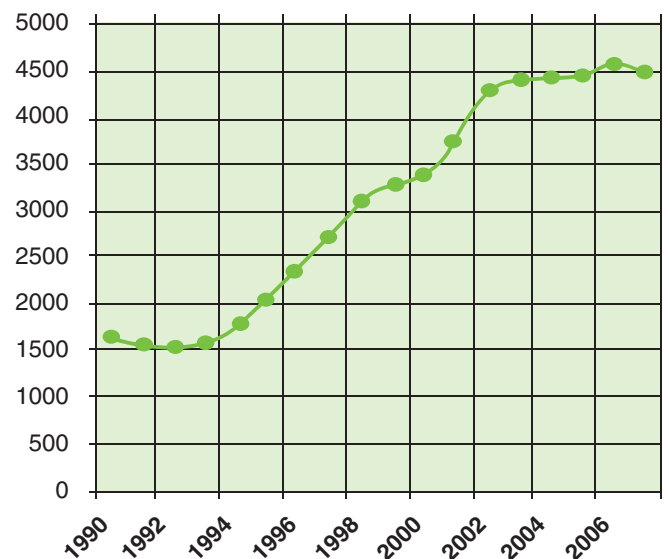
Looking first at suspects, defendants and offenders, there has been a huge rise in the number of women starting community sentences and being sent to prison in recent years. In the decade between 1995 and 2005, the number of women given community sentences at all courts increased from 15,043 to 31,388 each year,²⁴ while the prison population grew from 1,577 in 1992 to 4,431 in March 2007.²⁵ In 2005, a total of 12,275 women and girls were sent to prison.²⁶

Women in prison

However, following a decade of rapid growth, the years since the launch of the Commission have seen a significant slowing in the rise of the women's prison population. In 1992, the average female population in custody was 1,577. By 2002, it was 4,299, an increase of 173%, while the average population of males in custody increased by 50%. However, between September 2002, when the Commission was launched, and March 2007 (the most recent population available) the female population in custody grew from 4,403 to 4,431, an increase of less than 1%. During the same period, the male population in custody has grown by 12%.

Government ministers have publicly acknowledged that too many women are imprisoned, while the Home Office consultation paper *Making Sentencing Clearer* stresses that too many vulnerable women and people on remand are currently in custody.²⁷ In addition, there has been Government support for increased use of community provision for women offenders. The Together Women Programme, announced by the then Home Secretary Charles Clarke at the launch of the Commission's *One Year On* report

Female custodial population – 1990-2007



in March 2005, has been set up to demonstrate the advantages of community provision and the two projects, in Yorkshire and Humberside and the North-West, are now up and running.

At the same time, efforts are being made to improve the experiences of women in custody. HM Prison Service's Women and Young People's Group are in the process of finalising comprehensive Gender Specific Operational Requirements for the Prison Service, which set out in detail what needs to be done to ensure that, as far as possible, the needs of women in custody are met. However, this does not address the fundamental issue that the existing prison estate is geared towards meeting the needs of men. The *Corston Report* provides a comprehensive examination of the problems with the prison estate as it is currently constituted, and we fully endorse the findings and recommendations of the report.

An issue of particular importance to the Commission is the number of self-inflicted deaths in custody. The last two years had seen a reduction in the number of women's deaths in

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Women and the criminal justice system: Analysis

custody, compared to 2003 and 2004. While 14 women committed suicide in prison in 2003 and 13 died in 2004, the numbers had been substantially reduced to 4 female deaths in custody in 2005 and 3 in 2006. However, in the first six months of 2007 there had already been five self-inflicted deaths of women in prison, an extremely worrying development. The Prison Service now needs to prioritise identifying and addressing the causes of this latest upturn. In addition, it is inexcusable to us that the Government has attempted to exclude deaths in custody from the *Corporate Manslaughter Bill*. Following defeat for the Government on this issue in the House of Lords, the future of the Bill is unclear, but the Government should amend the Bill to remedy this indefensible exclusion.

New recommendation

The Government should amend the *Corporate Manslaughter Bill* to include deaths in custody

A number of further issues have been drawn to the Commission's attention in preparing this report. The first is the high number of foreign national women who are in prison. Many of these are serving long sentences, up to 14 years, for the importation of drugs, despite being first-time offenders. Many of these women are single mothers from a background of extreme hardship and they are often victims of abusive and exploitative relationships. They are rarely high up in the criminal gangs involved in the offence and while the issues surrounding these sentences are complex, a thorough review of their effectiveness and of alternative options is long overdue. The Commission is therefore pleased that the Sentencing Guidelines Council has announced that a sentencing guideline for these offences will be developed, examining whether these sentences are appropriate.²⁸

Ethnic minority women are also substantially overrepresented among the prison population, making up 36.3% of the female prison population. This figure is inflated by the high proportion of foreign national women in prison, but even looking just at British nationals, 22.3% of the female prison population consists of ethnic minority women.²⁹ Research shows that ethnic minority women may be imprisoned for different offences than white women. For example, 56% of British

black women prisoners had been imprisoned for a drug related offence, more than twice the proportion of white British women.³⁰ While ethnic minority women have many of the same needs as all female prisoners, the Prison Service needs to recognise that they may have particular needs, both in terms of the services available to them in custody and for resettlement. For example, toiletries designed for ethnic minority women may be required, and should not be more expensive than those for other prisoners, and courses offered in subjects such as parenting, family relationships and healthy living may need to take into account the different cultural norms which may exist in different groups.³¹ All services must be sensitive to the differing needs of all women prisoners.

It is clear to the Commission that too many women with mental health problems are still receiving custodial sentences, with 40% of women in prison having received help for a mental or emotional problem in the year prior to custody.³² Levels of self-harm in women's prisons are totally unacceptable. 16% of women in prison self-harm, compared with 3% of men, and more than half of all recorded incidents of self-harm occur in the female estate, despite the fact that less than 6% of the prison population is female.³³ In addition, the fact that nearly one out of every five adult women in prison is there on remand is very damaging,³⁴ especially given that around 20% of women held on remand before trial are acquitted and less than half of female remanded prisoners go on to receive a prison sentence.³⁵ Many women are on remand for a psychiatric assessment, despite the fact that the period of time that women spend on remand can be damaging to family relationships (with half of all women on remand receiving no visits from their family³⁶), employment and housing, as well as to their mental health. We are also concerned that prison is an unsuitable environment for pregnant women and for mothers, and continue to recommend that a defendant or offender with caring responsibilities should not be remanded or sentenced to prison without a report on the impact of incarceration on their dependents.

