

Centre for Women's Justice (CWJ) submission to Sentencing Council consultation on the 'Imposition of community and custodial sentences guideline' (February 2024)

Question 1

1. This submission is provided by Centre for Women's Justice (CWJ). CWJ is a lawyer-led charity established in 2016, focused on challenging failings and discrimination against women in the criminal justice system. We carry out strategic litigation and work with frontline women's sector organisations to challenge police and prosecution failings to tackle violence against women and girls (VAWG). As such we have gathered evidence which provides the basis for our recommendations for changes to sentencing guidelines to help ensure fair treatment of victims of VAWG who are convicted of offences.
2. Over the past thirty years CWJ's director, Harriet Wistrich, has been at the forefront of challenging convictions of women who have killed their abusive partner while subject to coercive control and other forms of domestic abuse. In 2021, CWJ published a major piece of research considering the barriers to justice for women who kill their abuser.¹ Although the focus of that research is on the small number of women who kill, it also sheds light on the criminal justice system's ability to deliver justice more widely for those who offend due to their experience of abuse.
3. Our submission focuses primarily on improvements needed to sentencing guidance to ensure full account is taken of women defendants' experience of domestic abuse and other forms of exploitation and violence against women and girls (VAWG). For further detail about the impact of trauma and the need for an intersectional, gender-specific approach to the sentencing of women, including victims of VAWG, we refer to our submission dated 30 November 2023 to the Sentencing Council consultation on Miscellaneous Amendments to Sentencing Guidelines, a further copy of which is enclosed.
4. We support the submission of Birth Companions in relation to the sentencing of women and pregnancy, birth and the post-natal period.
5. Nearly 60% of women in prison and under community supervision in England and Wales are victims of domestic abuse. Through our legal advice and casework service, we regularly receive referrals from women facing prosecution for a wide range of alleged offending resulting from their experience of domestic abuse and other forms of VAWG and exploitation.

¹ [Centre for Women's Justice \(2021\) Women who kill: How the state criminalises women we might otherwise be burying](#)

6. As highlighted by the UN Special Rapporteur on Violence against Women in 2015, it should be ensured that 'women's histories of victimization and abuse are taken into consideration when making decisions about incarceration, especially for non-violent crimes².'

Question 2

7. For further information contact Katy Swaine Williams:
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Questions 3 and 4

8. We understand that respondent's names may be published in any final report and shared with the Justice Committee of the House of Commons. We are content for this document and information within to be referenced in the consultation response document.

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

9. We welcome the staged step approach and the structure, the significant difference being the helpful and comprehensive detail in each section.

Question 6: Do you have any comments on the unified thresholds section?

10. We welcome the inclusion of additional guidance regarding consideration of the impact on dependants:

'Even where the threshold for a custodial sentence has been passed, a custodial sentence should not be imposed where sentencers consider that a community order achieves the purposes of sentencing. Imprisonment should not be imposed where there would be an impact on dependants, including on unborn children where the offender is pregnant, which would make a custodial sentence disproportionate to achieving the purposes of sentencing.'

11. As far back as the Corston report of 2007, it has been evident that the cycle of repeat offending for women and low level offending has frequently been linked to domestic abuse suffered. We would seek that domestic abuse be included as a potential underlying problem of frequent previous convictions:

'Numerous and frequent previous convictions might indicate an underlying problem (for example, an addiction, domestic abuse) that could be addressed more effectively through a community order with relevant requirements and will not necessarily indicate that a custodial sentence is necessary.'

² Page 23, para (viii) of UN Special Rapporteur's 2015 report

Question 7: Do you have any comments on the first part of the pre-sentence report section, before the list of cohorts?

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?

