Submission to the Prison Review Team

Women in Conflict with the Law

Summary of key issues

**Discrete women’s prison**: the provision of a suitable site upon which a small number of ‘cottage-style’ buildings are located to house those women for whom prison is a last resort

**Remand prisoners**: reduction in the number of remand prisoners through the provision of gender-specific alternatives to custody; to legislate for a presumption against short sentences; provide appropriate accommodation options for women offenders and vulnerable women

**Fine defaulters**: the provision of adequately resourced gender-specific alternatives to custody that minimise the risk of breaching conditions

**Mental health**: the provision of appropriate diversion from prosecution for women with mental health difficulties and the provision of appropriate mental health facilities to prevent women with serious mental health difficulties from entering prison

**Education/training/employment**: the importance of the realisation of the right to education in detention and provision of training as a key component of any strategy to reduce offending

**Funding to third sector organisations**: the provision of adequate levels of secure funding for Women’s Centres that wish to work with women in conflict with the law or with women at risk of offending
Introduction

The Commission’s work on the situation of women in the criminal justice system included the publication of investigation reports, *The Hurt Inside* (2005) and *The Prison Within* (2007). The in-depth reports focus on the special vulnerability of women in detention and examine the extent to which the treatment of women and girls in custody in Northern Ireland is compliant with international human rights standards. The findings of the second study call again for a “discrete, separate and self-contained” facility for women prisoners. Also highlighted is the need for appropriate mental health facilities to prevent women with serious mental health problems from entering prison in the first place. The report, while documenting examples of good practice within the Prison Service, highlights the urgent need for a comprehensive strategy on women’s imprisonment to be implemented by a range of agencies both inside and outside the Prison Service.

In March 2007, Baroness Jean Corston published her *Review of Women with Particular Vulnerabilities in the Criminal Justice System*. The ‘Corston Report’ called for community sentences to be the norm and that they should be designed to take account of “women’s needs, vulnerabilities and domestic responsibilities”. The government response to the report, published in December 2007, endorsed the view that there is a need to explore what more can be done to “avoid the use of custody” for those who have not committed serious or violent offences and are low-risk. The conclusions of the Corston Report were given further support by the Prisons Minister for England and Wales in July 2010.

In Northern Ireland, the recently published strategy for the management of women offenders\(^1\) echoed many of these issues as having a particular impact on women in conflict with the law. Among those highlighted are family relationships, children, health and well-being, addictions, history of sexual or other violent abuse, self-harming and financial and accommodation needs. Research commissioned by the Northern Ireland Office further highlighted these needs, and found that there was a requirement to “gain a deeper understanding of women’s offending behaviour and criminal justice practices” through research that takes account of the “social, political

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\(^1\) DoJ/NIPS/PBNI (October 2010) *Women’s Offending Behaviour in Northern Ireland: A Strategy to Manage Offenders and those Vulnerable to Offending Behaviour 2010-2013.*
and economic context within which women live and the system operates”.  

The female prison population in Northern Ireland is relatively small and stable, averaging approximately 45 at any one time with a significant percentage comprising remand prisoners. However, this average figure can be misleading as a large number of women are imprisoned for very short sentences. The number of receptions into prison for 2009-10 totalled 300. In 2009, 25 per cent of all women entering prison received a custodial sentence of three months or less. In Scotland, the Criminal Justice and Licensing (Scotland) Act 2010 includes a presumption against sentences of three months or less. Figures recently obtained from the Prison Service indicate that in 2010, 186 females received a custodial sentence for fine default, some on more than one occasion. Such sentences average four days in duration. This and the high number of remanded female prisoners are two areas that urgently need to be addressed. While it is important to acknowledge the high use of community sentences in Northern Ireland, it is time to ensure that prison is used only for the small number of women for whom a custodial sentence is necessary as a last resort.

It is encouraging to note that a number of issues that we highlight in the submission have been acknowledged in the Interim Report of the Prison Review Team. Many of the issues are ones that the Commission has consistently raised in its research reports and policy submissions. We provide below a summary of the key concerns identified by the Commission and others impacting upon the treatment of women in conflict with the law.

**Discrete women’s facility**

1. The Commission’s published reports, *The Hurt Inside* (2005) and *The Prison Within* (2007), provide evidence-based research which draws attention to the special vulnerabilities of women in detention and calls for a discrete, separate and self-contained facility for women prisoners.


