

Justice and Equality

Second Annual Review of The Commission on Women and the Criminal Justice System



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Foreword

It is three years since the Fawcett Society established its ground-breaking Commission on Women and the Criminal Justice System. Expertly chaired by Vera Baird QC MP, the Commission examined women's treatment as victims, as women accused or convicted of offences, and as workers within the system across England and Wales. Our experienced and dedicated Commissioners are drawn from across the criminal justice system and with representation from all three main political parties. In 2004 they found that women face systemic disadvantage in a system that has been designed principally by men for men. Since then Commissioners have worked with parliamentarians, policymakers and senior practitioners to achieve real change. This is their second annual review.

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Section one

Introduction

The initial phase of the Commission on Women and the Criminal Justice System, which took place in 2003, focused on gathering a large volume of evidence directly from women with experience of the system. In addition, we heard from experts and looked at existing research. We concluded that women are disadvantaged in all parts of the criminal justice system and we found that there is a clear relationship between the treatment of women working in the system and the experiences of female victims, suspects and offenders. We made a series of recommendations for each sector and our Final Report¹, published in March 2004, received widespread national and international attention.

In March 2005, we published *One Year On*², our first annual review of criminal justice developments and progress on our recommendations. We found two key challenges: the need for a strategic approach to address violence against women, and an urgent need for steps to be taken to prevent self-inflicted deaths and injuries in women's prisons. We were delighted that the Government had committed to addressing the systemic inequality we had uncovered by accepting our principal recommendation of imposing a duty on public bodies to promote equality between women and men. This duty is now enshrined in the Equality Act 2006 and will come into force next year.

One Year On was sent to parliamentarians, officials and practitioners in all criminal justice agencies including every Chief Constable, Regional Offender Manager and Governor of a women's prison. In the past year we have met with Ministers and senior civil servants. We have also held a series of thematic seminars on women in the legal profession and the judiciary, women offenders, and women victims. These took place under Chatham House Rules to facilitate frank discussion. We are very grateful to all those who have worked with us during the last year.

This report comes at a time when proposed reforms to the system, such as a new method of appointing judges and restructuring offender management, could have a

significant impact on women. We have seen excellent work in some areas and pay credit to those who are striving for change. But both policy and services continue to be patchy and the 'post-code lottery' we identified in 2003 remains in place. We believe this signifies that a change in cultural attitudes needs to take place. Once again, we make robust recommendations for each sector. These are our key proposals to the Government:

The Gender Equality Duty

From April 2007 all public bodies, including government departments and criminal justice agencies, will be subject to a duty to have due regard to the need to promote gender equality, similar to the race equality duty introduced after the Stephen Lawrence Inquiry, and the forthcoming disability equality duty. In the criminal justice context, the gender equality duty will require public bodies to have due regard to the need to eliminate unlawful sex discrimination and to promote equality of opportunity between women and men. To this end they will need to ensure that policies and services take account of the differences between women and men. This is not a 'formal' equality approach – treating women and men the same - as is commonly thought, but requires treatment to be afforded according to need. The law will also apply to private organisations carrying out 'public functions', for example companies who transport prisoners to court.

It is likely that, to implement the duty, public bodies will be required to collect statistics broken down by gender in order to be able to plan and deliver services according to need. We are, therefore, very disturbed by the Government's decision not to publish its annual Statistics on Women and the Criminal Justice System under Section 95 of the Criminal Justice Act 1991 at a time when the collection of gender disaggregated data will soon become a practical and legal necessity.

An equality duty on the Greater London Authority has been in force since 2000 and is proving to be effective

Section one continued

Introduction

in helping to improve services for women in London, for example on domestic violence and rape. We believe that, at a national level, the gender equality duty, if implemented properly, has the potential to radically improve women's treatment but the work in preparing for this change must begin now. We hope that this report is helpful in pointing out some of the areas in the criminal justice system where the duty needs to have most impact. We warmly welcome the Government's further commitment to introduce a Single Equality Act to harmonise discrimination law and this must be a platform for further progress towards equality.

A strategy to end violence against women

The British Crime Survey shows that almost half of women in England and Wales have experienced domestic violence, sexual assault or stalking³. An independent evaluation published by the Women's National Commission gave the Government an overall score of just 1 out of 10 in respect of an integrated approach to addressing violence against women⁴. The Commission has found that, whilst there are sound policies in some parts of the system on specific aspects of violence against women, there are many gaps in policies and services. Furthermore, there is poor communication both between criminal justice agencies and within and across government departments. This is hampering women's protection and access to justice. The publication in 2005 of a Domestic Violence National Action Plan, reaching far beyond one department, demonstrates that the benefits of a strategic approach are beginning to be recognised. Indeed, the London-wide domestic violence strategy has cut domestic homicides by one third since it was implemented in 2001⁵.

We are therefore very pleased that Fawcett has joined forces with the Women's National Commission, Amnesty International UK and a host of others to campaign for a strategic and integrated approach to ending violence against women. We urge the Government to take up this challenge urgently.

Tackling the crisis in women's prisons

As of 3rd March 2006 there were 4,428 women in prison⁶, a rise in population over the last decade of 126%⁷. The vast majority of women are sent to prison for non-violent offences and the appallingly high levels of self-harm and suicide demonstrate the vulnerability of this group. In 2005, there were four self-inflicted deaths in women's prisons, down from 13 deaths the year before and we know that there are many dedicated staff in prisons who carry out life-saving work on a daily basis. But four deaths is not a success and we believe there has been a collective failure by government and criminal justice agencies to deal effectively and humanely with vulnerable women. Last year Baroness Hale delivered the Longford Lecture in which she set out how women offenders differ from men, and justify different treatment⁸. The new gender equality duty will enshrine in law precisely the philosophy of requiring treatment according to need rather than the same treatment of women and men.