12. We welcome the more comprehensive guidance on pre-sentence reports (PSRs) that is provided in the draft guideline. It is critical in terms of consistency and awareness to include the list of specific cohorts and we welcome this more detailed approach.
13. Many practitioners and users of the criminal justice system may not readily appreciate the full definition of domestic abuse as per the Domestic Abuse Act 2021 and misunderstand it to relate only to physical violence. It is important for all practitioners in the criminal justice system to understand the full definition, particularly given the fact that women accused of offending often facing barriers to disclosing their own experience of abuse. CWJ's research on 'Women who Kill'³ (February 2021) found that *'late disclosure of abuse is common, with some women failing to disclose until after they had been convicted. This was particularly apparent in cases of coercive control. Barriers to disclosure can be exacerbated for women from non-white backgrounds, where controlling, abusive and violent behaviour may intersect with other cultural factors and create greater complexity and isolation for BME women.'*
14. To enhance the effectiveness of the proposed Guidance, we recommend the inclusion of a comprehensive definition of domestic abuse, as per section 1 Domestic Abuse Act 2021 which defines Domestic abuse as:

'Behaviour of a person ("A") towards another person ("B") is "domestic abuse" if—
(a) A and B are each aged 16 or over and are personally connected to each other, and
(b) the behaviour is abusive.
(3) Behaviour is "abusive" if it consists of any of the following—
(a) physical or sexual abuse;
(b) violent or threatening behaviour;
(c) controlling or coercive behaviour;
(d) economic abuse (see subsection (4));
(e) psychological, emotional or other abuse;

and it does not matter whether the behaviour consists of a single incident or a course of conduct.

(4) "Economic abuse" means any behaviour that has a substantial adverse effect on B's ability to—
(a) acquire, use or maintain money or other property, or
(b) obtain goods or services.

³ [Centre for Women's Justice \(2021\) Women who kill: How the state criminalises women we might otherwise be burying, pp.8-9](#)

- (5) For the purposes of this Act A's behaviour may be behaviour "towards" B despite the fact that it consists of conduct directed at another person (for example, B's child).
- (6) References in this Act to being abusive towards another person are to be read in accordance with this section.
- (7) For the meaning of "personally connected", see section 2.'

15. A potential example as applied to the Draft Guideline would be for the following to be included in the cohort:

'A pre-sentence report may be particularly important if the offender is:

- at risk of a custodial sentence of 2 years or less
- a young adult (18-25 years)
- female (see further information below at section 3)
- pregnant (see further information below at section 3)
- Sole or primary carer for dependent relatives
- from an ethnic minority, cultural minority, and/or faith minority community
- has disclosed they are transgender
- has any drug or alcohol addiction issues
- has a learning disability or mental disorder
- or; the court considers there to be a risk that the offender may have been the victim of domestic abuse – inclusive of physical or sexual abuse, violent/threatening behaviour, controlling or coercive behaviour, economic abuse, psychological/emotional/other abuse
- or; the court considers there to be a risk that the offender may have been the victim of trafficking, modern slavery, or been subject to coercion, intimidation or exploitation.'

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

16. CWJ's Double Standard report of 2022 described how women's offending more broadly is often directly linked to their own experience of domestic abuse and how victims can be unfairly criminalised in a wide variety of ways.⁴ Women for example are more likely than men to commit an offence to support someone else's drug use (48% to 22%).⁵

17. An unintended consequence from a Court providing an indication on culpability and harm to probation is that it will in practice result in the tying of the hands of the next sentencing bench/district judge/crown court judge, and unwittingly close the mind of the probation report writer prior to interview of an accused.

⁴ [Centre for Women's Justice \(2022\) Double Standard: ending the unjust criminalisation of victims of violence against women and girls](#)

⁵ [Light, M. et al \(2013\) Gender differences in substance misuse and mental health amongst prisoners](#)

