



Still No Way Out

Foreign national women and trafficked women in the criminal justice system

Full report

About the Prison Reform Trust

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective prison system. We have a longstanding interest in improving criminal justice outcomes for women. Our Transforming Lives strategy to reduce the unnecessary imprisonment of women, supported by the Big Lottery Fund, includes a specific objective to reduce the disproportionate imprisonment of foreign national women and trafficked women. For further information about Transforming Lives see: www.prisonreformtrust.org.uk/women

PRT's Advice and Information Service provides information to women and men in prison on prison rules, life in prison, prisoners' rights, prison conditions and how to get help in prison and can be contacted at: Prison Reform Trust, FREEPOST ND 6125, London EC1B 1PN or by freephone on 0808 802 0060.

About Hibiscus Initiatives

Established in 1986, Hibiscus Initiatives (Hibiscus) is a leading specialist charity, committed to supporting foreign national people involved in the immigration and criminal justice systems. Thirty years on, their expertise and depth of experience is widely valued. While women remain the main focus of Hibiscus' work, the organisation assists some men in similar circumstances. The work falls into four broad areas:

- Advocacy and welfare advice in prison
- Assistance and support with return and reintegration to home countries
- Assistance with community resettlement and reintegration in the UK
- Mentoring support in prison and the community.

Identification and support of victims of human trafficking is embedded in all areas of Hibiscus' work. For more information see: www.hibiscusinitiatives.org.uk

Credits and acknowledgements

This report is the result of collaboration between PRT and Hibiscus, as part of PRT's Transforming Lives programme. It was prepared by Katy Swaine Williams with Zoey Litchfield and Dr Jenny Earle, with assistance from Ryan Harman and volunteer Lauren Nickolls of PRT, and in consultation with Adrienne Darragh, Michaela Jarosinska and Vanna Derosas of Hibiscus. The report includes an analysis of caseload data and case studies prepared by Michaela Jarosinska of Hibiscus, and the views of women expressed at a focus group led by PRT and hosted at Hibiscus' specialist women's centre in London in June 2017.

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The personal accounts in this report are taken from the focus group held by PRT at Hibiscus' specialist women's centre in London on 1 June 2017, the roundtable consultation on 19 July 2018 and Hibiscus' 2016-17 caseload records. All names have been changed.

Methodology and scope of this report

This report considers the experience of foreign national women and trafficked women in the criminal justice system in England and Wales. It draws upon data from a number of sources, including published statistics, freedom of information requests and parliamentary questions, inspectorate reports and research studies as well as evidence gathered by Hibiscus.

Analysis of Hibiscus' caseload data 2013-2017

Hibiscus analysed three sets of data gathered through their work with foreign national women. Although the numbers of women involved are relatively small, this provides an important insight into women's experiences that is not available from other sources.

Quantitative analysis: The cases of 585 women service users in prison were reviewed, drawing out quantitative data relating to their experiences. These women received services from Hibiscus in two prisons between 2013 and 2017.

Qualitative analysis: This draws on the cases of 182 women who received services from Hibiscus in prison between April 2016 and March 2017.

Trafficking caseload analysis: Data was analysed from the cases of 45 women in prison whom Hibiscus case workers identified as victims and potential victims of trafficking between February 2013 and March 2017.

Freedom of information request

The government does not routinely publish criminal justice data broken down by gender and nationality except quarterly snapshot prison numbers. These figures do not reflect the total number of women received into prison over the course of a year ('receptions data') and show a preponderance of people serving longer sentences. In response to a freedom of information request by PRT, in February 2018 the Ministry of Justice provided receptions data which is referred to under Key Facts.¹

Focus group, June 2017

A focus group was held by PRT at Hibiscus' specialist women's centre in North London on 1 June 2017. Seven women service users took part, all of whom had been told about the purpose of the event and freely consented to participate.

Roundtable consultation, 19 July 2018

We held a roundtable meeting in the House of Lords on 19 July 2018, hosted by Baroness Hamwee and chaired by Anne Fox, CEO of Clinks, at which the report's draft findings and recommendations were considered. Attendees included representatives of the judiciary, CPS, police, probation, prisons, Ministry of Justice, Police and Crime Commissioners, parliamentarians and voluntary sector agencies, as well as two foreign national women with experience of the criminal justice system who participated with support from Hibiscus. These discussions informed the final report.