In March 2005, at the launch of *One Year On*, the Home Secretary announced £9.15 million for pilot community initiatives specifically for women offenders over a four year period. We welcome this example of good gender-specific policy-making. However, the initiatives are limited to two areas and this pot of money is very small when compared with the cost of imprisoning women, estimated at around £35,000 annually for every female prisoner⁹. We believe the evidence on the need for specialist, women-centred community services to better punish, reform and rehabilitate vulnerable women currently at risk in prison is overwhelming. The Government should act quickly to ensure these services are available in all parts of the country.

Section two

Police

In the summer of 2005, we sent *One Year On* to every Chief Constable of Police highlighting our key concerns, particularly the low conviction rate for rape and the lack of women in senior positions. After working with local MPs, we have heard from a quarter of the 43 Police Forces. The responses show a mixed picture; whilst there is good work going on in many areas to improve the treatment of women, this is not a priority for all forces.

Victims

Rape victims who gave evidence to our original inquiry made it clear that the criminal justice process is an ordeal in itself and cases often end in an acquittal. The vast majority of women choose never to report the offence. There is currently a stock-take of the Rape Action Plan, drawn up after the highly critical Police and Crown Prosecution Service (CPS) Inspectors' report in 2002 on rape investigations and prosecutions. Early indications suggest that there continues to be inconsistent provision of rape services across the country with some forces still not having specialist teams in place¹⁰. A follow-up joint thematic inspection will be published this year and in the meantime we urge all police forces to develop policies on rape which include specialist training for investigation officers and first response instruction for all frontline staff.

Concerned about continuing low conviction rates, the Metropolitan Police Service (MPS) recently carried out a review of rape investigations in the capital. This found that more rape suspects are being charged since the introduction of its model rape policy, Project Sapphire, in 2001. However, there are wide differences in the treatment of rape from one London borough to another¹¹. The review recommended that MPS should bring all offences of violence together under one Public Protection Command - an approach that could encourage joined-up work on related offences, such as rape within a domestic violence context.

Witness Care Units are developing across the country under No Witness, No Justice, a joint Police/CPS initiative.

They will improve information given to witnesses and their general care throughout the case. There are also proposals for Victim Care Units¹². Women who gave evidence to us complained of poor communications and we therefore welcome these initiatives. However, we make the point that specialist investigation by fully trained officers is the first requirement from the police for victims of violence. Comfort and support are no substitutes for that. Further, the Witness Care Units must be inclusive and never seek to 'own' witnesses, who will often need specialist counselling not available from the police or CPS and some of whom will have made, and will need to retain, relationships with crisis workers independent from the police investigation.

Sexual Assault Referral Centres (SARCs), often jointly run by the police and health services, provide specialist medical and support services to rape victims including forensic medical examinations, counselling, advice on sexual health and access to the police if the complainant wishes. It is our view that women in all parts of the country should have access to these centres of excellence. Three years ago when we first looked into the treatment of rape victims there were seven SARCs and there are now 14, with a further six being funded from the Victims Fund. However, local agencies report a lack of engagement from some statutory bodies, particularly health, in getting them off the ground. This reinforces the need for a cross-departmental strategy on violence against women to ensure that non-criminal justice agencies play their part in addressing this serious problem.

Whilst SARCs provide immediate support, ongoing services will come from local statutory bodies as well as specialist community services currently supported by the Victims Fund. It is not yet clear for how long this stream of funding will remain in place and this instability causes real disruption to the planning of small organisations, for instance in the recruitment of rape counsellors. We urge the Government to give a commitment to ongoing ring-fenced funding of sexual

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Police

violence services, so as to set up an infrastructure which can then be linked into a 24-hour rape helpline.

As with rape and other forms of gender-based abuse, women who experience domestic violence often do not report these crimes to the police and historically have suffered a poor police response if they do. We encountered poor communication between agencies, lack of training for frontline staff and a high attrition rate, whereby cases 'fall out' of the process. Domestic violence accounts for 17% of all violent crime¹³ and has the highest level of repeat victimisation of any crime. Whilst improvements have been made, implementation of national domestic violence guidance and training is still patchy. It is high time it was consistent across the country and the shift in thinking that has occurred in some parts of the Police Service needs to happen everywhere.

Vulnerability to ongoing victimisation is one of the most important issues for justice agencies to address, yet women are still falling through the gap between civil procedures – often related to child contact – and criminal justice procedures. The Domestic Violence Crime and Victims Act 2004 introduces non-molestation orders which, if breached, can be prosecuted in either the civil or criminal courts. Support services welcome this flexible approach considering that it puts the victim's safety first, although some in the police believe that a breach should be a criminal offence only. However the provisions are not yet in force nearly two years after the Act became law and it is unclear how they will be implemented.

In previous reports, we have highlighted how women from some communities can be particularly isolated and lack access to justice. For instance the Female Genital Mutilation Act 2003 came into force two years ago but has never been used, though support agencies report that there is still an ongoing problem in some communities¹⁴. Women who have insecure immigration status and are dependent on their partners have no

recourse to public funds if they are being victimised. In the past, refuges have sometimes been able to support these women without charge, but that is an impossible ongoing demand for organisations operating on such a low budget. There are serious concerns about the lack of support available to such women. The Government set up the Last Resort Fund but it ran out of cash over a year ago and further Government proposals are urgently awaited. In the meantime some police forces are working well with agencies to develop good practice on these issues.