18. In particular to set out where an individual's culpability/role is placed, before detailed investigation and interview by a probation officer is carried out into their circumstances, may unwittingly lead to a disadvantageous position for victims of domestic abuse. As identified by the Statutory Guidance on Domestic Abuse⁶ of July 2022, there are many barriers to disclosure of domestic abuse.
19. Taking as an example a woman who has pleaded guilty to possession with intent to supply drugs, with a history of coercive control from her partner (a co-accused in the same indictment) which has a direct nexus to the index offence. On the face of the case papers and with a no comment police interview and no basis of plea, a Judge may well consider on an initial indication that this person falls into a 'significant role' in relation to culpability. However, the nuanced and sensitive circumstances facing the accused as a victim of domestic abuse may only be detailed within a pre-sentence report. And thus could well result in them being more correctly placed into a 'lesser' culpability category if found to have been 'engaged by pressure, coercion, intimidation, grooming and/or control.'
20. Proposals seeking a PSR from committal by the Magistrates Court to the Crown Court are supported.
21. The shift away from written pre-sentence reports to oral stand-down reports which often are swiftly completed is concerning to CWJ, as this may well result in indicators of domestic abuse or sexual abuse being missed or not fully appreciated on account of lack of resources/time. In addition to further time, we would recommend inclusion within the Guideline of trauma informed approaches to enable a PSR author to seek further time to investigate or obtain a psychological report in relation to defendants who are victims of domestic abuse.

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

22. CWJ agrees with the inclusion of information on deferred sentencing. The draft Guideline includes a line referencing young adults, aged 18-25, as a cohort of offenders for whom deferring sentence may be particularly appropriate, along with offenders in transitional life circumstances.
23. By including this line, it will have the advantage of alerting sentencers to the kind of cohort to whom such a specific type of sentence might be suitable as applying to. Akin to this, CWJ ask for consideration to be given to further examples, such as offenders who have offended as a direct result of domestic abuse.

Question 11: Do you have any comments on the Purposes and Effectiveness of Sentencing section?

⁶https://assets.publishing.service.gov.uk/media/62c6df068fa8f54e855dfe31/Domestic_Abuse_Act_2021_Statutory_Guidance.pdf

24. CWJ supports the inclusion of details from the report published by the Sentencing Council of September 2022, namely that *'short custodial sentences are less effective than other disposals at reducing offending, increasing lengths of sentences is not effective for reducing reoffending for offenders with addiction or mental health issues and sentences served in the community may be more effective at promoting positive outcomes.'*
25. The research published by the Council of 2022⁷ at 3.3.1 details the importance of centrality of the individual in sentencing disposals. CWJ would support inclusion of a note reflecting consideration to trauma informed correctional practices, as it would assist in ensuring full efficacy of sentencing approach. Some of the patterns noted include offenders who have been victims of sexual violence, addictions stemming out of trauma of domestic abuse, and cycles of offending directly linked to domestic abuse.
26. The research at 7.3 considered the 2018 Ministry of Justice Female Offender Strategy, providing contrasting statistics. It is notable that women and girls were least likely to reoffend when formally cautioned (12.1 per cent) and most likely to reoffend when given a custodial sentence (56.1 per cent). For women serving sentences of less than 12 months' duration, the one year re-offending rate was that of 70.7 per cent. The rates of reoffending for fines, discharges and court orders varied between 21 and 31 per cent.

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

27. It is important to ensure sentencers use an intersectional approach when considering age and maturity, giving proper consideration to gender and race and the different factors that can be relevant for young women and girls and for Black, minoritised and migrant young people, including Black, minoritised and migrant young women and girls. This must include consideration of the impact of care experience and how this intersects with gender, race and migrant status.
28. Young women and girls in contact with the criminal justice system are highly likely to be victims of abuse but face barriers to disclosure, as explained by Saba, aged 27:⁸

If we do talk about it, who do we go to? Who will believe us? No one understood it. But just because we don't talk about what we go through, it doesn't mean that we're not struggling.