Overall, the Commission remains convinced that far too many women are being imprisoned. Community, rather than custodial, sentences should be used for women who are convicted of non-violent offences, particularly for first

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Women and the criminal justice system: Analysis

offences. More than a third of women in prison have no previous conviction – double the figure for men.³⁷ More custodial sentences for women offenders are given for theft and handling offences (31%) than anything else, with the majority of the sentenced adult female prison population being held for non-violent offences.³⁸ 33%, the largest group of female adult prisoners, are imprisoned for drug offences,³⁹ despite the fact that a recent report showed that handing out three times as much prison time for drug offences over the last decade has done little to reduce the flow of drugs on the street.⁴⁰ Overall, prison has been shown to be increasingly ineffective. 64% of women released from prison in 2004 reoffended within two years,⁴¹ compared to 38% of women released in 1992.⁴²

The use of non-custodial penalties for non-violent offenders would substantially reduce the number of short sentences given to women offenders. 63% of women sentenced to custody in 2005 were given a sentence of 6 months or less (compared to 55% of men).⁴³ These short sentences are widely considered to be more destructive than constructive as it is too little time for rehabilitative work or treatment but long enough for a woman to lose her home and children. Nearly 40% of women prisoners lose their home while in prison, with women far less likely than men to have a partner maintaining a shared home while they are in custody.⁴⁴ In addition, approximately two-thirds of women in prison have dependent children and a third have a child under five. It is estimated that over 17,700 children a year are separated from their mothers by imprisonment, while just 5% of women prisoners' children remain in their own home once their mother has been sentenced.⁴⁵ Given the over-representation of looked-after children in the criminal justice system, this is a cause of considerable concern. An examination of the effects of prison on an offender's family has also found that imprisonment leaves the family vulnerable to poverty, debt and potential housing disruption, due to a loss of income, benefit interruptions and subsidising prisoners' living costs. In addition, the costs of visiting prisoners are frequently not fully reimbursed.⁴⁶

Community sentences

A greater use of community sentences and, where appropriate, fines, would lessen the damage caused by

custodial sentences to prisoners and to their families. There is now considerable public support for a greater use of community sentences for women. A recent poll by ICM for SmartJustice demonstrated this, showing that 86% of the public support community alternatives to prison for non-violent women offenders and two thirds believe that prison is unlikely to reduce reoffending.⁴⁷ This confirmed the findings of polling carried out on behalf of this Commission by MORI in 2004, which showed that a majority of the public favour a greater use of community sentences to deal with the growth in the number of women in prison.⁴⁸

In addition, efforts have been made to improve the probation service's work with women offenders. In November 2006, the Probation Service produced *Delivering Effective Services for Women Offenders in the Community – A good practice guide*, which discusses the different needs of female and male offenders and sets out how equality of outcome for women offenders can be achieved. However, in order for greater use of community sentences to be effective, appropriate community provision must be provided. We believe that the evidence supporting the provision of specialist, women-only community services for vulnerable women currently at risk of custody or already in prison, as recommended previously by this Commission and in the *Corston Report*, is overwhelming. While the Together Women Programme is a welcome investment in such community services, the initiatives are limited to two areas and the £9.15 million that has been invested is small considering that the criminal justice budget in the UK for 2007-08 totals £22.7 billion.⁴⁹ Investment in a national network of community provision designed specifically for women offenders should be a priority if community sentences are to be effective in meeting the needs of women offenders and reducing reoffending.

In the meantime, it is important to examine what interventions are available as part of the new Community Order, and whether they meet women's needs, especially as breaching them can lead to a custodial sentence. Research on the needs of women on community sentences is very scarce. However, for example, research suggests that nearly half of offenders serving community sentences have mental health problems.⁵⁰ Despite this, the mental health treatment

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Women and the criminal justice system: Analysis

requirement, one of the options available to sentencers giving a community order, has been used very rarely, making up only 0.3% of the requirements given between August 2005 and July 2006.⁵¹ This suggests that women's mental health needs are not being identified, the requirement is not suitable for most offenders with mental health problems or suitable provision is not available in community. Whichever of these is the case, it is clear that more research is required into the needs of women on community sentences, and into whether the available requirements of the Community Order meet these needs. In addition, it is essential that sentencers are made aware of what women-specific community provision there is in their area and its benefits, in order to increase the likelihood that they will use community rather than custodial penalties.

New recommendation

Research should be carried out into the needs of women on community sentences and whether the available requirements of the Community Order meet these needs

Moreover, the Sentencing Guidelines Council has still not carried out its long-promised thematic review of women's sentencing. A thorough assessment of women's sentencing which examines recent trends would be a crucial step in addressing the overuse of custody for women offenders and the availability of suitable community penalties, and the Commission continues to recommend that this is carried out as a matter of urgency. The Parliamentary Home Affairs Committee had also started an inquiry into effective sentencing, which it ceased work on following the transfer of responsibility for sentencing policy from the Home Office to the new Ministry of Justice. The Commission is encouraged that the Constitutional Affairs Committee has taken up this inquiry and urges the Committee to include a particular focus on effective sentencing for women.

New recommendation

The Constitutional Affairs Committee should include a particular focus on sentencing of women in its inquiry on effective sentencing

The development of the National Offender Management Service (NOMS)

As well as examining the sentencing of women specifically, the Government must also address the rising use of custody for all offenders. A series of measures introduced by this Government, for example the new indeterminate sentence for public protection and the increased use of custody for breaching community supervision, has led to an explosion in the prison population. As previously mentioned, the overcrowding crisis in the male prison population has a knock-on effect for women in custody. Not only is it draining NOMS' budget, but two women's prisons have been converted in men's prisons in the last year, while the media has reported that proposals to address the ongoing crisis include converting HMP Cookham Wood, which currently holds adult women prisoners, into a men's prison.⁵² In addition, the focus on addressing prison overcrowding risks stifling any work on meeting women's needs. As a result, the Ministry of Justice needs to work with the Sentencing Guidelines Council to limit the use of custody for all offenders, ensure that community sentences are used where appropriate and reinvigorate the use of fines to reduce the overall pressure on the criminal justice system.

A reduced prison population is crucial to the success of NOMS. The creation of NOMS in 2004 and its subsequent development clearly has potential benefits for women offenders, in terms of the introduction of end-to-end offender management and the flexibility the new structure offers to Regional Offender Managers to commission services which meet the specific needs of women. However, the development of NOMS is not without risks. NOMS' regional structure may not be best suited to women's needs, given that the geographical spread of women's prisons means that women are more likely than men to be in prison a long distance from their resettlement area and therefore over regional boundaries. In addition, NOMS focuses its resources on the offenders who pose greatest risk of harm to the public, but the majority of female offenders are low risk. Despite this, they frequently have multiple and complex needs and there must be services available to meet them. Moreover, most specialist women's services are based at local level and will struggle to compete with large regional or national organisations in the commissioning process.

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Women and the criminal justice system: Analysis

Cross-government working

The *Corston Report* emphasises the need for Government departments to work together to meet the needs of women offenders. The Commission met this year with representatives of the Department of Health, the Department for Education and Skills and the Department for Work and Pensions to discuss their work with women offenders, and we strongly recommend that an Inter-Departmental Ministerial Group should be set up to co-ordinate the work of Government departments on women who offend or are at risk of offending, as recommended in the *Corston Report*. Also of particular importance is the relationship between NOMS and the Department of Communities and Local Government, as accommodation is often the primary concern of women leaving prison.

New recommendation

An Inter-Departmental Ministerial Group should be set up to co-ordinate the work of Government departments on women who offend or who are at risk.

The Department for Education and Skills also has a crucial role to play, developing education and training that is suitable for women offenders, both in the community and in custody. At present the Commission is concerned that education and training available to offenders is too focused on employment. While employment-focused training should be available, building life skills needs to be prioritised. There are also few women-only learning and skills facilities available in the community. Women, and particularly women who have previously been victims of domestic violence or sexual abuse, can be deterred from accessing or continuing with community-based learning and skills provision by having to learn in a mixed-sex environment.⁵³ Furthermore, for some women a personal development course that addresses the legacies of abuse may be a necessary precursor to being able to contemplate and complete vocational training. Overall, improvement is needed in all resettlement services, with one woman telling us that she 'found it really difficult coming out of prison', saying that 'there really is not any help when you come out of prison. I was left to do everything off my own back. I just felt so lost ... I remember thinking, well, what now?'

