

## **Violence Against Women and Girls (VAWG) Strategy 2021-2024 Consultation Response**

### **Female Offenders who are also Survivors of Abuse**

**19<sup>th</sup> February 2021**

#### **About APPEAL's Women's Justice Initiative**

1. APPEAL is a non-profit law practice committed to fighting miscarriages of justice and demanding reform. We provide investigation and legal advocacy for victims of unsafe convictions and unfair sentences who cannot afford to pay for a lawyer themselves. We use individual cases as leverage for system-wide criminal justice reform by educating the media, parliament, criminal justice policy makers, the legal profession and the public about how and why miscarriages of justice occur and what needs to change to stop them.
2. APPEAL's Women's Justice Initiative (WJI) uses strategic litigation to appeal sentences and convictions for women experiencing severe disadvantage in the criminal justice system; women who are victims of domestic abuse, whose mental health has been ill considered, and who are given damaging short sentences. We empower women to become advocates for reform and use casework to campaign for changes to the law.
3. The Women's Justice Initiative represents:
  - a. Women imprisoned for minor, non-violent offences when non-custodial options might have been more appropriate
  - b. Women sent to prison in cases where mental health or learning disabilities were not adequately considered in court
  - c. Women who are victims of domestic abuse/coercive control/exploitation, where this was relevant to the offence but not adequately explored at trial
  - d. Innocent women prisoners, especially those whose 'crime' was in fact accidental or the result of natural causes.

#### **Scope of VAWG Strategy Consultation and Background**

4. While we have understood that domestic abuse "will be dealt with in a further, complementary Strategy that will follow later in 2021", we believe that a comprehensive VAWG strategy must include robust evidence and approaches  
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to domestic abuse. Splitting the strategies risks duplication or gaps in the Government's provision of services to women and girls who have been subjected to violence.

5. We are further concerned that the VAWG strategy call for evidence makes barely any mention of domestic abuse as a driver to female offending. This is disappointing, given that almost 60% of female offenders have experienced domestic abuse<sup>1</sup> and the increasingly robust evidence base for the links between abuse and pathways into the criminal justice system for women as defendants.<sup>2</sup> The Government itself has acknowledged the links between abuse and women's offending in several strategy and policy documents.<sup>3</sup>
6. The harms of VAWG are often perpetuated and compounded by the inappropriate criminalisation of women who are victims of abuse and charged with crimes linked to their abuse. Current safeguards are not doing enough to divert such women away from prosecution. They are inept at uncovering their histories of trauma through the court process and make it exceptionally hard for women to overturn unjust decisions.
7. APPEAL's Women's Justice Initiative represents and receives requests for assistance from women in prison who believe they have been wrongfully convicted or unfairly sentenced. A large number of those women have been victims of domestic abuse and coercive control who have been inappropriately criminalised. We have provided case studies in an annex of some of the women whose stories and experiences of being criminalised despite being abuse victims illustrate our concerns.
8. The forthcoming VAWG Strategy should include reference to survivors involved in alleged offending and should set clear expectations that they receive equal protection from abuse. They should also provide for police and prosecution practices to be improved so that they consistently serve the public interest in these cases. Our recommendations for reform are set out below.

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<sup>1</sup> Ministry of Justice. (2018). *Female Offender Strategy*, p3  
([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/719819/female-offender-strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/719819/female-offender-strategy.pdf))

<sup>2</sup> See Prison Reform Trust. (2017). *"There's a reason we're in trouble" - Domestic abuse as a driver to women's offending*  
([http://www.prisonreformtrust.org.uk/Portals/0/Documents/Domestic\\_abuse\\_report\\_final\\_lo.pdf](http://www.prisonreformtrust.org.uk/Portals/0/Documents/Domestic_abuse_report_final_lo.pdf))