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2 NIO (January 2010) *Addressing Offending by Women: A Literature Review.*

NI included as a main recommendation that “a separate prison should be provided for women in Northern Ireland”.

3. In March 2008, a report into the Northern Ireland Prison Service carried out by the House of Commons Northern Ireland Affairs Committee recommended that development plans, costings and a timetable for implementation for a discrete women’s facility be treated as a “high priority” (Northern Ireland Affairs Committee, First Special Report, 5 March 2008).

4. In July 2008, the Committee on the Elimination of Discrimination Against Women (CEDAW) in its Concluding Observations on the UK’s Sixth Periodic Report, called upon the State party “to take further steps towards the establishment of small custodial units and community establishments, as well as separate women’s facilities, particularly in Northern Ireland”. Following devolution, it now falls to the Department of Justice to address the Committee’s concerns.

5. The Commission has raised the issue of delay in taking forward plans for a discrete women’s facility with the former Minister of State for Northern Ireland and the former Director General of the Prison Service. The issue has been highlighted in the Commission’s research reports and policy submissions and drawn on a range of human rights standards and ‘soft law’ including:

- European Convention on Human Rights (ECHR); in particular, Article 3 (the right to be free from torture or to inhuman or degrading treatment or punishment), Article 5 (the right to liberty and security), Article 8 (the right to private and family life), Article 9 (the right to freedom of thought, conscience and religion), and Article 14 (the right to non-discrimination);
- International Covenant on Civil and Political Rights; in particular, Article 9 (security of the person and the right not to be subjected to arbitrary detention) and Article 17 (right to privacy and family life);
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- Convention on the Elimination of All Forms of Racial Discrimination (CERD); in particular, Article 1 (meaning of racial discrimination), Article 2 (measures to eliminate racial discrimination) and Article 5 (the right to freedom
• Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; in particular Article 10 (training of personnel);
• Convention on the Rights of the Child (CRC); in particular Article 3 (‘best interests’ principle), and Article 16 (the right to privacy and family life);
• Convention on the Rights of Persons with Disabilities (CRPD); in particular, Article 1 (full and equal enjoyment of all human rights), Article 6 (women with disabilities), Article 16 (freedom from exploitation and abuse), and Article 21 (access to information);
• United Nations Standard Minimum Rules for the Treatment of Prisoners, and
• European Prison Rules (Revised), Recommendation Rec(2006)2 of the Committee of Ministers of the Council of Europe.

6. The Hillsborough Agreement (February 2010) includes proposals to consider a women’s prison “which is fit for purpose and meets international obligations and best practice”.

7. The Prison Service itself has accepted that the “current facilities are not ideal or suitable for the long-term management of women prisoners” and it must “engage on securing an establishment specifically designed to meet women prisoners’ needs (Committee for Justice Report, 13 May 2010).

8. We note that reference is made to “improving facilities for female prisoners” in the Department’s Draft Budget 2010 – Next Steps document. Reference is also made in the Addendum that “we will roll out the women offenders strategy addressing offending behaviour and underlying factors, and will carry out a full examination of the case for a new women’s prison”.
Reference is again made to the issue of a women’s facility in a recent Ministerial Statement to the Assembly on the progress made on the Agreement at Hillsborough Castle (1 February 2011). It is stated that a business case is under development taking account of projected future accommodation need and the potential to divert women from custody. In addition, that “further site options are being explored” and that the 2010 capital allocation to the Department of Justice provides opportunities “for greater certainty about the potential to
9. It is disappointing that a full examination of the case for a new women’s prison is still to be carried out. The Commission therefore advocates that such an examination be completed as soon as possible and that budgetary provision be made for funding a discrete site upon which a small number of ‘cottage-style’ buildings are provided for occupation by those, many fewer, women for whom prison is genuinely necessary. The factors that lead to high numbers of women on remand and women serving short sentences for fine default need to be addressed. There should also be more resources diverted to establishing effective gender-specific alternatives to custody within community settings for all fine defaulters. On financial consideration alone, such measures should generate substantial savings to NIPS where the average annual cost per prisoner place is approximately £94,805.4

10. Statistics extracted from the recently published strategy5 show that of those discharged from an immediate custody sentence in 2007, 47 per cent of women offended within one year, compared to 38 per cent of men (para 6.1). Of those 32 women given immediate custody in 2009, 21.8 per cent of women were imprisoned for breach of suspended sentence (para 2.28).