Following a review of prostitution, the Government recently announced that it will be focusing resources on preventing individuals becoming involved in prostitution, prosecuting men who use prostitutes and enabling women to exit prostitution. Tolerance zones will not be sanctioned but small brothels for women working in twos and threes may be licensed on the basis that there may be more safety in numbers¹⁵. Political attention has also turned to the plight of women who are trafficked into the UK for sexual exploitation. We welcome the Association of Chief Police Officers' (ACPO) campaign to tackle the illegal exploitation of trafficking victims under Operation Pentameter. We believe that there are challenges for the way the police and other agencies respond to these women, particularly as there are very few services for them. The Government has proposed an Action Plan and is considering ways of providing protection to victims¹⁶, however the Poppy Project is still the only specialist support in England and Wales. We call on the Government to immediately ratify the Palermo Protocol¹⁷ which requires States to provide a full range of support and provision for victims of trafficking. We also recommend that the Government signs up to the Council of Europe Trafficking in Human Beings Convention which guarantees a 30 day 'breathing' period for victims to access support.

Plans are underway to restructure the Police Service into a smaller number of 'super-forces' with the stated aim of delivering efficiency savings and better services. Some

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Police

forces have welcomed this and are already working together, whilst others have expressed concern. The Association of Police Authorities has warned against a 'one-size-fits-all' approach, which could ignore the needs of local communities. We believe that greater economies of scale may offer an opportunity to ensure best practice services for women across the country. But there is a danger that large forces could become dislocated from the grassroots, for example women who have been raped having to travel a great distance to their 'local' SARC if there was just one in the force area.

A new National Policing Improvement Agency will bring together national policing organisations including Centrex which develops guidance and training on rape and domestic violence. The purpose of this new body is to support forces in implementing national programmes. One of its first priorities will be implementing the recommendations of the Bichard Inquiry into the handling of police intelligence in the Soham murder case. This more centralised body has the potential to drive up standards and ensure consistency in the way that women in all parts of the country are treated.

Suspects

Women who had been arrested and taken to the police station told the Commission's original inquiry that they found custody suites to be intimidating and macho environments. On top of the ordinary pressure of being under arrest, women are additionally anxious if they are pregnant or menstruating, or worried about the care of their children or elders. We continue to recommend that women should have immediate access to a female member of staff not involved in her case and for custody welfare lists to include a question about the care of dependents.

Conditional cautioning is a new initiative whereby a suspect who admits the offence is given a caution with conditions attached instead of being charged. The scheme is being implemented in six police forces and is

likely to be rolled out nationally following an evaluation this year. The purpose is to attach conditions which address the behaviour behind the offence or to make reparation for it. If linked into the right kind of community services, this could work effectively for women who tend to commit low-level offences and who would benefit significantly from accessing support at an early stage. However, there remains a dearth of evidence on women suspects in general and we would urge the Home Office to carry out research in this area.

Workers within the system

At the time of our original inquiry in 2003, we found that female employees still felt the legacy of the sexual division of labour that was the formal police structure until it was outlawed by the Sex Discrimination Act 1975. Today, women still tend to be clustered in certain areas of work, for example they form around two-thirds of police staff but only a fifth of police officers. During the course of our work we have seen a gradual increase in that proportion and there continues to be a better gender balance among Special Constables and Police Community Support Officers where women represent 32% and 42% respectively of these groups¹⁸. The number of Black and Minority Ethnic (BME) women officers has more than doubled since 1999 but, whilst there are over 1000 BME women officers, there are still no BME women Chief Constables¹⁹.

The British Association for Women in Policing (BAWP) gave evidence to our original inquiry about the challenges that women working in the police face. They have concerns that the restructuring proposals (see above) will squeeze out talented women working at senior levels as a small pool of women will be competing for fewer senior jobs. For instance there are currently only six female Chief Constables (including two Acting Chief Constables) out of 43. They are also worried that if the proposals lead to redundancies in the lower grades, this will disproportionately impact on women who are clustered there. As these proposals develop, we believe it is vital to ensure that the progress that has been made on diversity in the police is not lost.

Section two continued

Police

Studies in the early 1990s indicated that there were high levels of sexual harassment in the Police Service and a recent report for the Home Office found that sexism and homophobia are still widespread in the police. The authors found that; "*Sexist language and behaviour was all but endemic within the police service*" and that senior officers were failing to tackle the problem²⁰.

Once again, we recommend that positive action schemes to ensure the promotion and recruitment of talented women should be rolled out across all police forces. A best practice example is the Metropolitan Police Service's training programme which specifically aims to increase female and ethnic minority representation at the rank of detective inspector.

We now make the following recommendations for the police:

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

- 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.
- Women suspects in the police station should have immediate access to a female member of staff who is not involved in the case.*
- Custody welfare checklists should include a question about the care arrangements of suspects' dependants.*
- The Home Office should carry out research on the differential treatment of male and female suspects.
- Plans to restructure police forces must ensure that progress on equality in employment is built upon.
- Positive action schemes to ensure the recruitment and promotion of talented women should be rolled out nationally across all police forces.*

* indicates existing recommendations which have yet to be acted upon

Section three

Crown Prosecution Service

At the end of November 2005, a shocking survey by Amnesty International showed that 30% of people surveyed think that a woman who is raped is at least partly to blame if she is drunk²¹ and such attitudes are likely to pervade those working in the criminal justice system. The same week the survey was published, a rape trial collapsed in which the 21-year-old complainant was so drunk at the time of the incident that she was unconscious. Recent changes to the law²² provide that a person must be capable of giving free consent to sex, a requirement inconsistent with unconsciousness. This brought into sharp focus the way rape cases are prosecuted and concern about the skill and expertise of barristers instructed by the CPS to prosecute these cases. We raised these issues with Ken Macdonald QC, the Director of Public Prosecutions and recommend that, to demonstrate compliance with their obligations under the gender equality duty, the CPS should only instruct advocates to prosecute serious sexual offences in court if they have attended accredited training. We believe this training should be provided by the CPS itself.