Women suspects and defendants

As well as the treatment of women offenders, the experiences of female suspects and defendants are important. Of particular concern is the introduction of the new system of legal aid. Following a review of legal aid, it is now intended that there will be a move to a market-based system for legal aid procurement, following a transitional phase in which hourly rates are replaced by fixed and graduated fees.⁵⁴ There is a risk that these changes will disproportionately disadvantage women,⁵⁵ and in particular ethnic minority women, as they are more likely to instruct ethnic minority-managed firms, which, as they tend to be smaller, will be significantly disadvantaged by the new system.⁵⁶ In addition to problems with legal aid, criminal defence lawyers representing women suspects and defendants must be aware of the issues that disproportionately affect women, particularly in opposing the use of remand and in ensuring that previous experiences of abuse are discussed early, so that they can form a credible part of their defence, where appropriate. Court facilities need to be improved. In particular, courts usually have no childcare facilities, which can be very problematic for defendants who may have to attend court for several days.

The experiences of women in police stations are also important. Women who are arrested are likely to be extremely anxious, particularly if they have dependant children or are pregnant. As a result, the Commission has recommended that women should have access to a female member of staff, to counter the 'macho' environment in many police stations, and that police stations should take account of women's specific needs, for example by including a question on their dependents on their custody welfare lists and by ensuring that appropriate hygiene facilities are available. Police stations also need to improve links with other local agencies. For example, many women who are arrested may have drug problems and may therefore require access to local drugs services.

This will be of particular significance with the roll out of conditional cautioning, introduced in the *Criminal Justice Act 2003*, allowing for a caution with conditions attached, which address the behaviour behind the offence or make reparation for it. National roll-out of the conditional cautioning scheme is

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Women and the criminal justice system: Analysis

now underway and full implementation is planned by March 2008. Conditional cautioning has the potential to divert women, many of whom commit low level offences, from the criminal justice system, but it is essential that appropriate support services are available to address women's offending behaviour at an early stage. However, very little is known about women suspects, and the Commission continues to recommend that the Home Office conducts research into the needs of women suspects so that appropriate services can be established.

Victims

Looking next at female victims of crime, the British Crime Survey has found that since peaking in 1995, crime has fallen by 44%, while the risk of becoming a victim of crime has fallen from 40% at its peak in 1995 to 23% in 2005/06.⁵⁷ These figures are not broken down by gender, so there is no way of knowing if these general reductions affect women disproportionately. The Government has invested substantial energy in making improvements for victims of crime. A *Code of Practice for Victims of Crime* has been published, which sets out the standards of service that victims can expect from the criminal justice agencies; victim impact statements have been introduced; Witness Care Units have been set up to improve communications with victims; a commissioner has been promised to uphold the rights of victims and witnesses; and pilot projects are being run by Victim Support to provide enhanced services to victims.

However, this does not constitute a rights-based approach, and although these general measures are important, the major concern for the Commission has been the experiences of victims of violence against women. The British Crime Survey has shown that 45% of women are subject to domestic violence, sexual victimisation or stalking at least once in their lifetimes, compared to 26% of men, while this difference is even more pronounced when repetition and severity are taken into account.⁵⁸ Violence against women also has huge financial costs. Treating the physical injuries and mental health problems related to violence against women is estimated to cost the NHS alone almost £1.4 billion a year.⁵⁹

Rape and domestic violence

The British Crime Survey shows that there are at least 190,000 incidents of serious sexual assault and an estimated 47,000 female victims of rape every year in the UK, and since the age of 16, at least 5% of women in the UK have been raped.⁶⁰ In 2002 there were an estimated 12.9 million incidents of domestic violence against women (compared to 2.5 million against men)⁶¹ and a quarter of women in the UK will experience an act of domestic violence at some point in their lifetime.⁶² Two women each week are killed by a violent male partner or ex-partner.⁶³

In the last year there has been considerable Government focus on rape and domestic violence, which is welcome. Work on the former issue culminated in the publication in April 2007 of a *Cross-government action plan on sexual violence and abuse*, which aims to provide a 'platform for a more strategic and holistic approach to addressing sexual violence and abuse'.⁶⁴ The action plan, which acknowledges that violence against women represents both a consequence and cause of gender inequality, covers prevention, health and support, and criminal justice responses and sets out key actions for the Government for 2007-8. It is a major success for the stakeholders who contributed to it and, if fully implemented, will be a major step forward on this issue.

The extension of Sexual Assault Referral Centres (SARCs) in recent years has been welcomed by this Commission, and the *Cross-government action plan on sexual violence and abuse* promises that the number of SARCs will be increased to around 40 by April 2008, from the 15 that are currently in operation. This is a positive development, but it is essential that stringent minimum standards are set for SARCs to ensure that they provide the holistic services promised. There is also concern that the expert medical evidence collected by SARCs is not being put to the best possible use. For example, one SARC reported to us that since it opened in 2004, a statement has been requested from the Sexual Offences Examiner in only 28% of cases and a call to appear in court was issued to Sexual Offences Examiners in only 9% of cases. While this may not be representative of all areas, this issue needs to be further investigated, and the use by the Crown Prosecution Service (CPS) of specialist medical evidence needs to be

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reviewed to ensure that it is contributing to building the best possible case.

New recommendation

Minimum standards should be set for SARCs to ensure that they provide services of an appropriate standard

New recommendation

The use by the CPS of specialist medical evidence collected by SARCs and the outsourcing of the provision of forensic physician services should be reviewed

The Commission is also concerned about the practice of outsourcing forensic services to private companies, which is highlighted in *Without Consent*. This reduces the likelihood of the availability of specialists in sexual offences and of female examiners, who are preferred by female and male victims of sexual violence. There is a risk that this will lead to an increase in the disparity of provision, both in terms of evidence gathering and of victim care, between areas where forensic areas are outsourced and areas where they are not. One female victim of rape who spoke to the Commission described her examination as 'brutal', adding that 'the bed was terrible. It wasn't meant for sexual assault work, it didn't have stirrups or anything. It was against the wall and you can guess how difficult it was to do an examination there.'

In addition, SARCs should not be seen as replacements for local voluntary sector sexual violence services. These services play a vital role in providing long-term support for women who have been victims of rape and sexual assault, and are particularly important in supporting adult survivors of childhood abuse. One woman who we spoke to, who had accessed counselling through a rape crisis centre, told us 'I think by now if I hadn't come here I would have committed suicide', while another added 'I don't think I could have got through this without them'. Many of the women that we spoke to who had been victims of sexual abuse as a child or as an adult highlighted the importance of counselling in a women-only environment where they felt safe and where they felt that their problems were understood. Despite this, even where voluntary sector sexual violence services exist, they often have waiting lists of several months due to a lack of funding.

Moreover, there are many areas where there are no services at all and the total number of services is declining. For example, due to decreases in funding there are now only 37 remaining rape crisis centres, compared to 68 in 1984, with six centres having closed in the last three years due to funding problems and a number of others at risk of closing. The state of Florida, with a population of just over 18 million, has 53 rape crisis centres, compared to the 37 in the entire United Kingdom. The action plan promises £1.25 million in funding for voluntary sector centres in 2007-8, but funding decisions were made very late through a competitive tendering process. A greater, long-term funding commitment is needed from Government to stabilise and then develop this sector. In particular, the Government must ensure that funding for sexual violence services is compliant with its own compact with the voluntary sector, which states that that funding should be allocated on a three year cycle. The Commission also continues to recommend that once a national infrastructure of local sexual violence services has been developed, a 24-hour rape helpline to allow victims of rape access to support and information should be set up to complement the 24-hour Domestic Violence Helpline.

