

## Consultation on Imposition of community and custodial sentences guideline Submitted by some members of the Corston Independent Funders' Coalition

This submission is from:

- Chloé Geoghegan – Chair, Corston Independent Funders' Coalition
- Esmée Fairbairn Foundation
- Liz Hogarth – Independent Advisor
- The Barrow Cadbury Trust
- The Bromley Trust
- The JABBS Foundation
- Triangle Trust 1949 Fund

members of the Corston Independent Funders' Coalition

About the Corston Independent Funders' Coalition and why some of our members are making this response:

The Corston Independent Funders' Coalition (CIFC) believes that all women should have access to justice in the criminal justice system - women already involved in the system as well as those at risk - and that women's specific needs must be met:

- at each point of contact with the criminal justice system, as opposed to being shoe-horned into a system that does not account for their specific gendered needs
- through trauma responsive ways of working which address the underlying vulnerabilities and disadvantages that the vast majority of women in the criminal justice system experience, as well as nurturing their strengths.

In line with Baroness Corston's vision set out in the Corston Report<sup>1</sup>, the CIFC seeks to enable systemic change in how women experience the justice system including through supporting women-centred, holistic, and trauma-responsive approaches to divert them away from crime. Much of the way our member organisations fund, and work more widely, therefore is shaped by systems thinking. We understand that the issues we are seeking to address are complex, that causes and consequences are interconnected, and that the power to create change is spread across the system. This work therefore requires partnering, collaboration and coproduction with all actors, particularly those with lived experience of the criminal justice system, to find solutions that will alter the underlying structures and supporting mechanisms which make the system operate in a particular way. And it is a commitment to this approach that we bring to the table.

The CIFC is a diverse group of funders with different charitable objectives, interests, and institutional frameworks. Opportunities for members to engage are structured around the three ways in which the Coalition seeks to make a difference - networking and sharing information and learning about policy, practice and grant-making, collaborative funding, and influencing policy and practice.

In making this response we acknowledge and appreciate the Sentencing Council's openness to feedback and increasingly comprehensive and finely tuned guidance. **We would welcome a relationship and an**

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<sup>1</sup> Corston Report (2007) Women with Particular Vulnerabilities in the Criminal Justice System London: Home Office <https://webarchive.nationalarchives.gov.uk/ukgwa/20130206102659/http://www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf>

**ongoing dialogue.** We have provided more information about the work of the Corston Independent Funders' Coalition in the appendix to this response.

Our response amplifies the key messages and concerns of the expert organisations our member organisations support and work alongside, and also highlights our additional and specific concerns as funders. Where we amplify the messages of our partners, we have referenced this. We have consulted with a range of organisations, including those with primarily a policy lens and those who focus on specialised service delivery.

### Summary and focus of our response.

We welcome this guideline as an important step towards a justice system which values the rights and needs of women. The new section on "Female Offenders" recognises and has the potential to be part of realising the vision of Baroness Corston:

*"It is timely to bring about a radical change in the way we treat women throughout the whole of the criminal justice system and this must include not just those who offend but also those at risk of offending. This will require a radical new approach, treating women both holistically and individually – a woman-centred approach."*

and indeed, the Female Offender Strategy (2018).<sup>2</sup>

In general, we believe that the wording of some sections of the guideline needs strengthening if they are to have the effect they intend, currently they are too open to interpretation. To this end, we refer you to the expert responses of our sector partners, many of whom have provided alternative wording for specific clauses in their responses.

We have focused our response on Pre-Sentence Reports (PSRs) (Questions 7, 8 and 9), the need for attention to intersectionality in application of the guideline (Questions 5, 10, 12, 13, 24 and 25) and the resourcing and monitoring of implementation required (Questions 13, 24 and 25). This reflects our opinion that:

- PSRs are fundamental to achieving the positive changes in sentences the guideline seeks. **We recommend that PSRs be mandatory for all women, except in a very few clearly defined circumstances.** We have also provided information about what makes for a good PSR and how this can be achieved.
- if intersectionality is not addressed, the impact of good PSRs and overall sentencing will be limited as inequalities will continue to negatively impact women's access to justice and will fail to provide solutions to the root causes of women's criminalisation. **We are therefore calling for transparent and accountable monitoring of the impact of this guideline with particular and robust reference to intersectionality in both data collection and analysis.**
- the positive changes sought by the guideline will not happen without adequate resourcing of all elements needed to ensure the guideline's impact is maximised, including through the training of sentencers. **We are therefore advocating for investment in a whole systems approach that centres an integrated way of working with the social sector to build the capacity for radical and sustainable change in how we meet the needs of women.** In order to ensure that strong guidelines translate into effective and just practice, a costing exercise must be undertaken with key stakeholders involved in implementing the guidelines and the wraparound support for women which is understood to be critical in their rehabilitation journeys. This list includes, but is not limited to, The

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<sup>2</sup> Female Offender Strategy (2018) Ministry of Justice Female Offender Strategy for women in the criminal justice system. [Female Offender Strategy - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/721122/fos-strategy-2018.pdf)

National Probation Service, The Judicial College, the Magistrate's Association, and women's specialist services providers.

**Question 5. Do you agree with the proposed chronological order of the guideline? Would you make any changes?**

5.1 In line with the response from CLINKS and our concern about equality, **we agree but recommend adding a ninth section focused specifically on equalities and disparities** to ensure that sufficient attention is given to ensuring equal treatment, specifically in support of any protected characteristics, alongside a focus on reducing disparities in outcomes that have a disproportionate impact on certain groups in contact with the criminal justice system.