<sup>3</sup> See the 2018 Female Offender Strategy (linked above) and the 2019 Transforming the Response to Domestic Abuse Consultation Response and Draft Bill  
([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/772247/Transforming\\_the\\_response\\_to\\_domestic\\_abuse\\_-\\_consultation\\_response\\_and\\_draft\\_bill\\_-\\_print.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/772247/Transforming_the_response_to_domestic_abuse_-_consultation_response_and_draft_bill_-_print.pdf))

9. APPEAL are signatories and supporters of a new statutory defence and an amendment on the law on self-defence to be added to the Domestic Abuse Bill for those whose offending is driven by their experience of domestic abuse. This would address gaps in legal protection for survivors, strengthen recognition of the links between victimisation and offending and deter inappropriate prosecutions. We have also called for a comprehensive policy framework to be introduced to protect survivors in these circumstances and ensure the public interest is served, drawing on learning from equivalent work to protect victims of trafficking who are suspects or defendants in criminal proceedings.<sup>4</sup>
10. Our proposals are supported by the Victims' Commissioner, the designate Domestic Abuse Commissioner and other legal experts and domestic abuse organisations.
11. We have also recently undertaken a large research project through the Griffins Society Fellowship, published in June 2020 and hosted at the Institute of Criminology at Cambridge University, looking at the barriers for women seeking redress in the Court of Appeal Criminal Division. The findings showed significant barriers to justice for women who are victims of abuse charged with criminal offences. A copy of the paper is attached to this submission.

## **Victims of abuse who are criminalised inappropriately**

### **Volume**

12. At APPEAL, we receive letters from women in prison requesting help appealing against either their criminal convictions, sentences or both. These women feel something went wrong in the first instance trial and are seeking to correct those mistakes. The data provided below represents a subsection of the total number of women who write to us, who have agreed to complete a monitoring questionnaire between February 2018 and February 2021.

<b>Have you ever experienced abuse?</b>	<b>( n )</b>	<b>%</b>
Domestic abuse	38	63%
Physical abuse	36	60%
Emotional abuse	43	72%
Sexual abuse/exploitation	33	55%
Culturally specific abuse (e.g. honour based violence, forced marriage or FGM)	9	15%

<sup>4</sup> These proposals were developed by the Prison Reform Trust as part of its Transforming Lives programme to reduce women's imprisonment. Since that programme ended in November 2020, the Centre for Women's Justice have taken over the lead on this work. For more information and a full list of supporters go to: [www.centreforwomensjustice.org.uk/dabill](http://www.centreforwomensjustice.org.uk/dabill)

Trafficking	5	8%
Not experienced abuse	6	10%
<b>Total</b>	<b>60</b>	

*Table 1: Frequency of experiences of abuse for women writing to APPEAL seeking help to overturn convictions or sentences. Please note respondents were able to select multiple categories on the questionnaire.*

13. The staggering numbers of women in this sample who reported being victims of differing and wide-ranging forms abuse is particularly concerning given that these are women who have reported concerns with the ways their criminal trial was conducted and are seeking to appeal Crown Court decisions.
14. It is worth emphasising that women in prison are a severely and multiply disadvantaged cohort, with intersectional needs. In our sample of 60 women:
- a. 13 had learning difficulties (23%)
  - b. 23 had experienced homelessness (39%)
  - c. 15 had spent time in care (25%)
  - d. 51 had been diagnosed with mental health difficulties (86%)
  - e. 23 had abused drugs or alcohol (39%)
  - f. 21 had a disability (36%)
  - g. 43 had children (72%), and 20% of those women had children under the age of 5
15. It is also worth noting that for 43 of the women who completed the questionnaire (73%), their current incarceration was their first experience of the criminal justice system. This suggests that there may be opportunities to divert more women away from prison who do not have prolific offending histories and who have often been victims of worse crimes than for those they stand accused.

## **Impact**

16. The impact on women survivors involved in alleged offending of being disproportionately and unfairly criminalised are wide ranging and catastrophic.
17. Fundamentally these experiences of criminalisation erode the legitimacy of the criminal justice system and the Government's stated ambition to "prevent these abhorrent crimes and improve outcomes for victims and survivors". Furthermore, it undermines the trust of women survivors in the ability of the state to keep them safe and to not further traumatise them.
18. We have worked on a number of troubling cases where abuse victims' lack of trust in the state's ability to keep them safe has led to severely delayed disclosure of the abuse and catastrophic consequences for the victim.