New recommendation

The Government must ensure that funding for sexual violence services is compliant with the voluntary sector compact, which states that funding should be allocated on a three year cycle

A network of Independent Sexual Violence Advisors (ISVAs), who begin work with victims of sexual violence as soon as an attack has been reported and give support throughout the criminal justice process, was also announced by the Home Office in October 2006, and there are now 38 across the country. Similarly, Independent Domestic Violence Advisors (IDVAs), who give support to victims of domestic violence throughout their case, have been introduced, and accredited training for ISVAs and IDVAs has been developed. The Home Office announced in September 2006 that the number of specialist domestic violence courts would be doubled to more than 60 in England and Wales, while local Multi-Agency Risk Assessment Conferences (MARACs), based on the model developed in the Cardiff Women's Safety Unit, will be

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developed to an agreed national standard in 100 areas by April 2008. The roll out of ISVAs and IDVAs is a welcome sign of Government commitment to tackling this issue, as is the expansion of MARACs.

The Department for Communities and Local Government has published new guidance on how to set up sanctuary schemes⁶⁵ and announced that every local authority in the country should offer sanctuary schemes to victims of domestic violence. A sanctuary scheme creates a 'safe room' within the victim's home and is intended to allow the victim to stay in their own home if the perpetrator no longer lives there, rather than having to go to a refuge or into temporary accommodation. The Commission is concerned that sanctuary schemes are not in themselves an effective long-term solution to the problems caused by domestic violence and are often not supported by appropriate services. However, as part of a combination of services that enable women and children to stay safely in their own home, if that is what they would like to do, they can be suitable. Moving accommodation can damage support networks and cause family upheaval and refuges should be used as a last resort. However, for sanctuary schemes to work effectively, it is essential that they are supported by an integrated network of well-funded local services, including IDVAs and MARACs.

Overall, the Commission welcomes the Government's efforts in this area. However, at present, the services available for victims of rape, sexual assault and domestic violence still vary hugely geographically. The expansion of domestic violence courts, a recommendation of *Justice and Equality*, is a positive step, but they are still not available in every area or fully integrated with IDVAs, sanctuary schemes and refuges. Similarly, while the expansion of the network of SARC is welcome, it is essential that local sexual violence services are also invested in so that they are available in every area. Many of these services are women-only, which many victims prefer, and provide longer term support and services to adult survivors of child sexual abuse, which SARC do not. Since 1 April 2007, a £15 'surcharge' has been placed on all fines, which is expected to raise £16 million in 2007-8 for a range of services for victims of crime and witnesses. This includes £3 million for independent domestic violence advisers, as well as £1.25 million for

services to victims of sexual violence.⁶⁶ However, £8 million is yet to be allocated and the Commission believes that further funding should be allocated to supporting and enhancing local voluntary sector sexual violence services.

New recommendation

Further funding should be allocated to local voluntary sector sexual violence services from the £8 million available from the increased revenue from fines

Investigating and prosecuting rape cases

The conviction rate in rape cases is an issue of immediate concern. In England and Wales the latest figures available show that in 2004, only 5.3% of rapes reported to the police resulted in a conviction. Thirty years ago this figure was more than 33%. Meanwhile in Scotland, only 3.9% of the 975 rapes recorded by the police in 2005-6 led to a conviction.⁶⁷ Figures published by the Commission last year have also revealed the extent to which the conviction rate varies by geographical area in England and Wales, from 13.8% in Northamptonshire to just 1.6% in Suffolk and 0.86% in Gloucestershire.⁶⁸ In addition, these are only the conviction rates for alleged rapes which are reported to the police, with research suggesting that between 75% and 95% of rapes are never even reported.

In order to address this, it is essential that the problems in the investigation and prosecution of rape cases highlighted by *Without Consent*, a joint report by Her Majesty's Inspectorate of Constabulary and the Crown Prosecution Service Inspectorate,⁶⁹ and previously in *A gap or a chasm? Attrition in reported rape cases*,⁷⁰ are addressed immediately. These reports have showed that frontline police officers often have little training in responding to rape and also overestimate the number of false allegations, feeding into a culture of disbelief of victims. Moreover, too many allegations of rape are being incorrectly recorded as 'no crimes' by the police, distorting the official figures, while some victims are reportedly being threatened with prosecution for wasting police time or perjury if their complaint is considered likely to be false. Many victims still say they are being treated with ignorance and scepticism by the police, with one woman telling us that 'the police investigation has been as bad if not worse than the sexual

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assault'. While some police forces have undoubtedly made improvements in this area in recent years, the treatment of victims still varies significantly both between and within police forces. The police must take all rape complaints seriously from the outset and fully investigate every reported offence, building the strongest possible evidential case. The police must also recognise the probability that in many cases the defendant will be known to the victim and will put forward a defence based on consent, and prepare cases accordingly.

In addition to the police, the CPS plays a crucial role in securing rape convictions. Many improvements have been made by the CPS in recent years, in particular the introduction of area rape co-ordinators and specialist rape prosecutors. The CPS has published a single equality scheme, and is working on a strategy to tackle all violence against women. However, the CPS's excellent national policies are not always being implemented in practice and this needs to be urgently addressed at a local level. Police and CPS training and best practice that encourages criminal justice professionals to take a positive approach to building rape cases is crucial to achieving higher levels of convictions and reducing the number of victims who choose not to pursue cases as a result of their experiences of the criminal justice system. In addition, the Commission is concerned that there is currently no national target for the police and the CPS to increase the proportion of rape cases that are prosecuted. A joint target, or complementary targets for the two agencies, should be developed to ensure that resources are focused on targeting rape.

New recommendation

A joint target, or complementary targets for the two agencies, should be developed for the police and the CPS to ensure that resources are focused on targeting rape and other serious sexual offences

At a meeting of the Commission with representatives of the CPS and the Association of Chief Police Officers, both stressed the importance of addressing public attitudes in improving the conviction rate. A poll by Amnesty International⁷¹ has shown that nearly a third of people think

that a woman is partially or totally responsible for being raped if she is drunk, while a third of people believe that a woman is partially or totally responsible for being raped if she has behaved in a flirtatious manner and more than a quarter think a woman is partially or totally responsible for being raped if she is wearing 'sexy' or revealing clothing. One in 12 people believe a woman is totally responsible for being raped if she has had many sexual partners. In addition, research on juries' attitudes found that jurors are reluctant to deliver a guilty verdict in cases where alcohol is involved.⁷² In these circumstances, it is clearly imperative that the Government takes the lead in improving public understanding of rape and challenging the myths and stereotypes that surround this issue.

New recommendation

The Government should take the lead in improving public understanding of rape

The court process remains traumatic for victims in cases of rape and sexual assault and for adult survivors of childhood abuse, who often have to confront family members. For example, one female victim of a sexual assault, who has physical and learning disabilities, recalls the prosecuting barrister describing her as 'not the sharpest knife in the drawer', and told us that as a result of her experiences in court that she wished that she had not told anybody that she had been assaulted. The Government published a consultation paper in March 2006 that made proposals which aimed to improve the court experience for rape victims.⁷³ This included a proposal that a video-recorded statement of a complainant should automatically be admissible as evidence-in-chief, if the victim would prefer to give their evidence in this manner. The Government's consultation response has yet to be published, but media reports suggest that the Government intends to introduce this measure, and the use of expert witnesses, despite opposition from the judiciary.⁷⁴

The Sentencing Guidelines Council has published a guideline on sexual offences, clarifying the sentencing structure for people convicted of all sexual offences. The Commission welcomes this guideline and in particular the statement that relationship and acquaintance rape should be treated as seriously as stranger rape. However, we are disappointed

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that the guidance states that 'an offender's culpability may be reduced if the offender and victim engaged in consensual sexual activity on the same occasion and immediately before the offence took place',⁷⁵ which contradicts the statement that acquaintance rape is as serious as stranger rape. It may, however, reflect public opinion on this issue, and this needs to be addressed within the work to address public attitudes. Many rapes occur after initial consensual sexual activity or intercourse and can be as serious, or more so, as cases where there has not been consensual sexual activity. Indeed, research shows that rapes by current or former partners are second only to stranger rapes in terms of the seriousness of injury.⁷⁶ This needs to be widely understood.

