

# An Inspection of how the criminal justice system treats females in conflict with the law.

## Terms of Reference

### Introduction

Criminal Justice Inspection (CJI) proposes to undertake an inspection of how the criminal justice system in Northern Ireland treats females in conflict with the law, that is, those in contact with the criminal justice system suspected or convicted of having committed a criminal offence. The Police Service of Northern Ireland (PSNI), the Public Prosecution Service (PPS), the Northern Ireland Courts and Tribunals Service (NICTS), the Probation Board for Northern Ireland (PBNI), the Youth Justice Agency (YJA), and the Northern Ireland Prison Service (NIPS) are the main focus of the inspection.

In just under a decade, the proportion of women sentenced to custody in Northern Ireland (NI) has almost doubled.<sup>1</sup> The increase is not unique to NI, the number of females in prison globally having increased by over 50% since 2000.<sup>2</sup> In 2007, Baroness Corston urged community alternatives to custody save for the small number of serious and violent women offenders who pose a risk to the public, noting then that *'[t]here can be few topics that have been so exhaustively researched to such little practical effect as the plight of women in the criminal justice system.'*<sup>3</sup> The necessity of gender sensitive approaches to achieve equality of outcomes for women was also stressed, which is recognised and mandated by international standards.<sup>4</sup>

A human-rights based approach by Government in response to issues impacting women is vital.<sup>5</sup> Within the United Kingdom (UK), the Devolved Administrations have been called on

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<sup>1</sup> The number of custodial disposals for women in 2010 was 171 out of 4,652 females convicted at all courts in 2010 compared to 300 out of 4,477 females in all courts in 2019; (see Graham, I. and Damkat, I, *Northern Ireland Conviction and Sentencing Statistics 2010-2012, Research and Statistical Bulletin 12/2014*, DOJ Analytical Services Group, September 2014 <https://www.justice-ni.gov.uk/sites/default/files/publications/doj/ni-conviction-sentencing%20-statistics-2010-2012-revised-december-2017.pdf>; and Graham, I., *Court Prosecutions, Convictions and Out of Court Disposals Statistics for Northern Ireland, 2019*, DOJ Analytical Services Group, June 2020 <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/prosecutions-convictions-and-diversionary-disposals-2019-published-version.pdf>).

<sup>2</sup> Walmsley, R, *World Female Imprisonment List, Fourth Edition, 2017, World Prison Brief; Institute for Criminal Policy Research*. Available online at: [http://fileserv.idpc.net/library/world\\_female\\_prison\\_4th\\_edn\\_v4\\_web.pdf](http://fileserv.idpc.net/library/world_female_prison_4th_edn_v4_web.pdf).

<sup>3</sup> *The Corston Report, Home Office 2007*, p.16. Available online at: <https://webarchive.nationalarchives.gov.uk/20180207155341/http://www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf>.

<sup>4</sup> See for example, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*. Available online at: [https://www.unodc.org/documents/justice-and-prison-reform/Bangkok\\_Rules\\_ENG\\_22032015.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf).

<sup>5</sup> Specifically on a coherent and consistent human rights based approach to tackling violence against women see *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, Mission to the United Kingdom of Great Britain and Northern Ireland, 19 May 2015*. Available online at: <https://www.ohchr.org/Documents/Issues/Women/SR/A.HRC.29.27.Add.2.pdf>.

specifically to produce female offender strategies.<sup>6</sup> The Department of Justice (DoJ) Business Plan 2020-21 has committed to launch a consultation on a new strategy, its previous strategy having been the 'Reducing offending among women 2013-16.'<sup>7</sup>

Within recommendations arising from her mission to the UK which included NI, the United Nations (UN) Special Rapporteur on violence against women called on the UK Government to:

- Establish specific safeguards to ensure that women's histories of victimization and abuse are taken into consideration when making decisions about incarceration, especially for non-violent crimes;<sup>8</sup> and
- Implement fully the recommendations made by the Corston Report, including the call to replace the women's prison estate with small women-specific custodial units with appropriate and necessary service.<sup>9</sup>

The Special Rapporteur was concerned more broadly about regressive measures across the UK, which included a shift away from gender specificity to gender neutrality, and austerity measures impacting gender sensitive services to address violence against women and other issues affecting them.