11. Statistics suggest community supervision is effective in reducing re-offending. In 2007, the figure for 12 months re-offending rate following a Probation Order was 20 per cent for women. Following a Non Probation Order community sentence the percentage fell to 18 per cent for women.6

12. The Commission fully acknowledges the work of the Women’s Project Team, the Inspire Women’s Project, and the Women’s Community Support Project, to improve conditions and facilities for women in Ash House. However, serious concerns remain about the suitability of the building itself to provide an acceptable environment that meets international obligations and best practice. The women’s prison occupies a small part of a site

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4 ‘Reviewing Prisons’ in Agenda NI, February 2011.
5 Women’s Offending Behaviour in Northern Ireland: A Strategy to manage women offenders and those vulnerable to offending behaviour 2010-2013, Department of Justice, October 2010.
6 As above.
that is primarily dedicated to housing the YOC which accommodates approximately 180 remand and sentenced young male prisoners at any one time.

13. The women prisoners are housed in accommodation formerly occupied by males sentenced to the YOC. The Strategy (para 7.4) acknowledges that whilst there is self-contained accommodation for the young offenders and the women, “there are considerable shared services and facilities”. It remains our understanding that shared facilities include the visits area, and a healthcare unit with male and female facilities located at either end of a corridor, providing insufficient privacy. Inevitably, the women’s outdoor space attached to Ash House and other parts of the grounds may be overlooked by young male prisoners.

14. Refurbishment plans for the ground floor of Ash House are noted as part of a process to provide a more gender-specific approach to the management of women in prison. However, this ongoing programme of incremental change, while improving conditions in the short term, does raise questions as to the commitment to prioritise the provision of a small discrete purpose-built facility for women for occupation by a small number of women for whom prison is necessary.

The high number of remands

15. There are a number of concerns regarding the high number of remand prisoners in Ash House. In 2009, remand prisoners accounted for 61 per cent of all female receptions. On average almost half (48 per cent) of women in prison were on remand. In the week commencing 14 February 2011, from a total of 48 female prisoners, 20 were on remand. Sentencing policy falls outside the remit of the Prison Service but does raise a number of concerns:

- Clarification is required as to what steps are being taken to address the high number of women placed on remand in Ash House.
- Further assurances are needed regarding whether remand prisoners are held separately from convicted prisoners.
- Further information is required as to what access to support services/activities/education and prison healthcare is available to remand prisoners.
Further information as to the percentage of women prisoners held on remand who eventually receive a custodial sentence and the sentence duration.

Lack of appropriate accommodation has been identified as a need to be met. It is understood that a scoping study will review the accommodation needs of women offenders and vulnerable women, and that the position will be reviewed by the end of 2011. The issue of dedicated accommodation (possibly hostel accommodation or supporting existing accommodation providers) has been raised in the context of provision as an alternative to custody for some women offenders (Strategy, paras 5.17-5.19).

As well as accommodation needs, a woman entering or leaving the criminal justice system is likely to require support in other areas, such as mental health, welfare and social security. It is suggested that a clear co-ordination role is provided, particularly for those services that sit within one organisation, such as Social Services, to ensure that women are not detained in custody any longer than absolutely necessary.

16. The Commission underlines the seriousness of the issue of accommodation and homelessness for all vulnerable female offenders, including those leaving prison, by pointing to the relevant international standards. The right to adequate housing is contained in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966). The most substantive interpretation of this aspect of Art. 11 was provided by the Committee that oversees the ICESCR with the issue of its General Comment No. 4. This establishes that “the right to adequate housing” is not to be equated with “shelter exclusively as a commodity. Rather, it should be seen as the right to live somewhere in security, peace and dignity”. Underlying this point is the need to understand that the right to housing cannot be viewed in isolation from other human rights contained in international human rights instruments. Housing is a foundation from which other legal entitlements can be achieved; for example, the adequacy of one’s living conditions is closely linked to the right to enjoy the highest attainable level of mental and physical health. General Comment No. 4 is clear that “disadvantaged groups must be accorded full and sustainable access to adequate housing resources” and should be “ensured some degree of priority consideration in the housing sphere”.