**Question 7. Do you have any comments on the pre-sentence reports section, other than the list of cohorts?**

Our response to this question has two elements:

- PSRs are beneficial to and therefore should be mandatory for all women with only very limited exceptions; and
- the guidance should also include direction to sentencers to utilise the recommendations in PSRs or give clear justification for not doing so.

We are also offering the expertise of the Effective Women's Centre Partnership to help strengthen sentencing guidelines around the needs of women and what works best for them.

**7.1 We recommend that PSRs are beneficial to and therefore should be mandatory (with only very limited and clearly defined exceptions) for all justice involved women owing to the widespread experience of trauma and multiple unmet needs of this cohort.** It has been reported that courts are over ten times more likely to impose a community sentence if a pre-sentence assessment has been conducted.<sup>3</sup>

7.2 Soon to be published research from The University of Birmingham's study "Trauma, Social Harm and Health with Justice-Involved Women: The Women's Risk Needs Assessment (WRNA) evidences that:

- Nearly three quarters (71%) experienced physical or sexual abuse as an adult
- Over half (55%) were physically or sexually abused as children
- Three quarters (76%) had symptoms of PTSD
- 88% had symptoms of anxiety and depression at the time of assessment and 35% were showing signs of more serious mental illness such as psychosis
- 75% have had experience with substance abuse

The WRNA is a comprehensive, trauma- and gender-responsive risk, needs, and strengths assessment designed specifically to be used with criminal justice involved women. It is the only validated, peer-reviewed risk and needs instrument in the public domain specifically designed by and for system-impacted women. The WRNA:

- has been proven effective at predicting women's recidivism and other re-offending behaviour.

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<sup>3</sup> Centre for Justice Innovation (2018) The changing use of pre-sentence reports, [https://justiceinnovation.org/sites/default/files/media/documents/2019-04/cji-changing-use-psr-briefing\\_wip-1.pdf](https://justiceinnovation.org/sites/default/files/media/documents/2019-04/cji-changing-use-psr-briefing_wip-1.pdf)

- shows statistically significant positive correlations with measures of re-incarceration, technical violations, new arrests, and new convictions.
- accounts for 'gendered pathways' of women into crime which are distinct from their male counterparts e.g. sexual abuse, trauma, mental illness.

7.3 As the WRNA tool is rolled out across women's centres and specialist organisations across the country and as trends in needs, strengths, and risks can be identified and analysed through various demographic markers, there is a potential for this work to inform the way PSRs are shaped and delivered. **The partners involved in the Effective Women's Centres Partnership would be happy to be involved in conversations as to how the data from the WRNA can help strengthen sentencing guidelines around the needs of women and what works best for them.**

7.4 In line with the response from Birth Companions and Women in Prison we also recommend that the guidance is strengthened to emphasise the importance of sentencers using PSRs effectively and taking them into account when considering sentencing options. PSR recommendations should be utilised and where they are not, clear justification should be provided for not doing so.

**Question 8: Do you agree with the general inclusion of, and specific cohorts included, in the list of cohorts in the pre-sentence report section?**

8.1 We welcome the detailed list of cohorts included and stress the importance of making PSRs mandatory for all females, barring very limited circumstances i.e. if the woman is only likely to be at risk of either a discharge or small standalone fine, or due to exceptional circumstances is likely to be unable to participate in the PSR process. In addition, as advocated by Birth Companions we would like to register our support for PSRs to ensure that the circumstances and needs of those who may be pregnant or primary carers can be taken into account.

We recommend that the limited circumstances in which a PSR is not deemed necessary for a woman be included in the guidance to ensure that women are not unfairly being denied a PSR through misinterpretation of the guidance.

8.2 In addition, **we suggest a section to explain the impact of intersectionality across these cohorts**, as being part of multiple cohorts deemed "vulnerable" compounds potential experience of harm and injustice if there is not a strong understanding of how experiences across these cohorts can compound and exacerbate disadvantage.

**Question 9. Do you have any comments on the second part of the PSR section, specifically on the court giving an indication to Probation, adjournments and on committal?**

Our response to this question focuses on quality and how that can be achieved.

9.1 We welcome a new, unified, and more comprehensive section on PSRs in the revised guideline and wish to reinforce the importance of ensuring the quality of these reports and therefore of understanding the time and resources taken to produce them and who needs to be involved in drawing them up so that women can trust the process and disclose the information that will help them. **In line with Women in Prison and others, we don't believe that oral reports are sufficient and additionally recommend that written reports should be mandated, with one week allocated to allow the preparation of a full report.** We also recommend that the quality of PSRs would benefit (especially on intersectionality) by having an internal gatekeeping system, whereby a PSR author is required to run a draft by one/two colleagues for cross checking and input.

9.2 Women in Prison in their recent submission<sup>4</sup> to the House of Lords Justice and Home Affairs Committee and in their response to this consultation sets out clearly what a good PSR process looks like:

- Full written PSRs should be undertaken prior to sentencing to develop a full picture of a woman's individual circumstances. This should include caring responsibilities, cultural background, learning and physical disabilities, and health needs, including mental ill health and anxiety. This should also include information on protective factors in women's lives, such as positive relationships and employment to ensure any requirements attached to community sentences avoid conflicting and disrupting these areas.
- Formal mechanisms should be introduced to ensure PSRs can be informed by specialist services who are currently working alongside women to provide additional context and advice to courts. This early involvement will ensure the delivery of effective community services. PSRs can for some be traumatising to complete as some women will have to relive violent or traumatic life instances. It is important that a woman is able to receive support from gender-specific services during this process.