Trafficking and forced marriage

However, violence against women covers a wider range of issues than just rape and domestic violence. It also includes female genital mutilation, forced and early marriage, stalking, crimes in the name of honour, trafficking and sexual exploitation and sexual harassment. There has been considerable progress on tackling human trafficking, with the Government signing the European Convention on the trafficking of human beings, a recommendation of *Justice and Equality*, in March 2007, following the ratification of the Palermo Protocol in February 2006. The Government must now ratify and implement the provisions of the convention without delay. The Home Office published a *UK Action Plan on Tackling Human Trafficking* in March 2007, which assesses existing work in this area and provides the basis for a more strategic approach to tackling human trafficking, and the United Kingdom Human Trafficking Centre has been set up as a central point for the development of expertise and operational co-ordination on human trafficking. With this groundwork in place, more services are now required for victims of human trafficking, alongside a greater understanding of their rights.

The Commission welcomes the Government's decision to back the *Forced Marriage (Civil Protection) Bill*, which had been brought to Parliament as a Private Members' Bill by Lord Lester QC. This Bill was developed through widespread consultation with organisations who work with victims of forced marriage, and is a positive step towards tackling this issue. The Government has also launched a new handbook

to provide victims of forced marriage with practical help and information and a support network to provide long-term support. A two-year strategy to tackle forced marriage has been published by the Forced Marriage Unit.⁷⁷ However, many women leaving a forced marriage have no access to housing, welfare benefits or publicly funded services such as refuges due to their insecure immigration status. This needs to be overcome if the problems of forced marriage, and domestic violence, are to be effectively addressed. The Commission therefore fully supports Southall Black Sisters' campaign to abolish the no recourse to public funds rule for victims of violence against women who have insecure status.

New recommendation

The no recourse to public funds rule for victims of violence against women who have insecure immigration status should be abolished

An integrated strategy on violence against women

Overall, as previously mentioned, it is essential that the Government brings all of this work together and develops a cross-departmental strategy on violence against women which joins up the work of Government departments, manages perpetrators appropriately and focuses on preventing violence against women happening in the first place rather than simply dealing with its effects. The Government signed up to the UN Beijing Platform for Action in 1995, more than a decade ago, making a commitment to creating a national action plan to address all forms of violence against women within an approach to gender equality, a commitment which it has not fulfilled. The Scottish Executive is developing a strategic framework on violence against women and the CPS and Metropolitan Police should both be commended for developing integrated approaches to violence against women. The Government acknowledges that 'In the coming year, we will see a greater collaboration between the domestic violence and sexual violence delivery plans, which will help local partnerships to marshal resources and deliver services for these victims',⁷⁸ but the Commission believes that it is now essential that the Government builds on existing good work and develops a coherent strategy to tackle violence against women.

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Incorporated in this strategy must be work to address the needs of women in prison who have been victims of violence and abuse. Women's prisons, since their return to the area management structure in 2004, are subject to the same performance management system as male prisons. This fails to take into account the fact that more than half of women in prison have experienced domestic violence, compared to a quarter of women in the general population, and a third have experienced sexual abuse.⁷⁹ Regimes for women and the training of staff who work in women's prisons should be predicated on the need to address this, and women's prisons should be judged on the way in which this issue is addressed. Prison regimes and the attitudes of staff must recognise that a large proportion of women in prison have been abused. It is important that these women are seen not only as offenders, but also as victims, and are treated accordingly.

Staffing

The number of women at a senior level in the criminal justice system remains disappointingly low. Until last month there had never been a female Home Secretary and the Equal Opportunities Commission (EOC) has shown that there are 101 women 'missing' from among the 269 senior police officers and 78 women 'missing' from among the 194 senior judges.⁸⁰

Diversity in the judiciary

Diversity in the judiciary has been a particular concern for the Commission. There is only one woman judge out of 12 in the House of Lords and three women out of 37 in the Court of Appeal. Women represent 9% of High Court Judges, 11% of Circuit Judges, 15% of Recorders, 22% of District Judges, 28% of Deputy District Judges and around half of all Magistrates.⁸¹ However, there has been some improvement. During 2005-6, 41% of new judges appointed were female⁸² and by 2006 18% of the judiciary were female, compared to 14% in 2001.⁸³ Despite this, the EOC estimates that at the current rate of progress, equality between women and men in the senior judiciary will take 40 years to achieve.⁸⁴

In addressing this, the introduction of the Judicial Appointments Commission (JAC) is a very welcome step. The JAC has a statutory duty to encourage applications from a wider range of candidates and since its launch in April 2006 they have done important work in defining merit and setting up new, more

transparent, processes for appointments. They have also launched a trilateral judicial diversity strategy with the Lord Chief Justice and the Lord Chancellor,⁸⁵ which sets out how a more diverse judiciary will be achieved. With this crucial groundwork in place, the JAC will now need to ensure that it is effective in reaching potential women candidates, particularly ethnic minority women. Work has already started on this, with better-targeted and more prominent advertising, more collaborative work with groups like the Association of Women Barristers and a greater emphasis on work to demystify judicial careers and explain the application process.⁸⁶ Although it is too early in the JAC's lifetime to judge the success of this work, the initial signs are positive, with the number of applications rising significantly. In due course, it will need to be evaluated to ensure that it has been successful in reaching the intended audiences.

New recommendation

The work of the JAC to advertise vacancies to underrepresented groups should be evaluated to ensure that it has been successful in reaching the intended audiences

However, even if the JAC are successful in substantially increasing the number of women who are appointed to the judiciary, it will take a long time to have a substantial effect on the make up of the judiciary. As a result the training of all judges and magistrates should be reviewed by the Judicial Studies Board to ensure that all sentencers understand the specific needs of women, both as victims and offenders. Work will also need to be done by the Lord Chief Justice, who is responsible for the welfare, training and guidance of the judiciary in England and Wales, to ensure that the judiciary can evolve to make it as attractive as possible to women. Welcome measures that have already been introduced by the Lord Chancellor include more flexible working arrangements, such as salaried part-time working, career breaks and a pilot mentoring scheme for district judges. It is essential that all potential judges are made aware of these.