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Fine defaulters

17. At present there is no alternative to custody for fine defaulters in Northern Ireland, a disposal that is available in England, Wales and Scotland. Supervised Activity Orders (SAOs) were legislated for in the Criminal Justice (Northern Ireland) Order 2008, but are not yet available as a disposal. The continued lack of an appropriate alternative to custody is extremely disappointing particularly given that the Addendum to the Programme for Government draws attention to the positive outcomes in reducing offending that community sentences generate.

18. The Northern Ireland Prison Service Annual Report (2009-2010) shows that out of a total of 5,701 prison receptions, 1,778 were fine defaulters (1,635 males and 143 females), with prison sentences averaging 4 days. Figures recently obtained from the Prison Service indicate that in 2010, 186 females and 1,774 males received a custodial sentence for fine default (some on more than one occasion). This continues to represent a significant proportion of those imprisoned and must carry significant cost implications to the NIPS in terms of staff time and resources.

19. We are aware of the recent initiatives to ensure that improved information is provided to the courts on ‘means to pay’ and the provision of additional supports which are to be welcomed.

20. The Commission has concerns that part of the package of measures under consideration may include direct deduction from benefits and earnings. The impact that this might have on low-income families needs to be addressed to ensure compliance with Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (right to an adequate standard of living).

21. We note the references to SAOs in the Justice Bill (Part 5, clause 63 and Schedule 6, paragraph 13) and understand that such legislation, if passed, would enable the introduction of a pilot scheme on SAOs. However, following a recent evidence session on the Justice Bill (13 January 2011) where the importance of having an opportunity to run a short pilot was acknowledged, it appears that before any such scheme is trialled a number of issues, including resources, need to be addressed. Also, if such a pilot goes ahead, it will lead to a situation where non-custodial
22. We are aware of some concerns about the introduction of SAOs in that they may represent an ‘up-tariffing’ (i.e. that a community sentence might be imposed rather than paying a fine, with potential for escalation in case of breach). However, adequately resourced gender-specific alternatives to custody that minimise the risk of breaches urgently need to be put in place. The fact that, at present, there is no alternative to custody for fine defaulters remains a serious concern.

23. A further concern is our understanding that women (and men) are receiving custodial sentences for non payment of TV licence fines. As stated in the Commission’s advice to the Secretary of State for Northern Ireland on a Bill of Rights, “no-one shall be deprived of his liberty merely on the ground of the inability to fulfil a contractual obligation”. This proposed provision incorporates the Fourth Protocol, Article 1 of the European Convention on Human Rights (ECHR). While the Article was not intended to cover fine default, many of the considerations that motivated this humane and sensible measure apply at least equally in cases where there are genuine reasons for failure to discharge a criminal penalty, rather than a civil debt or contractual obligation; for example, the sum at stake is not recovered by imprisonment, and the cost to society and to the individual of imprisonment is likely to exceed by a vast measure the original fine. The distinction between TV licensing and, for example, utility billing, where non-payment is a wholly civil matter, is hard to discern other than by reference to a statute that Parliament very likely did not intend to lead to the frequent and traumatic imprisonment of defaulters, at great public expense, for short periods.

24. It is also important that resources be put in place to support all those on community sentences, including SAOs if introduced, to ensure that breaches are kept to a minimum. This, in our view, would be in accordance with the Department’s Addendum to the Programme for Government (hereafter, the Addendum) which signals its intention to “develop more effective ways of dealing

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7 NIHRC (December 2008) A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland, pp 63-64. The male pronoun is used, as in the Protocol, to refer also to females.
with fine default” and to ensure that appropriate options are available for sentencers dealing with less serious offending.

25. While acknowledging measures within the Justice Bill to provide alternatives to prosecution and custody for low level offences, through imposition of a fine or fixed penalty notice (among other options), the Commission is concerned that such disposals have the potential to escalate to a default situation and possibly a custodial sentence.

26. In July 2008, the CEDAW Committee, in its Concluding Observations on the UK’s Sixth Periodic Report, called upon the State party to “intensify its efforts to develop alternative sentencing and custodial strategies, including community interventions and services, for women convicted of minor offences”.

27. An important aspect of meeting the State’s obligations in this area will be to ensure that those Women’s Centres that wish to work with women in conflict with the law, or at risk of offending, are provided with long-term funding. It is noted that in 2009 the Ministry of Justice secured £15.6 million as a first step to building capacity in this area in England and Wales. Significant funding has been provided to Women’s Community Projects to take this work forward. However, it is not clear whether this level of funding will be sustained.