Key facts

- Foreign national women represent 8% of the general population in England and Wales², but over 12% of all women received into prison each year and nearly 19% of those remanded³.
- This has come down since 2013 when foreign national women represented 17.5% of all women received into prison and 23.3% of those remanded.⁴
- Foreign national men and women accounted for nearly a fifth of self-inflicted deaths investigated by the Prisons and Probation Ombudsman in 2015–16.⁵
- Most (59%) of the foreign national women in prison in England and Wales on 30 September 2017 were from Europe, with the largest groups from Romania and Ireland.⁶ The most common countries of origin have remained consistent since 2013, apart from a decrease in the number of imprisoned Vietnamese women.⁷
- Of 585 foreign national women in prison supported by Hibiscus from 2013 to 2017:
 - Nearly half (49.7%) were held on remand. Of those sentenced, 49% were serving short sentences of one year or less, with 15% serving three to six months and 14% serving one to three months.
 - The offences for which foreign national women are imprisoned are overwhelmingly non-violent. The most common offences for which the women were in prison were fraud (18%), theft (18%) and false document offences (10%). These are all indicator offences for trafficking and coercion.
 - 57% of the women did not speak any English and required an interpreter.
 - 38% (222 women) disclosed that they had dependent children. For over a fifth of these women, their children were five years old or under.
- Amongst 182 foreign national women in prison supported by Hibiscus from 2016 to 2017, 53% had problems relating to their immigration status.
- Over half (56%) of all foreign national women prisoners in England and Wales are located in three prisons: HMP Bronzefield (27%), HMP & YOI Peterborough (18%) and HMP Downview (11%).⁸ The other 44% are dispersed across the women's prison estate.
- Support for foreign national women in prison, such as interpreting and immigration legal advice, varies considerably and resettlement support is generally poor.⁹ They are rarely considered for open conditions and Release on Temporary Licence (ROTL).¹⁰ As at 31 December 2017 there were only two foreign national women held in open conditions¹¹, severely restricting access to ROTL¹².
- The Modern Slavery Act 2015 introduced a defence for victims of modern slavery compelled to commit a criminal offence.¹³ Yet evidence confirms that victims of modern slavery continue to be prosecuted for crimes they were forced to commit.
- Hibiscus identified 45 women in prison as victims or potential victims of trafficking from February 2013 to March 2017, all of whom had disclosed information about their exploitation. They were in prison for between one and three months to up to three years, with four remaining in prison at the time of completing the data analysis.

Background

...[My probation officer later] said that if the judge had seen a presentence report about me probably my sentence wouldn't have been ... a 20 month sentence, for a first time...too harsh and too quick as well...and I think all that was because I was a foreign national.

Hibiscus focus group, June 2017

Six years on from the No Way Out briefing¹⁴, which highlighted the over representation of foreign national women in prison in England and Wales, their particular vulnerabilities and the barriers to justice that many face, it is time to review progress. Whilst there has been a decrease in both the number and proportion of foreign national women in prison, the reasons for this reduction are not clear and they remain over represented.

The Ministry of Justice's Female Offender Strategy, published in June 2018, acknowledges the unique challenges faced by foreign national women in the criminal justice system and expresses a commitment to improve outcomes for this particularly vulnerable and disadvantaged group.¹⁵ This is welcome progress after successive calls for a strategic approach have previously been ignored.¹⁶

There is little published information about foreign national women in the criminal justice system so this report aims to shine a light on their experiences and make practical proposals for reform. The insights gained from the women supported by Hibiscus, as well as prison inspections, indicate that outcomes for foreign national women have not improved and in some respects have got worse. The stories and statistics included in the report reveal a picture of inadequate legal representation, disproportionate punishment, isolation, fear, trauma and confusion experienced by the women themselves, with similar repercussions for their children. Meanwhile many women reported to Hibiscus that the atmosphere following the EU referendum has become even more hostile to 'foreigners'.