9.3 Many of these points are also made in the recommendations of the resulting House of Lords Justice and Home Affairs Committee report on Cutting Crime: Better Community Sentences.<sup>5</sup>

9.4 Finally, the learnings from the Ministry of Justice's a pre-sentence report pilot in 15 magistrates' courts in March 2021, of which women were a priority cohort for more comprehensive written PSRs to test whether this will enable more tailored sentencing recommendations to assist sentencers in making appropriate sentences, should be looked at carefully.<sup>6</sup>

#### Question 10: Do you agree with the inclusion of, and information proposed on deferring sentencing?

We welcome the inclusion of a section on deferred sentencing.

10.1 In responding to this question we would like to refer the Sentencing Council to the response of the **Centre for Justice Innovation** (CJI). CJI believes there is significant evidence to suggest that deferred sentencing should be used much more commonly than it currently is. Their paper, *A Smarter Approach: Deferred Sentencing*<sup>7</sup>, highlights international evidence and case studies which indicate that they could play a key role in reducing re-offending and reducing the use of custody. **Amongst other cohorts, they recommend that deferred sentences could also be an effective approach to sentencing women.** They note that the majority of women sentenced to custody receive sentences of less than 12 months, often for persistent low-level offences, and that there is a higher prevalence of reported needs among women in custody, including around substance misuse, trauma, and mental health.<sup>8</sup> And conclude that deferred

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<sup>4</sup> Women in Prison (WIP) (2023) — Written evidence (JCS0030) [committees.parliament.uk/writtenevidence/121977/pdf/](https://committees.parliament.uk/writtenevidence/121977/pdf/)

<sup>5</sup> House of Lords Justice and Home Affairs Committee (2023) Cutting crime: better community sentences <https://publications.parliament.uk/pa/ld5804/ldselect/ldjusthom/27/27.pdf>

<sup>6</sup> Rizk, T., and Bhakta, T. (2023) A process evaluation of the Pre-Sentence Report pilot. Available here: [A process evaluation of the Pre-Sentence Report pilot \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/118888/A-process-evaluation-of-the-Pre-Sentence-Report-pilot.pdf)

<sup>7</sup> Delivering a Smarter Approach: Deferred Sentencing (2021) Centre for Justice Innovation <https://justiceinnovation.org/sites/default/files/media/document/2021/Deferred%20sentencing.pdf>

<sup>8</sup> Gender differences in substance misuse and mental health amongst prisoners. (2013) Ministry of Justice Analytical Services <https://assets.publishing.service.gov.uk/media/5a7ccb2940f0b65b3de0b33c/gender-substance-misuse-mental-health-prisoners.pdf>

sentences can be an effective way to avoid these harmful short sentences and link them into this support to address their multiple and unmet needs. **We therefore suggest that women also be specified as a key group for deferral.**

10.2 In line with Birth Companions response and several others we also support the specification of young adults (18 to 25 inclusive) as a key group for deferral. We suggest that the guidance could also give pregnant and postnatal women as a specific example of relevant “*transitional life circumstances*”.

### Question 12: Do you have any comments on the new section on young adult offenders?

Our response to this question focuses on the importance of an intersectional approach and the corresponding importance of sentencers understanding and factoring in the multiple and unmet needs that many young women in contact with the criminal justice system face.

12.1 We welcome the inclusion of a distinct section to recognise the specific needs of young adults and in line with the response from Prison Reform Trust recommend that it should be made clear that young adults are 18 to 25 inclusive.

12.2 In line with the response from the Transition to Adulthood Alliance and the recommendations of Agenda Alliance and Alliance for Youth Justice’s A Call to Action Briefing we would like to see this section strengthened and recommend explicitly referencing the need to prioritise an intersectional approach so that young women’s intersecting identities – including race, ethnicity, faith, sexual orientation, and gender identity – and how these can compound disadvantage and can lead to barriers in engagement are taken into account.<sup>9</sup>

12.3 In addition, as advocated for by Birth Companions it is essential that sentencers recognise the accumulated disadvantage faced by pregnant or postnatal girls and women who are:

- young (typically under 25);
- from minoritised communities;
- and/or are care experienced.

This is especially relevant to the overlap with the age and/or lack of maturity mitigating factor, as pregnant or postnatal girls and women may be perceived as more mature than they are, or, in the case of girls, subject to “adulthoodification”<sup>10</sup> by virtue of having become pregnant. This will often not reflect the reality of their situation and care will need to be taken to ensure that immaturity, and neurodivergence, are properly factored in where women and girls are being sentenced under the age of 25.