This year has also seen the roll-out of specialist rape co-ordinators and prosecutors, working in parallel to specialist domestic violence practitioners. We are concerned to hear from local support services about the lack of expertise of some of these practitioners and recommend that there should be mandatory accredited training for these specialists. Furthermore, the CPS should evaluate the effectiveness of this new initiative. As previously mentioned, the CPS and Police Inspectorates are carrying out a follow-up thematic inspection on rape investigations and prosecutions and we await its findings.

At the time of our original research in 2003, victims told us that they had little contact with the CPS and it was apparent that there was little understanding that the CPS prosecutes cases on behalf of the state, rather than represents the complainant. Much has been done at a policy level since then to improve this situation. A Code of Practice for Victims sets out the minimum service victims can expect from all agencies and there will soon be a Victims Commissioner. The No Witness, No Justice initiative is proving to reduce the number of trials that do not go ahead because of witness issues²³. Guidance has been developed around domestic violence to ensure that statutory agencies work in conjunction

with Independent Domestic Violence Advisors (previously known as advocates) who help to ensure the victim's safety, advise her of criminal and civil justice processes and link her in to statutory and support services. We believe that consideration now needs to be given to how No Witness, No Justice can best deliver the kind of specialist services that victims of rape and other gender-based violence need. In addition, the CPS is piloting pre-trial interviews with witnesses to assess the reliability of evidence and inform decisions about prosecutions and we look forward to an evaluation of this.

In relation to women accused of offences, we welcome the fact that the CPS is beginning to prepare for its future obligations under the gender equality duty. One way it has done this is by carrying out an equality impact assessment on the new statutory charging regime. The organisation is also making progress on employment matters. Unusually in the criminal justice system the CPS is a female-dominated organisation with around 8000 employees. Two-thirds of CPS staff are women, historically located in the lower grades. However, the number of women working at senior civil service level increased from 27% in 2004 to 33% in 2005 and the proportion of female Chief Crown Prosecutors is also up to 24%²⁴. We are heartened by the continuing good work of the Law Scholarship Scheme introduced in 2003 during the course of our original inquiry. In the current year of this scheme, 70% of Law Scholars are women and 35% are BME Law Scholars²⁵.

We now make the following recommendations for the Crown Prosecution Service:

- In cases of rape and serious sexual offences the CPS should only instruct advocates who have undergone accredited training.*
- 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.*

**indicates existing recommendations which have yet to be acted upon*

Section four

Legal Profession

Although women were first admitted to the legal profession in 1922, we found that women working as solicitors and barristers experienced deeply entrenched cultural and practical barriers to career progression and large numbers of them were leaving the profession. Women were significantly under-represented at senior levels generally, and particularly as Queen's Counsel (QCs) and Partners in law firms. This was having serious repercussions for the High Court which is largely drawn from the pool of QCs. The system for appointing QCs was widely perceived as favouring an elite group and was in danger of losing public confidence.

Following a two-year holding period for applications, a new QC appointments system, set up by the Bar Council and the Law Society, is now in its first year. Candidates complete a self-assessment form, applications are then sifted and references are taken up by a selection panel which includes Human Resources expertise. The Panel make recommendations to the Secretary of State for Constitutional Affairs who then puts the recommendations to the Queen. The new process is transparent and seemingly much more objective and we welcome the root and branch reform that has taken place since we originally highlighted the systemic inequalities that women and Black and Minority Ethnic candidates face.

We met with the new body, Queen's Counsel Appointments, and the Department for Constitutional Affairs (DCA) in October 2005 to discuss how the new process might impact on women in the profession. Issues discussed included the application fee of around £2000 and the self-assessment process. Concerns have been raised that self assessment may disadvantage women if, because of historical disadvantages in the profession, they have less confidence in their abilities than men and this needs to be monitored. We also believe that this new process needs to be audited and for resources to be made available so that it can reach out to under-represented groups. It was announced in November 2005 that 15% of the first group of applicants are women, compared with 10% of female applicants in the last round of the previous system²⁶. Whilst we

welcome the increase in applications from women, we await to see the outcome of the application process in April 2006.

Queen's Counsel Appointments was set up by the legal profession and is probably a private entity. However its functions are likely to be regarded as being of a public nature, not least because the current approach is to recruit High Court judges from the pool of QCs. We therefore seek confirmation from the Government that it is to be treated as a 'public body' and subject to the requirements of the forthcoming gender equality duty as well as the race and disability equality duties.

The solicitors profession has grown over the last decade and there are now just over 100,000 solicitors with practising certificates with an increase in the proportion of women and BME solicitors. However, whilst 42% of solicitors are women, they still tend to be in more junior positions – just 23% of partners in law firms are women²⁷. The most recent figures show that there are around 11,500 self-employed barristers, of whom only 3,400 are women²⁸, but women continue to form the majority of those entering the profession and qualifying²⁹. We welcome the move by DCA Minister, Bridget Prentice MP, to write to the top law firms and barristers' chambers asking them to publish statistics about the demographic make-up of their lawyers.

The Bar Council Equality and Diversity Code states that chambers should have written policies allowing barristers to take parental leave, career breaks and work flexible hours. It also recommends that chambers should offer their members taking maternity leave or leave following adoption, a minimum period of six months free of chambers' rent and expenses, amongst other things. The Bar Council is taking steps to encourage members to comply with the Code and is conducting an ongoing exit survey to build up information about why people are leaving the profession. It is also running a new course for women returning from maternity leave. We welcome these moves and recommend that the Bar Council continues to make every effort to ensure compliance with the Code.