In NI, research by the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) found that the community sector continued to provide a wealth of expertise and commitment to support women who offend. But the availability of services had been severely impacted by funding cuts.<sup>10</sup> This was considered a possible reason for increased women's imprisonment. Return of the Inspire Model as the 'cornerstone for community based support' was recommended. The Inspire Model, led by the PBNi and delivered with partner organisations, had been commended in a 2011 report by the Prison Review Team.<sup>11</sup> Gender sensitive probation services will be an important focus for this inspection.

Among females, younger women and girls are a distinct group with particular needs. A contemporary account of the UN Convention on the Rights of the Child '*to guide States towards a holistic implementation of child justice systems that promote and protect children's rights*'

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<sup>6</sup> Committee on the Elimination of Discrimination against Women, *Concluding observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland*, 14 March 2019, at para. 58(a) and (b).

<sup>7</sup> [https://www.justice-ni.gov.uk/sites/default/files/publications/justice/doj-corporate-business-plan-20\\_0.pdf](https://www.justice-ni.gov.uk/sites/default/files/publications/justice/doj-corporate-business-plan-20_0.pdf)

<sup>8</sup> See also the Farmer Review, which makes recommendations to support ways in which information on women's key relationships may be made available to inform decision-makers, liaison and diversion services, and courts (Lord Farmer, *The Importance of Strengthening Female Offenders' Family and other Relationships to Prevent Reoffending and Reduce Intergenerational Crime*, Ministry of Justice, June 2019. Available online at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/809467/farmer-review-women.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/809467/farmer-review-women.PDF)).

<sup>9</sup> As above note 5, at para. 107 (c) (viii) and (ix)

<sup>10</sup> Campbell, Kate, *Transforming Lives: A study looking at the landscape of support for women who offend and ways to move forward in Northern Ireland*, NIACRO, Spring 2020. Available online at:

<https://www.niacro.co.uk/sites/default/files/publications/Transforming%20Lives%20K%20Campbell%20Spring%202020.pdf>.

<sup>11</sup> PRT, *Review of the Northern Ireland Prison Service: Conditions, management and oversight of all prisons*, Prison Review Team, Final Report, October 2011. Available online at: <https://www.justice-ni.gov.uk/publications/owers-review-northern-ireland-prison-service>.

has recently been published by the Committee on the Rights of the Child (CRC).<sup>12</sup> The importance of a prevention strategy, the scaling up of diversion, and continuation of child justice for those who turn 18 years during their time in the criminal justice system are among matters included. The CRC commended States that applied ‘...the child justice system to persons aged 18 and older whether as a general rule or by way of exception. This approach is in keeping with the developmental and neuroscience evidence that shows that brain development continues into the early twenties.’<sup>13</sup> The inspection will be particularly interested in the criminal justice system response to this group of young women.

This is the first time CJI has completed an inspection in this specific area. However, past inspections are relevant and will be taken into account as applicable; these include thematic and joint inspections relating to:

- females in detention, including on resettlement and the safety of prisoners;
- police custody;
- probation services;
- the youth justice system; and
- Inspections that have included consideration of females in conflict with the law as victims such as Child Sexual Exploitation and Modern Slavery and Human Trafficking.

### **Aims of the Inspection**

The broad aims of the Inspection are to:

- Examine the strategic approach, both justice-wide and in respect of the inspected agencies, to females in the criminal justice system including the extent of a human rights based and gender sensitive approach;
- Examine availability and use of gender informed opportunities for early intervention and diversion at the point of policing and prosecutorial decision-making including guidance and information made available to decision-makers;
- Examine availability and use of gender informed alternatives to custody for females in the formal criminal justice system including the quality of information made available to sentencers;
- Examine provision of gender sensitive services to support resettlement pathways for females in custody;
- Examine the treatment of females who turn 18 years during the course of their contact with the criminal justice system.