### **Case Study: R v A (2018)**

“A” was convicted of harming her baby and was given a ten-year extended sentence because a judge had found her to be dangerous. A was in an abusive relationship with T, marked by regular verbal, physical and sexual abuse, often leading to the police being called to their home. Despite the police’s knowledge of the violence, the abuse continued without effective intervention, severely damaging A’s trust in the ability of the police to protect her. T would beat her after the police attended the property and told her constantly that her children may be taken away if the police were called, so she began to tell others that her injuries were the result of falling over, or attacks by strangers.

The violence continued, even while she was pregnant and in the immediate aftermath of the birth of her child. One evening while A was holding the baby, T attacked her causing the baby to fall from her grasp. Both A and T were charged with harming the child. Even as they were on trial, T’s violence and threats persisted, causing A to fear the consequences of telling the whole truth about their relationship. She lied to her advocates that the baby had fallen by accident and did not disclose the abuse. It was only after her conviction and after she had participated in PTSD and domestic abuse workshops in prison that she felt she could disclose the full extent of the abuse. Working with APPEAL, A spoke with an experienced psychologist who found that her experience could be classified as torture. Her 10-year sentence was successfully halved on appeal, after the acknowledgement of significant legal error in finding this vulnerable woman to be dangerous. A’s case is due to appear before the Court of Appeal in 2021 for an appeal against her conviction, bringing forth all of the evidence of T’s violence that had not been discussed at trial.

19. We have set out an annex of further case studies that illustrate a number of women whose offending is linked to experiences of abuse.

### **Prevention and Support**

20. In this section we will set out our recommendations for reform to further protect survivors of abuse who are criminalised. As criminal defence experts, we have limited our recommendations to our area of expertise.

*Ask and Take Action*

21. We support Agenda's Ask and Take Action Amendment to the Domestic Abuse Bill, that calls for a duty on public authorities to ensure frontline staff make trained enquiries into domestic abuse, backed by sufficient funding to make this a reality.<sup>5</sup> The duty to make inquiries must be evident and required at every stage of contact with the criminal justice system, but in particular for the police and prosecution so that they are consistently able to weigh up the public interest to prosecute in cases where women may have been victims of domestic abuse.
22. Attempts have been made to ensure staff in some public services ask about domestic abuse. National Institute for Health and Clinical Excellence (NICE) guidelines currently state that staff in all mental health services should be making trained enquiries into experiences of domestic abuse among all those accessing their service.<sup>6</sup> These requirements should be mirrored in the legal system, to ensure women's experiences of abuse are directly asked about and appropriate responses to those disclosures can be developed.
23. This approach must be carefully balanced by a need to avoid the re-traumatisation of survivors of abuse. Focus groups with women with experience of the criminal justice system conducted by Women in Prison (and discussed in more detail in their submission to this inquiry), highlighted that women found it difficult to retell their story and not be believed or taken seriously by public services (particularly the police, courts and social services), and of the damaging effect of having testimony of abuse dismissed if disclosed in the later stages of a court process.
24. That is why the duty to inquire must be supported by adequate resources to ensure the provision successfully diverts women away from being inappropriately criminalised. The VAWG Strategy should set out clearly the existing framework for training frontline public services staff to identify violence and abuse and respond appropriately and make explicit that the duty falls on criminal justice professionals equally.
25. A practical and cost-effective step to achieving that in the criminal courts would be for the Plea and Trial Preparation Hearing Parties Pre-Hearing Information Form<sup>7</sup> to have a section or a box requiring defence advocates to make inquiries about whether or not their client may be a victim of domestic abuse or coercive control. There is currently provision in that form to consider if "the defendant is said to be a victim of modern slavery". An equivalent box for coercive control and abuse would ensure all defence advocates inquire and offer defendants an opportunity to disclose this to their advocate at an early stage in the trial process