12.4 In line with the section on female offenders we recommend that this section would benefit from the inclusion of more detailed information on the multiple and unmet needs that many young women in contact with the criminal justice system face. As set out and evidenced in detail by The Transition to Adulthood Alliance<sup>11</sup>, Agenda Alliance, and Action for Youth Justice<sup>12</sup> these young women’s life histories are often underpinned by experiences of violence, abuse and exploitation, poor mental health, substance misuse, poverty, and having no safe place to call home. By the time a young woman encounters the criminal justice system, she has often been failed by numerous public services, finding

<sup>9</sup> A CALL TO ACTION: Developing gender-sensitive support for criminalised young women (2023) Young Women’s Justice Project [https://www.agendaalliance.org/documents/155/Agenda\\_Alliance\\_-\\_A\\_Call\\_To\\_Action\\_Briefing-Nov\\_2023.pdf](https://www.agendaalliance.org/documents/155/Agenda_Alliance_-_A_Call_To_Action_Briefing-Nov_2023.pdf)

<sup>10</sup> Youth Justice Legal Centre. (2023). Dare to Care: Representing care experienced young people. <https://yjlc.uk/sites/default/files/attachments/2023-09/YJLC-Guide-DARE2CARE-16-D%20%281%29.pdf>

<sup>11</sup> Transition to Adulthood Alliance <https://t2a.org.uk/the-evidence/research-and-reports/>

<sup>12</sup> A CALL TO ACTION: Developing gender-sensitive support for criminalised young women (2023) Young Women’s Justice Project [https://www.agendaalliance.org/documents/155/Agenda\\_Alliance\\_-\\_A\\_Call\\_To\\_Action\\_Briefing-Nov\\_2023.pdf](https://www.agendaalliance.org/documents/155/Agenda_Alliance_-_A_Call_To_Action_Briefing-Nov_2023.pdf)

herself caught up in a damaging cycle of abuse, inequality, and offending. Even though many of these young women are grappling with trauma, too often they are crudely labelled as perpetrators and criminalised.

Young women are a minority within the criminal justice system on account of both their age and gender and are consequently an overlooked and disregarded group. Many young women describe feeling unsafe, alienated, and retraumatised by services that have by default been designed around the needs of men and boys, or older adult women. Failing to meet their needs at an early stage means that opportunities to provide effective support are often missed, leading to an escalation of disadvantage, and perpetuating a cycle of harm. Rather than receiving meaningful support, many young women are driven into further harm, with an increased risk of future contact with the criminal justice system and worsened life outcomes.

Young women with intersecting and marginalised identities are disproportionately impacted and criminalised by the criminal justice system, with their needs particularly neglected. Black, Asian, minoritised, and migratised young women experience inequality on account of their ethnicity and immigration status, as well as their age and gender including being more likely to be subject to 'adultification' and being treated as more mature and culpable for the offense than they actually are. In addition, many care-experienced young women encounter ingrained prejudice within the system, leading to disproportionate criminalisation.

Further detail could also be provided regarding the exploitation of young adult women, research has shown<sup>13</sup> that referrals are too infrequently made to the national referral mechanism for victims of exploitation and modern slavery, for young adult women who are in the justice system, leaving them with little access to specialist services and the legal protections they need.

### **Question 13: Do you have any comments on the new section on female offenders?**

We welcome both the inclusion of this section and its overarching approach and content emphasising the need for a gender specific framework both in terms of the factors that underly female offending and the impact of custody on women. We also welcome highlighting of the fact that 'short custodial sentences are generally less effective at reducing reoffending than community sentences, which can seek to better address the underlying causes of offending'. This is broadly in line with the Corston Framework.

As with other questions we would refer the Sentencing Council to the expert responses of our partners for where wording needs to be strengthened so that sentencers are guided to consider the widest range of circumstances and full range of sentencing options.

Specifically, we would refer you to:

**13.1 The Howard League for Penal Reform's response which recommends that the proposed drop-down should begin with a clear statement about the vulnerability of women in the criminal justice system, perhaps mirroring the introductory statement to the Female Offender Strategy Delivery Plan,**

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<sup>13</sup> How does exploitation affect young adults in the criminal justice system? (2023) Transition To Adulthood Alliance <https://t2a.org.uk/2023/05/09/exploitation-young-adults-criminal-justice-system/>

as follows: 'Women in contact with the criminal justice system are amongst the most vulnerable in society.'<sup>14</sup>

And that a sentence about Welsh women should be added to the bullet point regarding the number of women's prisons. Currently, Welsh women serve their custodial sentences in English prisons as there are no women's prisons in Wales. This has been highlighted as particularly problematic, with Welsh women facing a 'distinct set of issues... including distances from home, problems maintaining family contact, and links with community-based services.'<sup>15</sup>

13.2 The response of **One Small Thing** in relation to the description included of the needs of women in the justice system. **They suggest that instead of mentioning financial issues and the common experience of domestic abuse, the guidelines should also specifically highlight the direct causal links.** Women's involvement in the justice system is often as the direct result of domestic abuse or coercive control – this can include being coerced by an abusive partner into financial crimes such as fraud. It also includes women being in abusive relationships being criminalised under Joint Enterprise Laws.<sup>16</sup>

13.3 And the response of **Birth Companions** in relation to considerations linked to pregnancy and early motherhood. Particularly that:

It is vital that no pregnant woman or mother of children under the age of two is sentenced without a detailed PSR, allowing the impact of any sentence on her and her infant to be taken into full consideration when weighing up options. The HMPPS policy framework relevant to the care of pregnant and postnatal women in prison extends the postnatal period to 24 months, to cover the entirety of the critical 'first 1001 days' from conception to a child's second birthday and this guideline should therefore cover the same period.