The overarching aim of government policy in recent years has been to deport 'foreign national offenders' as quickly as possible¹⁷, the stated intention being to create a 'hostile environment' for those who do not have a right to be in the UK¹⁸. In the context of the Windrush scandal, which has exposed the unlawful treatment, including deportation, of people wrongly designated as foreign nationals, the Home Secretary has signalled his intention to move away from 'hostile environment' terminology and take a more humane approach to migrants.¹⁹ This resonates with the government's stated commitment to tackle unfair and discriminatory treatment of Black, Asian and minority ethnic people, and with recommendations made by the All-Party Parliamentary Group for Ending Homelessness to increase legal aid funding for immigration advice and to tackle the poverty and injustice faced by many migrants in the UK.²⁰

Where women are fearful of deportation they may not report crimes of sexual and domestic violence to the police or seek support,²¹ so the Home Secretary must act. The post-Lammy 'explain or reform' agenda for tackling racial bias in the criminal justice system must include addressing the treatment often unfairly afforded to those labelled as a 'foreign national offender'. However progress can only be monitored if criminal justice data disaggregated by gender, race/ethnicity and foreign national status, are collected and regularly published.

What does it mean to be a foreign national woman in the criminal justice system?

'Foreign national offender' is a broad term encompassing those convicted of any offence without evidence of British nationality. They may have arrived as children with their parents or may be second generation, often from former colonies; they may be asylum seekers or have indefinite leave to remain as refugees; they may be European and European Economic Area nationals or Irish nationals; they may be trafficked persons; they may have been arrested entering or leaving the UK on false documents. Also included are those who have entered the UK illegally and those who came legally as students, visitors or workers. The extent to which Windrush immigrants in contact with the criminal justice system may have been wrongly designated as foreign nationals is unknown.

Where the immigration status of a foreign national suspect, defendant or prisoner is unclear, criminal justice agencies generally proceed on the basis that they are liable for deportation or removal. Women classed as foreign nationals may have lived legally in the UK for many years, in some cases since childhood, and may regard themselves as British. They may have dependent children; yet their leave to remain may be revoked following a criminal conviction, so that they face possible removal or deportation to a country where they have no connection, leaving family and community behind.²²

A foreign national person who has been sentenced to 12 months imprisonment or more is subject to automatic deportation from the UK unless a defined exception applies. A range of other circumstances may make a foreign national person liable for deportation or removal where they have been convicted of an offence. They may also be detained for immigration purposes after the end of a prison sentence, either in prison or in an immigration removal centre²³, subject to limitations established by domestic case law and by the European Court of Human Rights.²⁴ Guidance under the Immigration Act 2016 is intended to reduce the detention of vulnerable people and the length of detention before removal. However critics call for a maximum time limit, for automatic judicial oversight of decisions to detain and for community alternatives.²⁵ A small number of women continue to be detained for immigration purposes in prison, post-sentence (18 women as at 30 June 2017).²⁶

Operation Nexus, the government's action plan to increase the removal of foreign national offenders whether or not they met deportation criteria, was set up to focus on 'high harm' offenders but was criticised for mission creep.²⁷ In July 2017 the Supreme Court found the government's 'deport first, appeal later' approach to be unfair and unlawful.²⁸ A further legal challenge to the government's deportation policy is being brought by the Aire Centre.

The government has been criticised by some for not removing foreign national offenders more quickly,²⁹ while the National Audit Office's 2014 report called for a full end-to-end review of the deportation process.³⁰ In its 2016 report on the work of the Immigration Directorates, the Home Affairs Committee concluded that the government 'should have done better' in deporting offenders with EU citizenship.³¹ The Home Office responded that the number of offenders removed from the UK in 2015-16 was the highest since records began.³² None of these reports consider women, who are rarely high harm offenders but who suffer the consequences of policies framed in response to such offending by (mainly) men.

Accounting for the reduced number of foreign national women in prison

The government aim to remove foreign national offenders as quickly as possible³³ may have contributed to the fall in numbers of foreign national women in prison. Another key factor is the marked reduction in drug importation offences and welcome changes to the sentencing guidelines for such offences.³⁴

There is nonetheless a continuing over representation of foreign national women in prison, particularly amongst those on remand. This may be due to the way in which bail criteria are applied by the courts, such as evidence of community ties, a suitable bail address, the provision of surety or security and perceived risk of absconding. For defendants who may be subject to deportation proceedings, this weighs in favour of custodial remand, even where deportation is unlikely or contestable.