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<sup>5</sup> For the full briefing, visit <https://weareagenda.org/wp-content/uploads/2019/08/Agenda-report-Ask-and-Take-Action.pdf>

<sup>6</sup> NICE (2014), PH50, Domestic violence and abuse: multi-agency working. [Recommendation 6](#)

<sup>7</sup> Downloadable at <http://www.justice.gov.uk/courts/procedure-rules/criminal/forms>

and would trigger relevant disclosure and public interest considerations in proceeding with a criminal case.

### *Judicial Direction*

26. The Crown Court Compendium<sup>8</sup> (last updated in July 2020) must include guidance for Judges and sample jury directions on delayed reporting of abuse and coercive control. Section 20-1 of the Compendium, under the heading “*Sexual Offences – The dangers of assumptions*” provides guidance to Judges where it may be appropriate to give directions to counter the risk of stereotypes and assumptions. The guidance states “(i) *experience shows that people react differently to the trauma of a serious sexual assault, that there is no one classic response; (ii) some may complain immediately whilst others feel shame and shock and not complain for some time; and (iii) a late complaint does not necessarily mean it is a false complaint.*” However, at present, there is no similar provision for guidance on the dangers of assumptions where domestic abuse or coercive control may be in issue. This needs to be amended and included in the Compendium.
27. The Equal Treatment Bench Book<sup>9</sup> (last updated in March 2020) must recognise that a defendant may also be a victim of domestic abuse, not just a complainant, and must be afforded with the protection of special measures and related adjustments. Chapter 6 of the Bench Book is about Gender and Domestic Violence, and includes a section on coercive control, but there is no mention or recognition that someone can be *both* a victim *and* a defendant and makes no provision for this. We need this to be updated.
28. The Bench Book already includes helpful language and statistics, such as that “*Fewer than 1 in 4 people who suffer abuse at the hands of their partner -and only around 1 in 10 women who experience serious sexual assault -report it to the police*” (para 38). It includes references to the “*significant reasons why women do not leave dangerous partners*” and the “*complex psychological reasons at play*” (para 46) as well as the fact that “*religious, cultural and social factors may be relevant*” (para 48). However, this guidance is given in reference to the treatment of victims of abuse who are called as witnesses in a criminal case and makes no reference to when they are also defendants.
29. ‘Special measures’ were introduced by the Youth Justice and Criminal Evidence Act 1999 (allowing evidence to be given by television link, by DVD, video recording or behind a screen; pre-recorded cross-examination of young and vulnerable witnesses and allowing hearings in private in certain

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<sup>8</sup> Available at <https://www.judiciary.uk/wp-content/uploads/2016/06/Crown-Court-Compendium-Part-I-July-2020-1.pdf>

<sup>9</sup> Available at <https://www.judiciary.uk/wp-content/uploads/2018/02/ETBB-February-2018-amended-March-2020.pdf>

circumstances). While the Bench Book at para 62 says, “*Consideration should always be given to using the court's general and special powers to effect a fair hearing where the case involves allegations of sexual harassment or violence*”, this comment is made only in reference to sexual violence and should be extended to include cases involving domestic abuse and coercive control.

30. The purpose of the special measures provisions is to enable the witness to give their “best evidence”. In cases involving allegations of domestic abuse or violence, there should be specific guidance surrounding witnesses *and* defendants where these issues arise. This is of particular importance in cases where the allegation of abuse is directed towards a co-defendant.

## **Conclusion**

31. The VAWG Strategy must set out the complex reality of women who are victims of domestic abuse where that abuse is a driver to their alleged offending and provide guidance for statutory agencies in dealing with such criminal cases. A clear expectation for statutory agencies to proactively ask about histories of abuse at much earlier stages would prevent the undue criminalisation of an already extremely vulnerable cohort of women. The best practice guidance should be developed in consultation with survivors and legal professionals.

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