New recommendation

All potential judges must be made aware of available flexible working arrangements, such as salaried part-time working, career breaks and mentoring schemes

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Diversity in the legal profession

Diversity in the legal profession is important, both in its own right and because the profession forms the pool from which the judiciary is drawn. Speaking at a Law Society seminar in March 2007, Harriet Harman QC MP, then a Constitutional Affairs minister, said that 'We need to find ways to attract women and men from a wider range of backgrounds to the law as a career. Until the profession itself is more diverse, the scope for a more diverse judiciary is constrained', adding that 'the impetus has also to come from the law firms themselves'.⁸⁷

Looking at solicitors, of the 104,543 solicitors with practising certificates, 57.5% are men and 42.5% are women. There has been considerable improvement in this area. In 1988, less than 20% of solicitors were women and since 1996 the number of women solicitors with practising certificates has increased by 108%, compared to an increase of just 29% for men. There are more female than male practising certificate holders aged 45 or less,⁸⁸ while in 2005-6 nearly 60% of new solicitors were female.⁸⁹ Despite this, even having accounted for differences in experience, higher proportions of men achieve partnerships than women.⁹⁰ This problem is particularly acute in leading City law firms, with research showing that over the last year only 20% of solicitors given partnerships in the top 25 City law firms were women.⁹¹

As of December 2006, only 33.5% of practising barristers were women. However, 52% of new barristers in 2006 were women, compared to 49% in 2005, suggesting that the number of female barristers is rising, although only slowly.⁹² The Bar Council Equality and Diversity Code states that Chambers should have written policies permitting members to take maternity leave and career breaks and work flexible hours, part-time or partly from home to enable them to manage their family responsibilities. This is part of a broad programme of work by the Bar Council to improve employment practice, which also includes a confidential telephone line, which is open to law students and pupils as well as practising barristers, to give advice to people who are experiencing discrimination or harassment. The Crown Prosecution Service (CPS) has issued an Equality and Diversity Expectations Statement for the Bar, which will apply when members of the Bar are working, or seeking to work,

for the CPS. It sets out expectations that Chambers will have an equality and diversity policy in place, that there will be evidence of active implementation in employment and in work allocation and that there will be evidence of regular review and reporting on progress.

Despite this progress, only 9% of Queen's Counsels (QCs) in self-employed practice are women,⁹³ while the number of women applying to be QCs remains worrying low. Of the 333 applications in 2006-7, the second year under the new applications system, only 16% were women.⁹⁴ The figures for how many were successful have not yet been published, but during 2005-6 15% of applicants were women, of whom 49% were successful. By comparison, while 84% of applicants were men, only 38% of male applicants were successful.⁹⁵ This suggests that the recent total overhaul of the application procedure has not yet resulted in more women applying to become QCs, despite an apparently higher than average success rate for female applicants. As a result it is essential that research is done as a matter of urgency into why more women are not applying to become QCs, while resources must be made available to engage with women, and with potential applicants from ethnic minorities, who are also underrepresented.

New recommendation

Research should be done into why more women are not applying to become QCs

In *Justice and Equality*, we expressed concern that the self-assessment used as part of the new application process for QCs might disadvantage women. We are pleased, therefore, that in its current round of applications, the Selection Panel has reduced the importance of this element by removing the initial filter, which was based solely on the self-assessment, so that at no stage is self-assessment considered in isolation. We are also pleased that the competency framework has been changed to make diversity a competency in its own right, so that all aspiring QCs are assessed in respect of their understanding of diversity issues. However, we expressed concern about the application fee, then around £2,000, and are therefore disappointed that the fee has now risen to over £2,900.

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Diversity in the Crown Prosecution Service (CPS)

In contrast, women are overrepresented in the CPS, with women constituting 67% of all staff. There are only 13 female Chief Crown Prosecutors out of a total of 42, but in general women's representation is also increasing at senior levels. A review of equality and diversity in employment at the CPS, carried out by HM Crown Prosecution Service Inspectorate and published in November 2006,⁹⁶ praised the work that had been carried out in the CPS and the progress that had been made on staff diversity. However, it did find that flexible working arrangements are often not well arranged and recommended action to ensure that staff expectations about flexible working are realistic and properly managed. In addition, we are delighted with the ongoing good work of the CPS' Law Scholarship Scheme, which lays out, with financial support, a clear development and qualification route from administrator to prosecutor for CPS staff.

Diversity in the police service

However, women continue to be underrepresented among police officers. In March 2006, while 64% of all police staff were female, only 31,723 of the 143,271 police officers in England and Wales were female, representing 22% of the total, an increase of only one percentage point since March 2005. The proportion of women in more senior ranks remains particularly low. Only 10% of officers at the rank of Chief Inspector and above are female, compared with 25% of women at constable rank.⁹⁷ Although 33% of officers recruited during 2005-6 were female,⁹⁸ the fact that most officers have long careers with the police and turnover is low means that changing the proportion of women in the police will be a slow process.

The Government remains committed to a representative police service, with policing minister Tony McNulty saying that 'We must redress the balance of women and BME staff at higher levels of the service and we need to ensure equal access through fair, transparent and objective promotion and progression procedures. I believe if the service gets it right with staff, it will get it right with potential recruits and with the public'.⁹⁹ However, the Association of Chief Police Officers (ACPO) has estimated that it will take between 17 and 23 years to achieve the Home Office target for 2009 of 35% for women officers and 7% for minority ethnic officers. As a

result, ACPO believes that a change in employment law to allow affirmative action will be necessary to achieve a representative police force in the near future.¹⁰⁰ However, 42% of Community Support Officers¹⁰¹ and 33% of special constables¹⁰² are female, a higher proportion than for police officers, suggesting that this could be a potential source from which to recruit more female officers. In addition, we welcome Government proposals that 'balancing measures' should be allowed to accelerate the achievement of a representative police service, for example fast-tracking through initial training new staff from underrepresented groups who have already met the entrance criteria, passed the relevant tests and been accepted for initial training.¹⁰³

While the major police restructuring that had been planned at the time of our last report, which risked squeezing out senior women, has now been abandoned, a number of issues still face women police officers. The British Association of Women in Policing's *Gender Agenda 2*,¹⁰⁴ published last year, states the need for the police service to 'demonstrate consistently that it values all women working in policing'. It argues that 'although the theoretical and legal arguments for equality of opportunity and promotion and selection on merit have been made, these have not yet been fully reflected in reality', suggesting that this is the result of the perpetuation of dated stereotypes and myths; inflexible thinking on flexible working; policy development excluding the female perspective; and a failure to recognise the impact and consequences of the predominant and dominating culture on minority groups.

A Home Office study has found that 'sexist language and behaviour was widespread' in the police and that 'women, gay and lesbian officers ... reported feeling excluded by a predominantly male, heterosexist culture. Women officers frequently felt undermined and undervalued.'¹⁰⁵ Clearly a culture change in the police service is still required, and this must be a priority for every police force. Networks for women police officers within police forces can help to achieve this, but they need more resources and support to allow them to function effectively. The police must also act to improve the working environment to make it suitable for women, and to ensure that the right equipment and facilities are available to allow women police staff to do their jobs. However, there are

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some examples of good practice that other police forces can learn from. For example the Metropolitan Police won Working Families' Employer of the Year award as a result of its forward thinking approach to supporting its staff, including a heavily subsidised emergency back-up childcare scheme.¹⁰⁶

Diversity in the National Offender Management Service (NOMS)

At the time of the Commission's original investigation, we found that, like the police service, the Prison Service was male dominated, and there were particular concerns about sexual harassment. The vast majority of Prison Service staff are still male, with women even more underrepresented at senior levels. For this reason the Commission welcomes the Prison Service's *Single Staff Diversity and Equality Scheme*, which covers gender, race, disability, sexual orientation, age, and religion or belief. However, tackling sexual harassment remains a priority. As a result of concern about this issue and how it has been managed by the Prison Service, the Equal Opportunities Commission (EOC) has launched, and then immediately suspended, a formal investigation into sexual harassment in the Prison Service. The suspension of the investigation is conditional on the Prison Service fulfilling the terms of a two-year agreement with the EOC on tackling sexual harassment, and carrying out the action plan it includes.¹⁰⁷ This agreement and the *Single Staff Diversity and Equality Scheme* are positive steps forward, and the Prison Service must ensure that they are fully implemented. The Prison Service has also identified equal pay as an issue that needs to be addressed, and work on this issue is welcome.