Section four continued

Legal Profession

The DCA has published its White Paper, *The Future of Legal Services: Putting Consumers First*³⁰, following the report of Sir David Clementi³¹ on the regulatory framework governing the provision of legal services. The White Paper gives no indication that consideration has been given to the equality and diversity implications of any changes. We consider that it should be put beyond doubt that any new regulatory bodies (the Legal Services Board, Front Line Regulators and the Office for Legal Complaints) should be subject to the equality duties. We welcome the observations in the White Paper that Alternative Business Structures may provide opportunities for more flexible working patterns and advantage women in the profession. However, we recommend that any new business models should be closely monitored to check for their impact on women and BME lawyers. In particular, we recommend that in implementing the 'robust licensing regime' Front Line Regulators use their powers to ensure that gender equality objectives are mainstreamed by requiring that licensed firms properly promote and respect a gender equality agenda in relation to their staff, lawyers and service users.

We now make the following recommendations for the legal profession:

- An audit process of the new system of Queen's Counsel Appointments should be put in place.
- Resources should be made available to allow Queen's Counsel Appointment to reach out to engage with under-represented groups.
- Confirmation is sought that Queen's Counsel Appointments will be subject to the gender equality duty.

- The Bar Council should continue to take all steps necessary to ensure its members fully comply with the Equality and Diversity Code.*
- Regulatory bodies should be subject to the gender and other equality duties.
- 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 services users.

**indicates existing recommendations which have yet to be acted upon*

Section five

Courts and Judiciary

Victims

Service users often say they find courts to be intimidating and confusing places. This can be especially so for female victims of rape and other violence who have to recount their ordeal in a male-dominated environment. Section 41 of the Youth Justice and Criminal Evidence Act restricts the use of a rape complainant's previous sexual relationships in order to discredit her as a witness and we await publication of a Home Office evaluation on whether this has been effective.

What is clear is that convictions for rape continue to fall. The latest known figures are for 2004 when just 5.3% of reported cases resulted in conviction³², down from 24% in 1985³³. This issue has risen on the political agenda and the Solicitor General is now giving consideration to the use of expert evidence in court on the psychological impact of rape, such as why a woman might not report the attack immediately³⁴. There is an urgent need to tackle the perception that women who are drunk will be unable to show lack of consent and consideration is also being given to an amendment to rape laws. We warmly welcome the Home Office's campaign targeted at young men warning them to be sure the woman is consenting to sex.

When we undertook our original inquiry specialist domestic violence courts were being piloted and this programme is now being extended to 25 courts. The National Domestic Violence Action Plan published in March 2005 puts Independent Domestic Violence Advisers at the heart of the work on domestic violence. Evidence has shown that they reduce repeat victimisation, reduce attrition rates, increase victim satisfaction and confidence, and are cost effective³⁵. We believe that specialist domestic violence courts

should be extended to all areas. For victims, closer integration between the civil and criminal processes is essential and a combined civil and criminal court is in operation in Croydon.

Special measures for vulnerable and intimidated victims, such as screens between the defendant and complainant, have also been introduced in courts. We found that special measures were not being implemented properly in some areas because courts lacked the right facilities, a problem that the recent unification of the Magistrates' and Crown Courts could address. Child witnesses are allowed to give evidence in chief via video and then be examined by the defence advocate via a television link. This is now being piloted for adult witnesses in Wood Green and Sheffield Crown Courts. Whilst moves to protect victims in the court process are clearly welcome, this has to be balanced with any negative impact on the jury's perception of the victim's credibility.

Defendants and offenders

For women offenders before the courts there remain serious concerns that judges and magistrates are becoming harsher in their response to less serious offences leading to a steep rise in the number of women in prison. A woman convicted of theft or handling stolen goods in the Crown Court is now twice as likely to go to prison as she was in 1991. In the Magistrates' court, the rate of increase in the use of custody for women is higher³⁶. The Criminal Justice Act 2003 introduced new short prison sentences. We have raised concerns with the Home Office that a sentence of Intermittent Custody (sometimes known as weekend custody) could doubly punish women if they have to travel further distances from home than men because of the geographical

Section five continued

Courts and Judiciary

spread of women's prisons (see Prison section below). We understand that an evaluation of this pilot will take account of gender differences and look forward to its publication this year.

The introduction of another short prison sentence, Custody Plus, which contains an element of imprisonment followed by a period of supervision in the community, has been delayed until the autumn. Experts and commentators have expressed concern that Custody Plus has the potential to accelerate the number of women sent to prison if sentencers are attracted to the 'short, sharp shock' of imprisonment followed by supervision. It is widely recognised that existing community provision for women is inadequate (see Probation section below) and this, combined with insufficient numbers of probation staff, means that the 'support' element is not yet in place leading to the real possibility that women could breach and be recalled to prison. With this in mind, we ask the Home Office to carry out a pilot gender impact assessment of Custody Plus before it comes into force.

We have previously raised concerns about the use of Anti-Social Behaviour Orders (ASBOs) on particular groups of women, such as prostitutes and women with mental health problems. We believe it is vital that the Sentencing Guidelines Council should take account of the different impact sentencing has on women and men when drafting guidelines, as should the Home Affairs Committee when scrutinising draft guidelines. The gender equality duty, which will apply to the Sentencing Guidelines Council and Sentencing Advisory Panel, is likely to require public bodies to obtain information where it is lacking. In light of the disproportionate rise in the female prison population, we recommend that the Sentencing Advisory Panel hold a thematic review of women and sentencing.