**Accordingly, throughout the explanatory note on female offenders, the references to pregnancy should be amended to specify "pregnancy and the postnatal period, extending up to 24 months after birth".**

And their strong support for the proposal to add further detail to the question of whether custody is avoidable **with their suggested amended wording to draw attention to risks across the entirety of pregnancy and the postnatal period.**

'a custodial sentence may become disproportionate to achieving the purposes of sentencing where there would be an impact on dependants, including on unborn children where the offender is pregnant. Courts should avoid the possibility of an offender navigating the risks associated with pregnancy, birth, and the postnatal period (up to 24 months after birth) in prison custody unless the imposition of a custodial sentence is unavoidable.'

13.4 We would also like to draw the Sentencing Council's attention to **One Small Thing's** response regarding the guideline's reference to perimenopause and menopause, namely that there is a lack of evidence of a direct link between menopause and increased 'criminal behaviour' and therefore we suggest not including it framed as such. **They recommend instead that this section would be better phrased to increase awareness of the emotional and health needs women may have, that are not well**

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<sup>14</sup> Female Offender Strategy Delivery Plan 2022–25 (2023) Ministry of Justice

<https://www.gov.uk/government/publications/female-offender-strategy-delivery-plan-2022-to-2025>

<sup>15</sup> Prisons in Wales: 2022 Factfile. (2023) Jones, R. [https://www.cardiff.ac.uk/\\_\\_data/assets/pdf\\_file/0012/2779833/Prisons-in-Wales-2022-Factfile.pdf](https://www.cardiff.ac.uk/__data/assets/pdf_file/0012/2779833/Prisons-in-Wales-2022-Factfile.pdf)

<sup>16</sup> Clarke and Chadwick, Manchester Metropolitan University (2020) <https://www.crimeandjustice.org.uk/news/2020-11-25/new-report-joint-enterprise-and-criminalisation-women> and Hulley, The Howard Journal of Crime and Justice (2021) <https://onlinelibrary.wiley.com/doi/full/10.1111/hojo.12445>



met if a custodial sentence is given, for example changing the wording to 'Women (typically aged 45 to 55) may suffer from the symptoms of perimenopause or menopause which can affect physical and mental health in ways not well addressed in custody.'<sup>17</sup>

13.5 Prison Reform Trust also recommends strengthening language around women being primary carers to read:

"Female offenders are more likely to be sole or primary carers than male offenders."

And on not qualifying the guidance in relation to what it says about short sentences.<sup>18</sup> The draft guidance does not need to be qualified by "generally". We therefore agree with their suggestion of amending the final sentence in the Female Offenders box to read:

"Courts should consider the research referenced in this guideline that short custodial sentences are less effective at reducing reoffending than community sentences, which can better address the underlying causes of offending."

13.6 We note that the Council is considering whether it might be necessary in the future to have a separate overarching guideline for sentencing female offenders. We welcome this as an option should the current work to provide more detailed guidance not have the desired impact. It shows the Council's commitment to ensuring that the current points of principle translate into sentencers' understanding of their requirements under law and better outcomes for women. **We would urge that consideration of whether a separate guideline is needed doesn't hold up the active promotion and implementation of these principles and advocate that this is accompanied by detailed and regular monitoring of their impact, with a particular focus on an intersectional approach. We recommend the findings of such monitoring are widely shared and the expertise of specialist organisations enlisted to explore them and recommend further action as required.**

#### Question 24: Do you have any comments on the resource assessment and/or on the likely impact of the proposals on sentencing practice?

24.1 Good guidelines are an important element, but their potential to deliver justice and better outcomes for women will only be realised if sufficient attention and resource is put into ensuring their implementation. This includes the need to work with sentencers to ensure they feel confident in applying them and that they have knowledge of and confidence in the specialised community services available in their local area and how to collaborate with them to support women. There are many expert organisations who provide excellent training, for example **Hibiscus** in relation to cultural mediation, How to Best Support Black, Minoritised and Migrant Women and Modern Slavery and Anti-Trafficking Work Course<sup>19</sup> and **Revolving Doors'** Lived Experience-led Integrated Offender Management training<sup>20</sup>. **In line with action one of Tackling Double Disadvantage, ending inequality for Black, Asian, minoritised and migrant women in the criminal justice system, a 10-point action plan for change<sup>21</sup>, we would encourage sentencers to be enabled to access courses such as these.**

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<sup>17</sup> Van Hout, M. C., Srisuwan, L., & Plugge, E. (2022). A human rights assessment of menopausal women's access to age- and gender-sensitive non-discriminatory health care in prison. *Menopause*, 29(11), 1338-

<sup>18</sup> The Ministry of Justice's own evidence shows that short prison sentences are less effective than community sentences at reducing reoffending.

<sup>19</sup> <https://hibiscusinitiatives.org.uk/get-involved/training/>

<sup>20</sup> <https://revolving-doors.org.uk/>

<sup>21</sup> Tackling Double Disadvantage Ending inequality for Black, Asian, minoritised and migrant women in the criminal justice system. 10-point action plan for change (2022) <https://hibiscusinitiatives.org.uk/influencing/doubledisadvantage/>

**24.2 We are concerned that so little is known about the resource impacts of this guideline and as a starting point would like to request that a costing analysis is carried out to understand the resources needed to ensure the new guidance can be effectively implemented.** In line with the National Concordat for Female Offenders<sup>22</sup> published by the Ministry of Justice, if the aspirations in the Female Offender Strategy are to be realised, there needs to be investment across all statutory services with a redirection of resources away from the criminal justice system toward health services, welfare, safe housing, youth services, education, and social care to address the root causes of crime.