Training for staff in women prisons, who are disproportionately female, should be examined. Different skills and training will often be necessary for working in women's prisons, and most prison staff are likely to have a very limited knowledge about the different needs of women prisoners when they join a women's prison. Working with women prisoners, particularly prisoners with vulnerabilities and those with mental health problems, can be difficult and stressful, particularly if staff are not well prepared. In particular, as previously mentioned, staff training should encompass how to meet the needs of women who have been victims of violence in childhood or as adults, as women who have been subjected to multiple forms of violence by

more than one perpetrator appear to be disproportionately represented in prison populations.

New recommendation

The Prison Service should ensure that training for staff in women prisons is made appropriate for working with women prisoners, and must address violence and abuse in detail

In contrast, women are well represented in senior positions in NOMS' central management. Five of the ten Regional Offender Managers are women, as is the NOMS Chief Executive. Similarly, the probation service, like the Crown Prosecution Service, is dominated by women, who account for 64% of Probation Officers and 74% of Trainee Probation Officers, although only 53% of Senior Probation Officers are female.¹⁰⁸ Half of the 42 Chief Officers in the Probation Service are women. The roll out of the commissioning model will see significant changes to the provision of probation services and it is important that in this context the gender balance in senior positions is not lost. In addition, the rise in the number of offenders under probation supervision is likely to have increased the stress levels of staff, and thereby contributed to staff sickness levels, which are among the highest in the public sector.¹⁰⁹ The average number of cases for each probation officer is now well over 30, a very demanding level, and staffing levels need to be increased to meet the demands placed on the service.

New recommendation

More probation staff must be recruited to reduce pressures on existing staff

Section 5

The gender equality duty: Relevance and application¹¹⁰

The policy paper *Justice: A new approach*, published to coincide with the launch of the new Ministry of Justice, explicitly states that there will need to be 'different approaches for different offender groups to ensure they are treated equally and not just treated the same'.¹¹¹ This exemplifies the ethos that underpins the gender equality duty, which was implemented on 6 April 2007, introducing the most radical change in sex discrimination law for 30 years.

The gender equality duty seeks to address the structural gender inequalities in society, which are reflected in the criminal justice system. It represents a significant shift from the individual, complaints-driven approach of tackling discrimination once it has happened, to a more positive, proactive approach so that the burden rests with the public body to take active steps to promote equality. Its implementation will ensure that gender equality becomes part of the core business of public bodies and the duty has the potential to revolutionise the criminal justice system, forming the foundation of an entirely different system which is responsive to women's needs. A move towards equal outcomes between women and men is long overdue in the criminal justice system, where women's needs are often neglected in a system designed for men.

The gender equality duty places a statutory obligation on all public authorities to have due regard to the need to eliminate unlawful discrimination and harassment and to promote equality of opportunity between women and men. It applies to all the functions of a public authority including policy-making, service provision and employment. In addition to the general duty, those public authorities listed in the Statutory Order¹¹² are also subject to a series of specific duties. These include the obligation to carry out gender impact assessments on current and proposed policies and practices, gathering and using information relevant to gender equality and publishing a gender equality scheme that states the gender equality objectives of the public body and contains a three-year action plan directed at achieving them. Public bodies must also consult with stakeholders in developing gender equality objectives and gender equality schemes must demonstrate that the public body has considered the need to take action on pay discrimination. They must report against their scheme every year and review

the scheme at least every three years. Among the public bodies covered by these specific duties are all Government departments, local councils, police services and police authorities, probation boards and the Judicial Appointments Commission.¹¹³

There is an important role for central Government to play in establishing the importance of the gender equality duty. Public bodies look to central Government for guidance and leadership and it has a crucial role to play in challenging a culture that often ignores women's needs. The Government must provide strategic direction on the implementation of the gender equality duty to ensure that gender is mainstreamed throughout all Government activities. Delivering gender equality must be at the heart of both planning and delivery and the entire process of designing and delivering policies will need to take place from a gender perspective. This will require practical and cultural change at every stage of the policy-making cycle, encompassing an understanding of the differences between women and men and an assessment of their different needs.

However, the Commission is concerned that the duty is not being given sufficient priority by Government departments and public bodies. Looking at the Home Office in particular, which at the time that the duty was introduced was responsible for management of the criminal justice agencies, the consultation process in the development of their gender equality scheme was very limited and took place at the last minute and many of the recommendations made by external stakeholders with regards to women in the criminal justice system were disregarded. Moreover, not only was the process of developing the scheme inadequate, but the scheme itself fails to address many of the key issues related to women who have contact with the criminal justice system. The transition to the Ministry of Justice will be an opportunity to re-examine the priorities for the criminal justice agencies as part of developing a new gender equality scheme, building on the Department for Constitutional Affairs' (DCA) scheme.

There are, however, examples of good practice. The DCA's scheme (before its transformation into the Ministry for Justice) is well-developed, and the Department has created an Equality Reference Group to oversee the implementation and

development of the scheme. The Crown Prosecution Service has also seized the initiative in developing a single equality scheme, published in November 2006, which covers gender, race and disability, as well as religion or belief, sexuality, gender identity and age and has publicised its intent to develop an integrated approach to violence against women. In addition, the Department for Communities and Local Government's gender equality scheme commits the department to addressing violence against women, while the Cabinet Office has committed in its gender equality scheme to examining how it can play a role in tackling violence against women. The Department of Health has also published a single equality scheme, which specifies violence against women as an issue for the Department.

The Commission is delighted that a template for gender equality schemes, created for police services by the Home Office, the Association of Chief Police Officers and the Association of Police Authorities, included many of the recommendations of the Commission among its suggested actions. These included ensuring that female staff are available on all shifts, considering women's concerns about safety in custody suites and prioritising actions to address violence against women.¹¹⁴ Many of these recommendations are included in individual police services' gender equality schemes, an important first step to ensuring that these needs will be met. All probation areas should have published gender equality schemes, which will be an important tool in assessing their work on gender issues.

The duty is of vital importance to the development of the National Offender Management Service (NOMS). Under the duty, responsibility for contracted out processes remains with the public body and gender equality must be built into the commissioning process. If this is not the case, the commissioning body will be in breach of the duty. Given the centrality of commissioning to the new NOMS structure, it is essential that NOMS is proactive in ensuring that all new contractors meet their obligations under the gender equality duty, training all procurement staff on gender equality in procurement and monitoring existing contracts to ensure that they are compliant with the duty. NOMS will also need to address at a national level the potential tension between NOMS' focus on high risk and dangerous offenders, and its

obligation to meet the needs of women offenders, who are underrepresented in these groups.

As well as the gender equality duty, two further public sector equality duties already exist. In 2001, a duty was placed on public bodies to promote race equality, and a disability equality duty was introduced in December 2006. Both of these are extremely important, given the overrepresentation of both groups among women in the criminal justice system. There needs to be a real focus on how the gender equality duty can work with these other equality duties to ensure that the needs of women from all backgrounds in the criminal justice system are understood and met.

However, the gender equality duty is about more than developing gender equality schemes and carrying out gender impact assessments, although both are important in identifying challenges, for example the challenges posed by violence against women and the needs of women offenders, and addressing them. It is about taking action on the areas of greatest concern, so that real change is achieved. At present, good practice in the criminal justice system is sporadic and geographically varied and successful pilots are often not mainstreamed. The gender equality duty imposes an important obligation to ensure that good practice is developed and shared, both in terms of national policy making and in the delivery of local services. It is also an important lever in addressing existing failures in policy and practice which disproportionately disadvantage women.