The Commission has made ongoing recommendations that the health sector, particularly psychiatric services, should be linked more closely into the courts to ensure

that there is swift access to mental health services for the many court users who need them. Joint work is now being carried out by the Home Office and Department of Health on court mental health liaison and diversion schemes. In December 2005 we met with Department for Constitutional Affairs Minister Harriet Harman to discuss our recommendations that courts should be obliged to have a written report on the impact of imprisonment on the defendant's mental health. Furthermore, we said that women should not be sent to prison for the purpose of obtaining medical reports. Many women before the courts have children and the Prison Reform Trust estimate that over 17,000 children a year are separated from their mothers by imprisonment³⁷. We therefore also continue to recommend that courts should be obliged to have a written report on the impact of imprisonment on defendants' dependents. We believe these are very practical measures that would bring home to sentencers the impact of their decisions on the lives of vulnerable individuals.

Workers within the system

One of the areas where we have seen real progress over the last three years is policy on the appointment of judges. The lack of women working at senior levels in the judiciary was immediately apparent to us when we began our work. There was a healthy gender balance among the lay magistracy, who are unpaid, but there were no women at the top, in the House of Lords, and there never had been. We received many submissions saying that a system that dispenses justice must itself be seen to be fair. The evidence we gathered suggested strongly that the lack of diversity in the judiciary and unfair selection processes were having an impact on confidence in the system among the wider community.

There is now one woman judge out of 12 in the House of Lords and two women in the Court of Appeal. Women represent 10% of High Court judges, 11% of Circuit Judge, 14% of Recorders, one fifth of District Judges and around half of Magistrates³⁸. The Equal Opportunities Commission estimate that equality

Section five continued

Courts and Judiciary

between women and men in the senior judiciary will take 40 years to achieve³⁹. We pay tribute to the work of the Commission for Judicial Appointments which was set up in 2001 to audit the QC and judicial appointments process. Its reports have been robust and thorough in exposing subjective and discriminatory practices. Chaired by a non-lawyer, Sir Colin Campbell, it has questioned traditional practices and found 'systemic bias' against women and ethnic minority lawyers⁴⁰. Prompted by a chorus of concern about judicial appointments, the Government has responded by developing a Judicial Diversity Programme and, as discussed previously, the legal profession has set up a new QC appointment process.

Most significantly however, the Constitutional Reform Act 2005 establishes a new and independent body to oversee judicial appointments, the Judicial Appointments Commission (JAC). The JAC begins work in April under its first Chair, Baroness Usha Prashar, a highly valued former member of our Commission. Inaugural Commissioners have also now been appointed with a mix of lay and judicial representation. The Act requires the JAC to have regard to diversity and we hope that it will prioritise this from the start as structures and processes are put into place so that talented women and men from all backgrounds are represented in the judiciary. It is important that this new body is given the best possible start and therefore an adequate budget if it is to carry out its vital work and restore public confidence in the process. Furthermore, it must operate truly independently from the DCA.

We now make the following recommendations for the courts and judiciary:

- Specialist Domestic Violence Courts should be extended to all areas.
- The Home Office should carry out a pilot gender impact assessment on Custody Plus before it comes into force.

- The Sentencing Guidelines Council and the Home Affairs Committee should take account of gender differences when drafting and reviewing sentencing guidelines.*
- The Sentencing Advisory Panel should undertake a thematic review of women and sentencing.
- Psychiatric and voluntary agencies should work with local courts to provide fast-track assessment and community treatment packages.*
- 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.*
- 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.*
- 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.*
- 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.

**indicates existing recommendations which have yet to be acted upon*

Section six

Probation

Whilst women are a majority (52%) of the general population, they are a minority of offenders representing around 14% of those under probation supervision⁴¹. Women are far less likely than men to become involved in crime and when they do, they usually commit much more minor offences and over shorter periods of time. A very small proportion of women offenders commit violent offences and it is exceedingly rare for women to commit sexual crimes. But women's routes into crime and life experiences also differ from men's. Women offenders are a particularly disadvantaged group with high levels of poverty, victimisation, mental health problems, and drug and alcohol problems⁴². Research for the Home Office and Prison Service in 2003 found that *"a history of abuse is one factor among others contributing to a risk of offending and of a range of associated problems, including drug and alcohol problems, mental health problems and self-harm"*⁴³. Women are also far more likely than male offenders to have primary caring responsibilities.

Men represent the vast majority of offenders and the system is designed to meet their needs. We concluded that women are shoe-horned into a system that has never considered them, and this has very damaging consequences. For instance, whilst many women offenders have primary caring responsibilities, there is a general lack of childcare provision. Furthermore, women on mixed sex probation programmes report intimidation and harassment by male offenders, a serious issue particularly for women who have a history of being abused by men. These factors are likely to disadvantage female offenders and may mean they are more likely to breach. Moreover, because women's offending is at the lower end of the scale, they often do not trigger a full probation assessment so do not access interventions that could address offence-related problems such as substance misuse. There remain concerns that OASys, the probation risk assessment tool, does not fully capture the different factors relating to women's offending. We have also highlighted previously that it is inappropriate for vulnerable women

to be placed in mixed sex probation hostels and we are pleased that these are now being phased out and replaced with single sex accommodation.

The evidence we gathered points overwhelmingly to the need for women-specific community based services such as the Asha Centre in Worcester and the 218 Centre in Glasgow. We were therefore delighted that, at the launch of *One Year On* in March 2005, the Home Secretary announced £9.15 million for community initiatives to link women into services they need, such as health services, abuse counselling, drug and alcohol programmes and housing advice. These will target offenders and women at risk of offending, from the police station stage through to release from custody. This is the first time that the government has dedicated funds specifically for women offenders and we believe that this initiative, Together Women, represents a real step forward. It is policy-making according to need, as will be required by all public bodies when the gender equality duty is in force in April 2007. However, these are small pilots limited to two areas (the North West and Yorkshire & Humberside) and the shift in thinking that Together Women represents needs to happen throughout criminal justice policy-making. We are calling for specialist services to be made available to women offenders in all parts of the country.