⁷ <https://www.sentencingcouncil.org.uk/wp-content/uploads/Effectiveness-of-Sentencing-Options-Review-FINAL.pdf>

⁸ [Agenda and Alliance for Youth Justice \(2021\) 'I wanted to be heard': Young women in the criminal justice system at risk of violence, abuse and exploitation](#)

29. 63% of girls and young women (16–24) serving sentences in the community have experienced rape or domestic abuse in an intimate partner relationship.⁹ Care-experienced young women may be more vulnerable and less likely to access support.¹⁰ Stigma and devaluation can play a significant role in the criminalisation of young women on the margins and the impact of this on their transition to adulthood.¹¹ Young migrant women may face additional barriers to accessing support, due to insecure immigration status which inhibits them from reporting abuse or seeking help due to fears of immigration control, as well as limits on their access to welfare support and services (such as No Recourse to Public Funds).¹² Agenda calls for a trauma-responsive response to young women and girls in contact with the criminal justice system, whose needs have historically been overlooked.¹³
30. Recent research confirmed that care-experienced children are disproportionately likely to have youth justice involvement compared to those without care experience, with some groups of ‘ethnic minority’ children being even more likely to have youth justice involvement. A significantly higher proportion of care-experienced children in this study received a custodial sentence compared to non-care-experienced children.¹⁴ Custodial sentences were twice as common among Black and ‘mixed ethnicity’ care-experienced children compared to white care-experienced children.
31. The over-representation of care-experienced children in the criminal justice system particularly affects girls: care-experienced girls are more likely to receive both non-custodial and custodial sentences than girls without care experience, with the rates of immediate custodial sentences being 25 times higher for girls who have spent time in care.¹⁵

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

⁹ [Wong, K. et al. \(2017\) T2A Final Process Evaluation Report, Policy Evaluation Research Unit](#)

¹⁰ [Agenda and Alliance for Youth Justice \(2021\) Falling through the gaps: young women transitioning to the adult justice system](#); see also: [Agenda Alliance \(2023\) A Call To Action: Developing Gender Sensitive Support for Criminalised Young Women](#)

¹¹ [Sharpe, G. \(2023\) Women, Stigma and Desistance from Crime: Precarious Identities in the Transition to Adulthood](#)

¹² See for example: [Centre for Women's Justice & Imkaan \(2023\) Life or death? Preventing domestic homicides and suicides of Black and minoritised women](#); [Hibiscus Initiatives \(2023\) Race, migration, criminalisation and mental health: The gendered experiences of Black, minoritised and migrant women in contact with the criminal justice system supported by Hibiscus Initiatives](#)

¹³ [Goodfellow, P. \(2019\) Outnumbered, locked up and overlooked? The use of penal custody for girls in England and Wales](#)

¹⁴ [Hunter, K. et al \(2023\) Policy Briefing – Care Experience, Ethnicity and Youth Justice Involvement: Key Trends and Policy Implications](#)

¹⁵ [ONS, 2022](#), cited in [Staines, J. et al \(2023\) 'We need to tackle their well being first': understanding and supporting care-experienced girls in the youth justice system](#)

32. CWJ supports the inclusion of a section taking into account the distinct issues that need to be considered in relation to women defendants. However, CWJ views that a separate and overarching guideline for the sentencing of female defendants is required and would assist both practitioners and sentencing courts alike.
33. CWJ supports the inclusion of a section ensuring that sentencers take into account the impact of the menopause.
34. The drop down content is not overly lengthy nor disproportionate. CWJ welcomes this initiative as a starting point. CWJ would request that the content within the drop down be available as a link contained within the main body of the specific offence Sentencing Guidelines (as for example, a link is currently provided to the Equal Treatment Bench Book). Although noted that this is not a specific overarching Guideline, a concern is that without specific links/reference in each offence Guideline that the importance and content may be missed.
35. It would be useful to provide a hyperlink within the Guideline to the Sentencing Council's research of 2022, for example at paragraph 7.4, thus ensuring all users of the Guideline are aware of the important content of this research.