Fundamentally, there needs to be a shift in public bodies' thinking about equality so that it becomes an issue that is central to all aspects of policy development and service delivery. Success in this will require strong leadership and a focus on outcomes. If this is to be achieved, it is essential that the implementation of the gender equality duty is not seen as a mere bureaucratic exercise to complete but as a tool to help make better use of resources in meeting the different needs of all service users and staff.

Section 6

Conclusions

Much has been achieved in the years since the Commission was established and the last year has seen a number of important action plans and reports on women and the criminal justice system, the most significant being the *Corston Report* and the *Cross-government action plan on sexual violence and abuse*. There are also a number of examples of good practice and pilots which show considerable promise. This work is welcome, and much of it has long been called for by this Commission. However, with the introduction of the gender equality duty, it is essential that existing pockets of good-practice are made available to all women. It is also important that improvements in policy are mirrored by corresponding changes in practice. Good policy on paper is not the same as real progress on the ground. The actions and measures that are recommended and promised in these reports must now be put into action, creating a criminal justice system that truly is responsive to women's needs.

With a change in Prime Minister and the creation of a Ministry of Justice, now is the time to take a broader look at criminal justice policy, particularly with reference to offenders. Whilst many women offenders are vulnerable, few are dangerous and it is inappropriate that so many are imprisoned. Women offenders need different treatment and the new Government under the leadership of Gordon Brown must develop the justice system without delay to ensure that it meets women's needs. The publication of the *Corston Report* provides a unique opportunity to address the particular challenges presented by women offenders. An approach based on the report's recommendations, which echo the recommendations made by this Commission in the past and in this report, would see community penalties replacing prison for all but the small number of serious and dangerous female offenders and the creation of a national network of specialist, women-centred community services. It would also connect these moves with an integrated approach to violence against women.

More fundamentally, if the criminal justice system is to function effectively and gain public confidence, it needs to do more than simply 'manage' women as offenders or as victims. It is essential that women are seen as and treated as individuals, not through their status as victims or offenders. The extent to which many women offenders have themselves been the victims of sexual abuse and domestic violence must

be recognised and addressed. This has significant implications for policy making and service delivery.¹¹⁵ The introduction of the gender equality duty, which puts gender at the heart of policy making, is an opportunity to develop a new direction in penal policy with regards to women in the criminal justice system. If the Government wants to seize this opportunity and create a system that is suitable for women, Labour's fresh start in Government must include a bold agenda for women throughout the criminal justice system.

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About Fawcett

Fawcett works to close the inequality gap between women and men at work, at home and in public life. We are proud to trace our roots back to 1866, when Millicent Garrett Fawcett began her lifetime's work leading the peaceful campaign for women's votes. Today we campaign so that all women can enjoy fair treatment and live with dignity and respect.

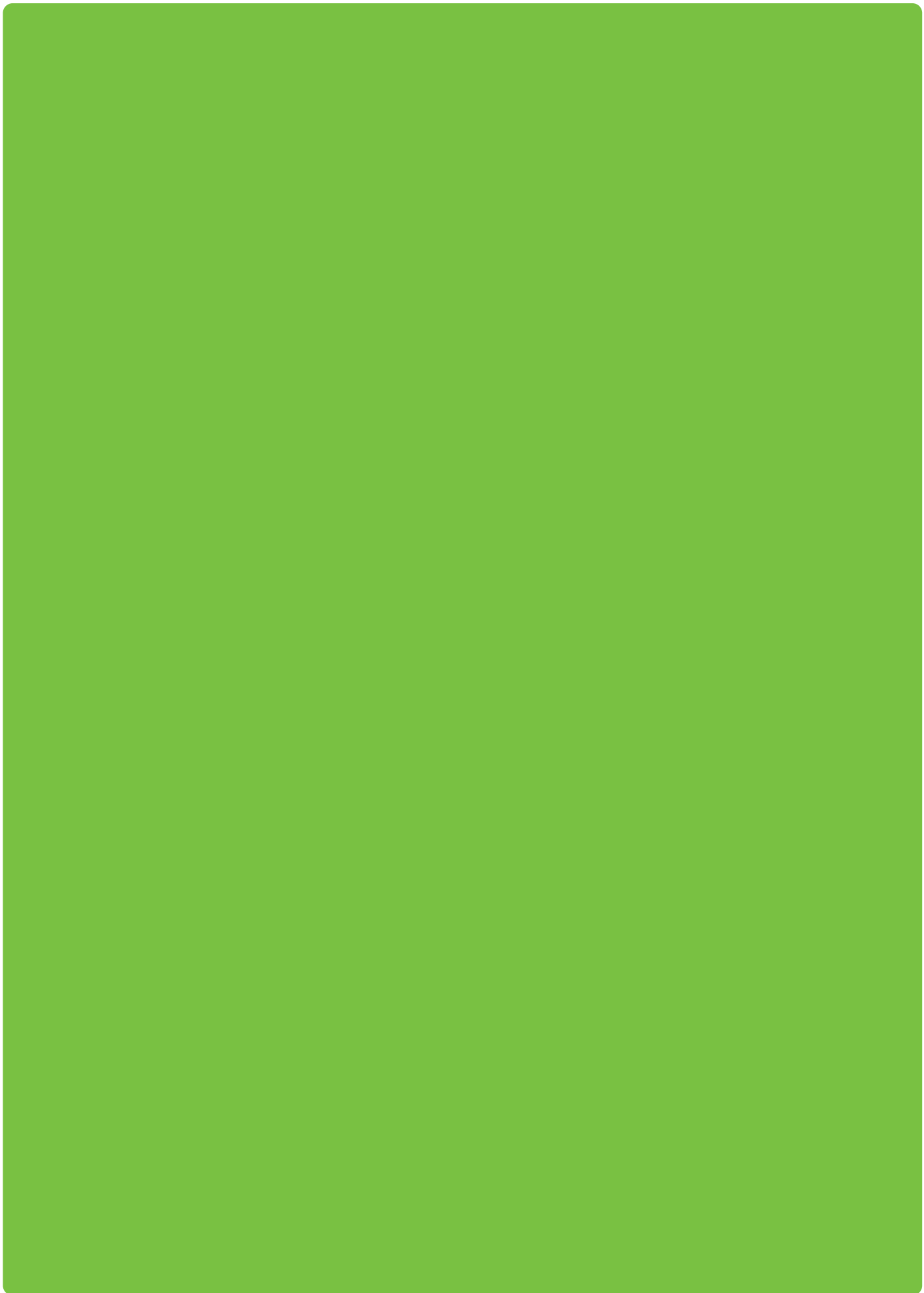
We campaign to transform women's lives by tackling the vicious cycle of inequality from all angles. We do this by focusing on women's access to:

- **Power:** a woman's right to exercise power and take the decisions that affect her life;
- **Money:** a woman's right to fair pay and pensions and to live free from poverty and discrimination;
- **Justice:** a woman's right to live free from violence and enjoy fair treatment.

We set the gender equality agenda through innovative campaigns supported by robust research, a national network of supporters and activists and unrivalled access to decision makers within politics, business and the media. We ensure that women's voices are heard in every debate and offer pragmatic solutions that never fail to put women first.

For more information on Fawcett and our work visit www.fawcettsociety.org.uk

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