24.3 We believe it is counter intuitive to suggest that no additional resources will be needed for probation, especially if progress is to be made on the production of quality PSRs and to support the needs of women outside of the prison system.

24.4 In line with a systems change approach, resources need to be spent both in and across statutory and non-statutory services to create shared and trusted systems, relationships, strong leaders, and strong organisations. As your resource assessment details, probation will most likely need better and different resourcing, but probation is only one of the key actors in the system. Where probation provides supervision and is directed by risk, the social sector provides support and thus needs to be recognised as valued partners, collaborated with, and funded accordingly.

**24.5 As independent funders, we are keen to play our part in ensuring a thriving and healthy social sector, but it is a statutory responsibility to ensure that organisations contracted to provide services to deliver community orders are funded at full cost recovery for this work.** The role of independent philanthropy works best when it is channelled into organisations to help them build resiliency, innovate, and become more effective and impactful.

24.6 Recent research by **Rosa, the UK Fund for Women and Girls**, Mapping the UK Women and Girls Sector and its Funding: Where Does the Money Go?<sup>23</sup> shows that the women and girl's sector is not getting the investment it needs or deserves. Most starkly that, 'A tiny per cent of grants recorded on 360Giving in 2021 are going to women's and girls' organisations – just 1.8% of the total value awarded.'

This is a challenge to the newly invigorated CIFIC to advocate better within our own institutions and also within the wider independent funding sector to remedy this. **We also want to invite the Sentencing Council to work with us to take on the parallel challenges revealed by the Women's Budget Group's 2020 report The Case for Sustainable Funding for Women's Centres<sup>24</sup>**, namely that:

- A place at a Woman's Centre ranges from £1,223 to £4,125 per woman depending on needs, whilst a place in prison costs £52,121.
- It is estimated that £1.7bn is spent on issues linked to female offending, whilst in the long term £2.84 is saved for every £1 spent on women's centres.
- The Women's Centre model shows one centre making a saving of £18 million over a 5-year period.
- An initial review of 15 women's services specialist providers has revealed a £10m gap in core funding for Women's Centres for the year from March 2021. For many, this funding 'cliff edge' and the inability to plan beyond the short-term, risks the closure of vital support services for women who might otherwise end up in custody. Feedback from women's centres participating in the CRS contract further compounds the funding gap, with contracts failing to enable full cost

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<sup>22</sup> Concordat on women in or at risk of contact with the Criminal Justice System Cross government agreement to improve outcomes for women in or at risk of contact with the Criminal Justice System. (2021) Ministry of Justice

<sup>23</sup> Mapping the UK Women and Girls Sector and its Funding: Where Does the Money Go? (2023) Rosa <https://rosauk.org/wp-content/uploads/2023/04/Women-and-Girls-Sector-Research-Mapping-Report-Amended.pdf>

<sup>24</sup> The Case for Sustainable Funding for Women's Centres (2020) Women's Budget Group <https://wbg.org.uk/analysis/the-case-for-sustainable-funding-for-womens-centres/>

recovery of services and not meeting the demand and complexity of need that women's centres are facing.

These findings when combined with another key finding of that report, namely that women's centres are proven to cut reoffending to 5% against a national average of 23%, demand an urgent and radical response.

24.7 The CIFIC has a history of pooling funds, including in partnership with the Ministry of Justice to set up the Women's Diversionary Fund in 2008. Currently, a number of CIFIC members are jointly funding strategic initiatives including the National Women's Justice Coalition (NWJC) and Agenda Alliance (more information provided in the appendix). Of relevance to this consultation, several of the CIFIC funders have recently committed funding for a project led by the Prison Reform Trust (PRT) looking at the barriers and challenges to significantly reducing the women's prison population. The starting point for the project will be what can be learned from how the dramatic drop in use of custody for young people has been achieved, including investigating what is needed to increase confidence in alternatives to custody. The PRT led project will work with practitioners, including probation, to produce a guide with solution-based resources to provide a blueprint for change.

We would like to cite two further examples of effective systems change initiatives including in how resources are allocated:

- The success of the **Problem-Solving Court in Greater Manchester**<sup>25</sup> and the current women's **Intensive Supervision Court pilot in Birmingham**. Although it should be noted that the key lynch pin in this latter initiative – the women's centres – was not funded by the Ministry of Justice in the original budget and funding needed to be found at regional level to plug the gap. Any model based on this work going forward needs to be properly funded.
- Work led by **Agenda Alliance and Changing Lives in the North East of England**<sup>26</sup> which focuses on the ways in which women with multiple unmet needs in Northumberland and Tyne and Wear experience public services, and the relationship between public service provision and growing societal inequality. At the core of this initiative has been the establishment of a place-based network focusing on building a resilient network of local practitioners offering a model for collaborative systems-change.