'Additionally, women may experience prison more harshly due to their histories of trauma and feeling greater discord at being distant (both farther away geographically than males due to fewer women's prisons and physically in a personal relationship perspective) from family and children. This different experience may also mean that custodial sentences have different effects based on gender. Concerningly, the negative effects of imprisonment may be amplified for females. Indeed, officials are concerned with the high rate of women committing self-harm in English prisons, with almost 12,000 self-harm incidents recorded in the fiscal year ended 2021. It is also relevant to the general lack of female-oriented treatment programming such that any such services typically offered to females were originally designed for men, despite there being treatment-relevant differences between the genders. A further difference is of relevance, as indicated in an MoJ report. In the two years ending in fiscal 2021, MoJ found that women were more likely than men upon release from custody to be either homeless or rough sleeping and less than half as likely as men to be employed.'

'In its 2018 Female Offender Strategy, MoJ laid out an agenda to focus on community- based solutions for women and to make custodial penalties more effective for them, acknowledging the special vulnerabilities of women in custody. However, a Prison Reform Trust report in 2021 determined that only 31 of the 65 commitments in the strategy had been fully achieved. Accordingly, for females, some criminogenic effects of imprisonment risk being amplified and the potential for rehabilitation undermined.'

36. CWJ would welcome consideration of a revision to the current Domestic Abuse Sentencing Guideline effective from 24th May 2018. The scope of the Guideline is to identify the 'principles relevant to the sentencing of cases involving domestic abuse.' But currently would not assist with sentencing principles applicable to defendants

who themselves have suffered from domestic abuse and in connection with the abuse subjected to, go on to offend.

37. At present the Domestic Abuse Guideline in itself would not assist a sentencing court – if taking the examples of Farieissia Martin or Sally Challen, whose offences directly derived from domestic abuse they were subjected to. As recognised as far back as the Corston report many women's offending pathways and cycles are inextricably linked to domestic abuse. It would assist greatly criminal justice practitioners and sentencing courts to have further guidance on how domestic abuse a defendant has suffered ought to be considered and is applicable as within sentencing principles in the overarching domestic abuse guideline.

Question 14: Do you have any comments on the imposition of community orders section?

38. CWJ supports the inclusion of all important information related to the imposition of community orders in one place, for example in terms of the maximum term of a community order being that of 3 years.

Question 15: Is the new guidance on determining the length of a community order and how courts should consider time remanded in custody or on qualifying curfew clear?

39. CWJ views the new guidance to be clear.

Question 16: Do you have any comments on the new information against each of the requirements in the requirements section?

40. None.

Question 17: Do you agree with the new approach to rehabilitative requirements in the Community Order Levels section?

41. CWJ agrees that a flexible approach is required to the levels table, to ensure that community orders are tailored to an individual defendant, reflecting the personal circumstances, risks and needs of that defendant and that it would assist to emphasise that 'any requirement/s imposed for the purpose of rehabilitation should be determined and aligned with the offender's needs.'

Question 18: Do you have any other comments on the Community order levels section?

42. In relation to fines, CWJ would ask that sentencers consider the domestic setting of offenders, such as whether they have been subjected to domestic abuse, economic control, any outstanding debts and childcare costs and financial support of children. For example, the section on imposition of curfews refers to a Court ensuring safeguarding and domestic abuse enquiries are carried out on any proposed curfew address. Likewise, an analogous approach in relation to fines is suggested, ensuring the impact of economic control on domestic abuse victims is considered if imposing a fine.

Question 19: Do you have any comments on the Imposition of custodial sentences section? We welcome comments both on content and format/structure.

43. We would recommend including a link directly back to the drop down on Female Offenders in this section, so that it is appreciated by sentencers that there are specific issues to take into consideration when sentencing female defendants.
44. This section of 'is it unavoidable that a custodial sentence be imposed' ought to include reference to the Sentencing Council's published research on the impact of short term custodial sentences on women.

Question 20: Do you agree with the restructure and new factor in the table of factors indicating it may or may not be appropriate to suspend a custodial sentence?