Any other matters arising during the inspection if considered appropriate by CJI may be included. As the inspection progresses, Inspectors may also determine it necessary to focus on a specific aspect of the terms of reference while always adopting a risk based approach, including the implications of public health advice for conducting fieldwork, in making this decision.

This inspection will not specifically examine the treatment of females in prison, as routine establishment inspections occur as part of CJI’s National Preventative Mechanism mandate

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<sup>12</sup> Committee on the Rights of the Child, *General Comment No.24 (2019) on children’s rights in the child justice system*, 18 September 2019. Available online at:

<https://www.ohchr.org/Documents/HRBodies/CRC/GC24/GeneralComment24.pdf>.

<sup>13</sup> As above,, para. 32.

and inspection programme. As an inspection of police custody has also been recently completed,<sup>14</sup> Inspectors will seek to avoid duplication and not include this as the main focus of the current inspection.

In 2020-21 CJI is also undertaking an inspection of bail and remand. Inspectors will be mindful to avoid duplication and this may include joining elements of fieldwork where this is considered appropriate and practicable.

## **Methodology**

The inspection will be based on the Inspection Framework, the three main elements of the inspection framework are:

- Strategy and governance;
- Delivery; and
- Outcomes.

Constants in each of the three framework elements and throughout each inspection are equality and fairness, together with standards and best practice. The inspection methodology can be found at [www.cjini.org](http://www.cjini.org).

CJI is cognisant of the current circumstances and uncertainty arising from the Covid-19 pandemic which will inform designing and carrying out fieldwork for the inspection (see below) and may impact timing.

## **Design and Planning**

Preliminary research has been undertaken including review of relevant documentation such as previous inspection and other reports, publicly available criminal justice system statistics, relevant international standards and any documentation provided by the criminal justice agencies.

## **Delivery**

- Terms of reference will be prepared and shared with the PSNI, the PPS, the NICTS, the PBNI, the YJA, and the NIPS prior to the commencement of the inspection. Liaison officers for each body should be nominated for the purposes of the inspection.
- Inspected agencies will be given the opportunity to complete a self-assessment of their approach to females in conflict with the law, and to provide an outline of current process and any management information deemed relevant.
- Management information, data and other relevant documentation held by the criminal justice agencies will be examined.
- Interviews and focus groups will be conducted with stakeholders and criminal justice agency staff, to give an insight into the issues affecting females.
- Opportunities to facilitate the participation of females who are experiencing, or have experienced, the criminal justice system will be explored.
- A sample of Pre-Sentence/Magistrates' Court reports, YJA reports for court and the PPS, and case files may also be examined to help understand how decision making and practice is gender informed.

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<sup>14</sup> CJI and RQIA, *Police Custody: The Detention of Persons in Northern Ireland, September 2020*. Available online at: <http://cjini.org/TheInspections/Inspection-Reports/2020/July-September/Police-Custody>

- Progress in the development of performance and management information will be examined.
- Evidence of planning and decision-making leading to performance improvement and recognition of future development will be assessed.
- Where appropriate benchmarking and identification of best practice within and outside NI.
- Fieldwork requiring face-to-face contact or file review will be planned and risk assessed in consultation with relevant organisations or individuals and public health advice such as social distancing will be followed. All timescales are indicative and dependent on developments with the Coronavirus pandemic and public health advice.

Following completion of the fieldwork, analysis of data, and initial feedback on emerging findings to the inspected agencies, where appropriate, a draft report will be shared with them for factual accuracy check in line with protocols. The Chief Inspector will also invite the inspected bodies to complete an action plan to address the recommendations and if the plan has been agreed and is available it will be published as part of the final inspection report. The inspection report will be shared, under embargo, in advance of the publication date with the inspected bodies.

#### ***Publication and Closure***

It is planned for stakeholder fieldwork to take place between November and December 2020 and for fieldwork with inspected agencies to take place between January and May 2021. A draft report will be finalised for Ministerial approval with publication intended for autumn 2021.