24.8 Additionally, we would like to stress the importance of addressing racism and inequality in how resources are allocated. As set out by **Women in Prison**<sup>27</sup>:

We know that Black, Asian, minoritised and migrant women experience 'double disadvantage' as a result of the combined impact of sexism and racism that manifests at both a structural and interpersonal level, including when coming into contact with the justice system.<sup>28</sup> We also know that racially minoritised women are overrepresented at every stage of the criminal justice system<sup>29</sup> and experience unequal treatment and outcomes, including in their experiences of probation and community sentences. For example, as part of a thematic inspection of race equality in probation, HM Inspectorate of Probation found that some individuals said it was difficult to engage with probation because of previous negative

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<sup>25</sup> Greater Manchester Combined Authority (2023) — Written evidence (JCS0044) <https://committees.parliament.uk/writtenevidence/124351/html/>

<sup>26</sup> DISMANTLING DISADVANTAGE Levelling up public services for women with multiple unmet needs (2023) Agenda Alliance and Changing Lives [https://www.agendaalliance.org/documents/148/Transforming\\_Services\\_Final\\_Report.pdf](https://www.agendaalliance.org/documents/148/Transforming_Services_Final_Report.pdf) and Transforming Together: Building place-based networks to improve services for women (2023) <https://www.agendaalliance.org/our-work/projects-and-campaigns/transforming-together-networks/>

<sup>27</sup> Women in Prison (WIP) (2023) — Written evidence (JCS0030) [committees.parliament.uk/writtenevidence/121977/pdf/](https://committees.parliament.uk/writtenevidence/121977/pdf/)

<sup>28</sup> Hibiscus Initiatives, Muslim Women in Prison, Zahid Mubarek Trust, Agenda Alliance, Criminal Justice Alliance, and Women in Prison (2022) Tackling Double Disadvantage

<sup>29</sup> Women and the criminal justice system 2021 (2022) Ministry of Justice

experiences with the police, prison staff or with white people in other positions of authority and that some service users reported that their probation officers were kind and well-meaning but did not understand their heritage, culture, or religion.<sup>30</sup>

**We therefore endorse their recommendation, which also speaks to action nine from the Tackling Double Disadvantage, ending inequality for Black, Asian, minoritised and migrant women in the criminal justice system, a 10-point action plan for change<sup>31</sup>, when making resourcing decisions.**

**Sustainable funding for specialist services led 'by and for' Black, racially minoritised and migrant women must be made available. Specialist services can effectively recognise and respond to the additional challenges of racism, language and cultural barriers, immigration restrictions (including No Recourse to Public Funds), modern slavery and trafficking, and destitution and provide tailored support to address the root causes of crime.**

24.9 Finally, we note your reference to the current Sentencing Bill and the potential for its presumption that custodial sentences of 12 months or less should be suspended (Clause 6) to significantly impact this guideline not least of all how that presumption to suspend will dramatically exacerbate resourcing issues of women's centres and specialist community services. This is significant as should sentences be suspended without funding and processes in place to enable women to access the wrap-around, trauma- and gender-responsive services that are critical to diverting women away from the revolving door of criminalisation, it will likely result in women repeatedly having contact with a system which is failing to address the root causes of crime.<sup>32</sup>

### **Question 25: Are there any equalities issues relating to the proposed revised guideline that should be addressed?**

We welcome the general direction of these guidelines with their increased reference to specific cohorts and their needs, both in reference to protected characteristics as well as wider characteristics that shape lived experiences of discrimination, inequality, and privilege such as socio-economic disadvantage and care-experience.

25.1 Our main concern is that without close and intersectional monitoring there can be discrimination in how policy/guidelines are applied. For example, an evidence review by the **Centre for Justice Innovation** on youth diversion revealed the following key findings in relation to race:

- Youth diversion can contribute to keeping children and young people out of the formal justice system. But if access to diversion is unequal, it can increase racial inequality across the youth justice system.
- Race-neutral eligibility criteria like "number of previous offences" can increase disproportionality because of inequalities in how different communities are policed.
- Practitioners' unconscious biases can influence which young people they think are suitable for diversion.<sup>33</sup>

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<sup>30</sup> Race equality in probation: the experiences of Black, Asian and minority ethnic probation service users and staff (2021) HM Inspectorate of Probation

<sup>31</sup> Tackling Double Disadvantage Ending inequality for Black, Asian, minoritised and migrant women in the criminal justice system. 10-point action plan for change (2022) <https://hibiscusinitiatives.org.uk/influencing/doubledisadvantage/>

<sup>32</sup> See also Doing more with less?: Criminal justice demand and the three Bills, (2023) Centre for Justice Innovation <https://justiceinnovation.org/publications/doing-more-less-criminal-justice-demand-and-three-bills> which highlights the likely impact of these three bills on an already chronically stretched probation service.

<sup>33</sup> Disparities in youth diversion – an evidence review – Centre for Justice Innovation (2021) [https://justiceinnovation.org/sites/default/files/media/document/2021/disproportionality\\_diversion\\_lit\\_review.pdf](https://justiceinnovation.org/sites/default/files/media/document/2021/disproportionality_diversion_lit_review.pdf)

For these reasons, we have included sections in our responses to previous questions to emphasise the need for an intersectional approach and are advocating for monitoring of the impact of these guidelines on various groups of women including young women, pregnant or postnatal women, Black, Asian, minoritised and migrant women, as well as those who are care experienced. This is in line with action five of Tackling Double Disadvantage, ending inequality for Black, Asian, minoritised and migrant women in the criminal justice system, a 10-point action plan for change.<sup>34</sup> As such we welcome how The Sentencing Council and the MoJ have responded to the Justice Select Committee's report Public Opinion and Understanding of Sentencing<sup>35</sup> and agreed to work together and with other partners to monitor and analyse the impact of sentencing on different groups, and to ensure that sentencing guidelines and practice are fair and proportionate. **We advocate that to enable this to happen data must be collected and made public which as well as being disaggregated by age and gender should also be disaggregated by other characteristics, including ethnicity and care experience.**