45. Within the subsection of 'strong personal mitigation' we recommend inclusion of examples, such as having been a victim of domestic abuse.
46. In terms of a history of 'poor compliance with court orders AND unlikely to comply in the future' this would potentially jeopardise the position for individual women who have entrenched antecedent backgrounds of acquisitive offending directly arising or linked to a backdrop of domestic abuse. This runs contrary to the accepted concepts of the cycle of offending, as set out within the Corston report, and may result in limited impact of the subsection on 'female offenders.' We suggest the following edit to the final factor indicating that it may not be appropriate to suspend a custodial sentence:

'History of poor compliance with court orders (but considering carefully context and reasons for offending of individual using a trauma informed approach) AND unlikely to comply in the future.'

Question 21: Do you have any comments on the suspended sentence order section, including the guidance on requirements of a suspended sentence order?

47. None.

Question 22: Is the guidance on determining the operational and supervision periods of a suspended sentence order and how courts should consider time remanded in custody or on qualifying curfew clear?

48. Yes

Question 23: Do you think that the flowchart aligns with the proposed new structure in the guideline, and do you have any comments on the sentencing flow chart?

49. The flowchart places emphasis on only one facet to be considered, namely 'would a custodial sentence have an impact on dependants, including any unborn children that would make it disproportionate.' Whilst it is clearly important for sentencers to take

this into account, the issue of an individual being a victim of domestic abuse should also be included in this section of the flowchart.

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

50. Further research needs to be conducted specifically in relation to women defendants. As a result it is suggested that resource assessment include collection of disaggregated data, in order to improve the understanding of specific impacts on the sentencing of women defendants (see also published report of CWJ of 2022 'Double Standard'¹⁶ at page 15.)

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

51. We share concerns that sufficient time and resources be provided to allow for completion of detailed pre-sentence reports, particularly if trauma informed approaches are required for an individual defendant (such as an individual who has faced sexual violence in their background).
52. We agree there is a need for disaggregated data particularly in relation to women defendants to assist the Council in the future.
53. We welcome the reference to pregnancy and its impact within several areas of the Guideline. We refer to Birth Companions' submission, which we support.
54. We recommend that a full guideline on women defendants be developed, rather than guidance being restricted to a particular area of drop down within the draft Guideline. This should include detailed guidance on the need for an intersectional approach to prevent disparities in treatment and outcomes for Black, minoritised and migrant women.
55. Black, minoritised and migrant women face disparities throughout the criminal justice process, including in relation to sentencing and experience of prison. For example:
- Black, Asian and 'minority ethnic' women are disproportionately more likely to be committed for trial at the Crown Court, and more likely to receive a custodial sentence at the Crown Court than white women.¹⁷
 - Black, Asian and 'minority ethnic' women face racial and religious discrimination from staff and other prisoners, and report feeling less safe in prison.¹⁸

¹⁶ [Centre for Women's Justice \(2022\) Double Standard: ending the unjust criminalisation of victims of violence against women and girls](#)

¹⁷ Uhrig, N. (2016) Black, Asian and minority ethnic disproportionality in the criminal justice system in England and Wales, cited in Prison Reform Trust (2022) Why focus on reducing women's imprisonment?

¹⁸ Women in Prison & Agenda (2017) "Double disadvantage": The experiences of Black, Asian and minority ethnic women in the criminal justice system; and Prison Reform Trust (2017) Counted Out: Black, Asian and

- In the 12 months to March 2022, 72% of women from a white ethnic background received approval from a Mother Baby Unit (MBU) Board, compared to only 63% of women from an 'ethnic minority' (excluding white minorities) background.¹⁹

Question 26: Are there any other comments you wish to make on the proposed revised guideline?

56. CWJ would welcome consideration of a revision to the overarching guideline on domestic abuse. So that when defendants offend as a result of domestic abuse suffered, a Sentencing Court can be assisted further. (See paragraph 33 above).

**Centre for Women's Justice
February 2024**

**With thanks to Paramjit Ahluwalia, One Pump Court
www.onepumpcourt.co.uk**

minority ethnic women in the criminal justice system, cited in Prison Reform Trust (2022) Why focus on reducing women's imprisonment?

¹⁹ Ministry of Justice (2022) HMPPS Offender Equalities Annual Report 2021/22