Mental health

28. At the time of writing it is understood that work on the Prison Healthcare Strategy is well advanced; however, publication is still awaited. Delivering the Bamford Vision envisaged that “the involvement of the Health and Social Care Trusts in leading prison healthcare should ensure the development of the service in keeping with that in the community and facilitate seamless transfer of care across the interface between prison and the community” (para 70).

29. In a recent report by the Criminal Justice Inspectorate on mental health and the criminal justice system, the need for a separate women’s facility is reinforced with “a greater emphasis on

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providing a therapeutic environment for women who are often very damaged and very vulnerable”. The report notes that women’s issues centre around “complex psychological needs and in particular, women feel the separation involved in imprisonment more keenly than men do”. It also acknowledged that women suffering from personality disorder should not be detained if at all possible, and there should be a more ‘community based’ approach to dealing with offending. A key recommendation is that alternatives to custody for women suffering from mental health problems should be identified.

30. It is understood that the DoJ has established a sub-group to take forward the recommendations made by the CJINI report referred to above. The DHSSPS is taking work forward to ensure that ‘new mental health capacity legislation will be introduced in the Assembly by December 2011. The Commission reviewed the Mental Capacity (Health, Welfare and Finance) Bill Equality Impact Assessment. Under the section entitled ‘Criminal Justice System’, it is noted that provisions of the Bill will generally apply to those subject to the criminal justice system, i.e. presumption of mental capacity, powers of intervention for those who lack mental capacity and proportionate safeguards where interventions are made. However, at point 20, separate provision is being considered for a small group of people subject to the criminal justice system. These people may have mental capacity, but may require treatment, and it has been suggested that separate provision may be required to allow a court to direct hospital care or treatment. This may conflict with Article 25 (Health) of the United Nations Convention on the Rights of Persons with Disabilities (CRPD). In particular, 24(d) obliges the State to:

“Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care…”

31. The meaning of Article 24 is further clarified by looking at Article 3(a), General Principles, of CRPD which reads: "The principles of

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the present Convention shall be: (a) Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons”.

32. The Health Service has been looking at options for dealing with women’s mental health. These include:

- improvement of the committal screening process
- development of a model of care to meet the mental health needs of women prisoners
- exploration of other therapeutic interventions, including those that might address post-traumatic stress disorder
- development of policies and procedures to inform clinical decisions; and
- development of health promotion among women in prison.\(^{10}\)

33. Further information is needed as to what specialist input and in-reach into prisons has occurred to date, and any consideration that has been given to the development of diversion projects on the interface between the Health Service and the criminal justice system. Such projects can limit the number of prosecutions of women with mental health difficulties by diverting them to appropriate mental health services in the community and, where necessary, to mental health facilities where their needs can be addressed and away from prison custody.

34. We are pleased to note the inclusion of a number of these issues in the Interim Report, in particular recognition of the need for ‘more diversion schemes for those with mental health problems and more supportive environments and services for them in the community’.\(^{11}\) Also highlighted is ‘the lack of sufficient mental health support to meet need, particularly for primary mental healthcare and for those with personality disorders’.\(^{12}\) The need for continuity of mental healthcare upon release with support systems in place is also acknowledged.

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\(^{10}\) CJINI, *Not a Marginal issue – mental health and the criminal justice system*, para 4.48.


\(^{12}\) Ibid, p17.
Education/training/employment

35. The realisation of the right to education, and the profound and positive impact that it can have on reducing offending, should make education a fundamental concern both in detention and in the community. We acknowledge the NIPS Learning and Skills Strategic Plan 2010-2013, and plans to take forward work on the specific needs of women with a learning disability or other special needs. It is hoped that this will enable further efforts to be made to enhance educational and employment opportunities for women serving long sentences with particular emphasis on improving pre-release programmes, as currently more opportunities seem to be given to male offenders. Clearly, a proactive strategy is required to identify and develop relationships with employers in the community that can offer constructive activities and employment on a day-release basis for women offenders.

36. Consideration should be given to broadening the range of activities available for women. While acknowledging the relatively small numbers of sentenced and remanded women, there ought to be more opportunities for less structured/informal activities or courses for women not interested in pursuing a qualification, but who would benefit from group activity and personal development.

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