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<sup>34</sup> Tackling Double Disadvantage Ending inequality for Black, Asian, minoritised and migrant women in the criminal justice system. 10-point action plan for change (2022) <https://hibiscusinitiatives.org.uk/influencing/doubledisadvantage/>

<sup>35</sup> Public Opinion and Understanding of Sentencing Justice Select Committee (2024) <https://committees.parliament.uk/work/6741/public-opinion-and-understanding-of-sentencing/publications/>

## Appendix 1 – Further information on the Corston Independent Funders' Coalition (CIFC)

### Our Vision and Mission

#### Vision

A world where women experience justice, fairness, safety, and equitable treatment within a justice system which values their rights and needs.

#### Mission

Enabling women's access to justice through supporting women-centred, holistic, and trauma-responsive approaches to diverting women from crime.

#### Expertise we support and can offer.

We are all too aware that sentencers' knowledge of women's centres and specialist services is not as widespread as is needed to ensure that sentencers are addressing the needs of women in the contexts in which they best thrive, and that there is an urgent need to increase sentencers' confidence in the effectiveness of these services. We fund many high-quality organisations and services whose work requires scaling so that it is available to all women who need them.

We would particularly like to highlight two networks which the Coalition was instrumental in establishing, which we continue to fund and support, and which we believe model the kind of thinking and action required:

- the **National Women's Justice Coalition (NWJC) founded in 2021** – NWJC comprises, currently 19 organisations specialising in delivering services to women involved in the criminal justice system, particularly those running community-based women's centres and related services. As a starting point, the Sentencing Council might be pleased to learn of the NWJC's map of services <https://www.womensservicesmap.com/>. For more information see: <https://wearenwjc.org.uk/>.
- **Agenda Alliance** which was born in 2015 after a consultation in the sector in response to the Corston Report showed the need for an alliance to bring together the voluntary sector to advocate for women and girls with the most complex unmet needs. Agenda Alliance has over 100 member organisations – from large, national bodies to smaller, specialist organisations. Its mission is to end the cycle of trauma and harm so that all women and girls can thrive, which it works towards by advocating and campaigning for systems and services to respond appropriately to women and girls with unmet needs.

As a starting point, the Sentencing Council might be pleased to learn of Agenda's - Young Women's Justice project delivered in partnership with Alliance for Youth Justice. Consultation with Agenda on the specific needs of young women being sentenced will ensure that this cohort is adequately served by the new guideline. <https://www.agendaalliance.org/our-work/projects-and-campaigns/young-womens-justice-project/>

We also recommend these stories as a resource for sentencers:  
<https://www.agendaalliance.org/women-girls-voices/>

In addition, two CIFC members lead on two further initiatives that illustrate the expertise we can bring:

- **Barrow Cadbury Trust convenes and funds the Transition to Adulthood Alliance (T2A)** – T2A supports research and practice to identify effective approaches for young adults (18 to 25) throughout the criminal justice system. Currently T2A is focused on embedding the idea of

young adult maturity into the mainstream of criminal justice practice, supporting research in that area, and developing good practice guidance. <https://t2a.org.uk/>. It has submitted a response to the Sentencing Council's consultation.

- **The Effective Women's Centres Partnership** which is a collaboration between Anawim – Birmingham's Centre for Women, Farida Women's Centre (Partners of Prisoners), The Nelson Trust, The Salford Foundation, Stockport Women's Centre, Together Women, Women's Centre Cornwall, The University of Birmingham, and The JABBS Foundation.

The programme of work represents an ambitious and unique opportunity to demonstrate the effectiveness of the Corstonian 'one stop' shop model. Through cutting edge and gold standard evaluation methods the project furthers the case for women's centres as viable alternatives to custody for women. A core aspect of this work includes the rolling out of the Women's Risk Needs Assessment (WRNA) to women's centres and specialist organisations across the country. The WRNA is not only an actuarial risk assessment tool with dynamic needs and responsiveness scales, but also drives a comprehensive, holistic case-plan designed to enable frontline professionals to work alongside women in a way that best accounts for their specific needs and strengths and which mitigates risk.

Should the new guideline be implemented effectively, you would expect to see an increase in community sentences and treatment requirements, many of which would be expected to be carried out at women's centres designed to provide a "one stop shop" model for justice involved women. This would be a positive outcome for women as in a meta-analysis from Summers, R., Pemberton, S. & Long, J. (forthcoming) 'Examining the Effectiveness of Interventions for Criminal Justice-involved Women: A Meta-Analytic Review' it has been evidenced that:

- Women who undergo gendered interventions are 16% less likely to re-offend compared to those who undertake a gender-neutral intervention (gendered OR =.52, gender-neutral OR = .68).
- Interventions that address complex needs and substance misuse demonstrated 40% and 38% reduction in recidivism, respectively, compared to treatment as usual.
- Women are 12% less likely to re-offend when participating in a therapeutic programme compared to participating in a non-therapeutic intervention (therapeutic OR=.55; non-therapeutic OR=.67).
- Women who participated in interventions over 6 months were 11% less likely to commit a crime compared to those who participated in interventions for less than 6 months ( $\leq$  6 months OR=.72;  $>$  6 months OR=.61).