Reforms to prison and probation services under the National Offender Management Service (NOMS) are ongoing. The Government has consulted on proposals to abolish Probation Boards and has recently published the NOMS five-year strategy⁴⁴ in which services for offenders will be commissioned from a range of public, private and voluntary sector providers. The strategy registers concern about the rise in the number of women sent to prison for less serious offences and we welcome the focus on individual needs and building partnerships across government departments, particularly health. Our concern is that the needs of vulnerable women may be lost within the new regional framework. Specialist community services for women usually operate at a

Section six continued

Probation

local level and the under-resourced women's voluntary sector will struggle to compete with large voluntary or private organisations in a commissioning process. Furthermore, large private organisations, such as prison escort companies, do not have a good track record in providing high-quality services to women, as recent reports about the treatment of pregnant women in prison vans have highlighted⁴⁵.

It is vital, therefore, that the Home Office and NOMS consider how they will comply with their obligations under the gender equality duty. Regional Offender Managers (ROMS) 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. Private and voluntary sector bodies carrying out public functions, or hoping to in the future, will themselves be subject to the gender equality duty and, like public bodies, need to begin preparing for their future legal obligations. We believe that there needs to be a high level diversity lead within the NOMS structure who provides guidance to Regional Offender Managers (ROMS) on delivering services to minority groups of offenders. It is crucial that this work begins now as regional resettlement plans are implemented as part of the National Reducing Re-offending Plan.

We now turn to consider the treatment of women working in the Probation Service which is a female-dominated organisation with a good gender balance at senior levels. Nevertheless, female employees experience similar problems to women working elsewhere in the system, for instance they are disadvantaged if they take career-breaks to raise a family. We suggest that the Probation Service considers how job-sharing and flexible working can be introduced at senior levels as has happened in other public sectors. Furthermore, we remain concerned that the progress the Probation Service has made in recruiting and promoting women may be undone by its absorption into a prison-dominated NOMS structure. We continue to recommend that the Probation Inspectorate should carry out a thematic

inspection on sex equality to help pinpoint discriminatory cultures and practices.

We now make the following recommendations for probation:

- Specialist community provision should be available to female defendants and offenders in all parts of the country.
- 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.
- There should be a diversity lead at the highest level of the National Offender Management Service who provides guidance to Regional Offender Managers on delivering services to minority groups of offenders.
- Private and voluntary bodies carrying out public functions need to begin preparing for their legal obligation under the gender equality duty.
- The Probation Service should consider how it can introduce job-sharing and flexible working for those working at senior levels.
- The Probation Inspectorate should carry out a thematic inspection on sex equality.*

**indicates existing recommendations which have yet to be acted upon*

Section seven

Prison

Whilst women make up a small minority (6%) of the total prison population⁴⁶, there has been a sharp and disproportionate increase in the number of women in prison in recent years, primarily as a result of more severe sentencing by the courts. In the decade from 1995 to 2005 the women's prison population increased by 126% compared with a 46% increase for men⁴⁷. Twice as many women as men in prison have no previous convictions and around a fifth of women in prison are on remand. Foreign nationals, many of whom are single mothers from poverty-stricken countries who have been convicted of drug smuggling, represent around 20% of the female prison population⁴⁸.

The women who are sent to prison are overwhelmingly there for non-violent offences and the single most common offence for which women are imprisoned is shoplifting. The vast majority of women are given short sentences of less than a year – widely considered to be more *destructive* than *constructive* as it is too little time for any real rehabilitative work or treatment but long enough for a woman to lose her home and children. Indeed, 65% of women leaving prison are now re-convicted within two years⁴⁹.

Women in prison are among the most vulnerable people in society. Over half of women in prison have experienced domestic violence compared to a quarter of women in the general population. Forty per cent have received help for a mental or emotional problem in the year prior to custody, 20% have been in care compared to 2% of the general population, and two-thirds are drug dependent or report harmful levels of drinking in the year prior to custody⁵⁰. The depth of despair is reflected in the fact that a large proportion of women in prison self-harm, many on a routine basis. In 2003, the year of our original inquiry, 14 women died in prison from self-inflicted injuries. Last year there were four self-inflicted deaths. At the end of last year the Prison Ombudsman's report into six deaths of women at Styal prison was finally published, following which a review of vulnerable women offenders has been announced, headed by Baroness Jean Corston. We

believe that this must look at how vulnerable women accused or convicted of non-violent offences end up in prison in the first place and that it will lead to real change.

Many women in prison have chronic psychiatric needs – around three-quarters suffer from two or more mental disorders⁵¹ - and there has been much concern about the standard of healthcare in prisons, considered to be significantly lower than that in the community. Responsibility for prisoners' health is now being transferred from the Prison Service to the NHS for publicly run prisons and private establishments have differing contract arrangements with the Home Office. It is still early days to tell whether this is improving healthcare for prisoners and we believe the primary focus for Primary Care Trusts and prison governors must be on dealing with women's mental health needs. In order to provide support and information to distressed women who often arrive at prison from court late at night, we urge the Prison Service to ensure that First Night in Custody schemes, such as the successful scheme in Holloway, are fully in place in every women's prison, particularly those receiving women from court.

Women coming out of prison have many similar resettlement needs to men, but there are significant differences. A significantly higher proportion of female prisoners than male are single and many lose their homes whilst inside. The children of female prisoners stay with family members, foster parents and some end up in care. On release, women find themselves in a catch-22 situation; they have problems getting their children back if they do not have a home, but have problems in getting a home if they are not caring for their children. Many women will also be struggling to deal with substance abuse problems and histories of abuse. As discussed in the previous section, ROMS must therefore ensure that there is adequate support in place to respond to these needs.

At present, there are 17 prisons holding women and these are unevenly located across the country. The result

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Prison

is that women are imprisoned further from home than men – usually over 50 miles - despite the fact that they are far more likely to have primary caring responsibilities. Women are shunted around from one prison to another as the system tries to cope with crisis levels of over-crowding in men's prisons and this causes serious disruption to any rehabilitative work they do in prison and to family ties. In the previous section we highlighted issues about the NOMS regional structure. For women in prison and women leaving prison this presents particular difficulties that need to be addressed.

A new strategy for adult prisons is to be published shortly outlining the Government's vision for community prisons which link less serious offenders into local services. We believe that consideration needs to be given to how this can work for the very small number of women whose offences are serious enough to justify imprisonment. History has shown that where women are located on the same site as men they are sidelined and resources are often diverted to the higher risk male population.

The Police and Justice Bill proposes to merge the five existing criminal justice inspectorates into a unified inspectorate. We are concerned that this could reduce the effectiveness of the prisons inspection regime which plays such a crucial role in driving up standards in prisons and providing protection for some of society's most vulnerable and damaged people. We recommend that the new Inspectorate should be required to carry out regular thematic reviews on women in the criminal justice system and that it is able to respond very quickly to assess how a prison is performing in its care-taking role.

We now turn to the experiences of women who work in the Prison Service which is a large male-dominated organisation. During our original inquiry we were particularly concerned to hear about the high level of sexual harassment and other discriminatory practices that female prison staff experience. The Prison Service

recently agreed to settle over 3,300 equal pay cases at a cost of £50 million in back pay, mainly to civilian women working in prisons. We urge the Prison Service and the Prison Officers Association to fully address sexual harassment and other discriminatory practices and support individual women who complain of such treatment.

We now make the following recommendations for the prison service:

- 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.
- 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.*

**indicates existing recommendations which have yet to be acted upon*

Conclusions

Towards Women's Equality in the Criminal Justice System

The criminal justice system is in a state of flux with major reforms ongoing. Whilst this poses challenges for the treatment of women employees and service users, there are also opportunities to make progress on good policies and practices that already exist. So it is vital that, as these changes take place, government departments and criminal justice agencies (both statutory and non-statutory) put appropriate treatment of women and men, ie according to need, at the heart of any reforms.

When the gender equality duty comes into force in April 2007 certain public bodies will be required to publish gender equality schemes and carry out gender impact assessments on new policies. These include the Home Office, Department for Constitutional Affairs and Law Officers, plus key criminal justice bodies including police forces, the Crown Prosecution Service, and the Prison Service. We are concerned that, in gathering information for this report, criminal justice agencies and government departments have struggled to provide us with up to date statistics broken down by gender. This lack of basic information will seriously hamper the efforts of public bodies to comply with their future legal obligations if not rectified. We believe there needs to be monitoring of the impact of the gender equality duty and, furthermore, that it needs to be built upon in any future discrimination legislation.

The gender equality duty will have an impact on different levels, for example public spending and policy-making as well as services on the ground. Our work shows that some of the areas where the gender equality duty could be most effective in leading to change include;

- Public Service Agreements and other targets that take account of the different needs of women and men.
- Collecting data that is broken down by both gender and race.

- Requiring private bodies to take steps to promote equality through commissioning and procurement processes.
- Community provision designed specifically for women accused or convicted of offences that links them into the services they need.
- Integrated policies and services on violence against women within the criminal justice sector as well as across government departments.

Debates about gender equality in the criminal justice system usually centre around employment issues. Indeed, there is a common misunderstanding that this is the focus of the gender equality duty. But this is not the case and one of the most important changes that now needs to take place is for there to be a shift in cultures and attitudes towards equality. The gender equality duty will put the spotlight squarely on what equality means for women victims, suspects, defendants, offenders and prisoners. This is not 'formal equality', rather it is appropriate treatment according to need. A draft Code of Practice on the gender equality duty has been published and the Equal Opportunities Commission will, in addition, be producing guidance for the criminal justice sector.

The duty was the Commission's principal recommendation in its Final Report in 2004. We are very pleased, therefore, that the Fawcett Society will shortly be publishing research and a toolkit on policies and services for women accused or convicted of offences, an often over-looked group. This will provide very practical support for criminal justice agencies in preparing for their future legal obligations.

A new Commission for Equality and Human Rights will have the role of enforcing the gender equality duty when the Equal Opportunities Commission closes in 2007. In the context of this changing world, we hope that we have set out where the challenges lie in achieving women's equality in the criminal justice system.

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About Fawcett

What we believe in

Our vision is of a society in which women and men enjoy equality at work, at home and in public life.

Issues

We campaign on issues such as women's representation in politics and public life; equal pay; pensions; childcare; work-life balance; equality in the workplace; multiple discrimination; violence and access to the justice system.

Our history

Our roots go back to 1866 when Millicent Fawcett began her campaign for women's votes. Our bold, passionate and independent campaigns are inspired by our heritage.

Our achievements

We make real differences in women's lives by creating awareness, leading debate and driving change. We count many changes in legislation among our achievements.

How you can help

Be part of our campaign! As a campaigning charity, we are always in need of financial support and you can give this by joining or donating to Fawcett. Other practical support on campaigns can be found on our website www.fawcettsociety.org.uk.