There is no strategic approach to the diversion or rehabilitation of foreign national women in the criminal justice system who may in fact legitimately remain in the United Kingdom long term. There is no monitoring of their access to court disposals or community sentencing options. Probation services are not contractually required to provide services that meet their specific needs, although this should be understood as part of the Secretary of State for Justice's duty under Section 10 of the Offender Rehabilitation Act 2014.¹ Hibiscus has found that since the Transforming Rehabilitation reforms to probation, foreign national women are often left to fall through the gaps.

Multiple disadvantages faced by foreign national women

As recognised by Baroness Corston,³⁵ foreign national women face a range of challenges and vulnerabilities. For many, English is not their first language. They are more likely than British women to be from a minority ethnic group and subject to compound disadvantage and inequality.³⁶ Uncertain immigration status may lead to financial insecurity where women are unable to claim benefits or work legally. Fear and a lack of confidence in the authorities may deter them from seeking help through official channels. Like British women, many foreign national women in prison are primary carers of dependent children and many have underlying physical and mental health problems.

Despite the state's obligation to provide independent, accredited interpreting and translation services in criminal proceedings, women continue to report difficulties. Inspectorate reports suggest that provision varies widely. There is no requirement to provide a suitably qualified female interpreter where requested. Unless women can make themselves understood and feel able to speak about the circumstances of their alleged offence, which may involve abuse and coercion, criminal justice agencies cannot make informed decisions about arrest, detention, conviction and sentencing.

Survey results from an inspection of the foreign national women's wing at HMP & YOI Peterborough suggest that a dedicated unit may facilitate women's access to some specialist support.³⁷ However the overriding purpose of the unit is to expedite deportation,³⁸ and the same survey reveals that the women there have much poorer experiences than British women in areas such as resettlement. Most foreign national women are held in other prisons where support is variable and very few have access to Home Detention Curfew or Release on Temporary Licence.

¹ This is a duty to identify and address the needs of women.

Prosecution of trafficked women

Foreign national women are more likely than British women to have been victims of trafficking.³⁹ Prosecutions for trafficking are increasing year on year, but official estimates of the extent of trafficking vastly outstrip these figures.⁴⁰ Women and girls account for over half the victims referred to the National Referral Mechanism (NRM).⁴¹ In some cases, women's exploitation includes direct coercion to commit offences such as cannabis production, prostitution related offences, begging and theft. In other cases their adverse experiences may have left them vulnerable to offending even some time after they have escaped, for example where traffickers have stolen their identity documents or given them false papers. These women are likely to have been vulnerable before they were trafficked, as a result of poverty, domestic abuse or other circumstances.

The UK government's resolve to improve the response to human trafficking and modern slavery offences included appointing an anti-slavery commissioner in 2015. His resignation in May 2018, when he raised concerns about the lack of progress, is worrying.⁴² A statutory defence is in place for victims of human trafficking and modern slavery who are coerced or compelled to commit offences (section 45, Modern Slavery Act 2015). Yet evidence from Hibiscus, confirmed in recent police and Crown Prosecution Service (CPS) inspectorate reports, suggests a continuing failure to ensure victims are identified, protected and supported in a timely fashion.⁴³ Further information is needed about the impact of reforms to the NRM announced in October 2017.⁴⁴

For women who have not been trafficked but whose offending has been driven by abuse or coercion, there is no statutory defence. The forthcoming Domestic Abuse Bill presents an opportunity to remedy this.⁴⁵

Linh's story - Prosecution of trafficking victim

Linh is a Vietnamese woman speaking no English, remanded in prison for cannabis production. During her initial needs assessment interview, Hibiscus identified Linh as a victim of trafficking and referred her case to the first responder.

Linh was raised in a farming family in Vietnam and has three children. She ran away from her abusive husband who deployed her as a drug mule. Working as a waitress in Hanoi, Linh was promised a better job abroad by some regular customers. She was taken with six or seven other women and girls, travelling first to Russia before being led on foot through the countryside to Slovakia, then taken at night by boat to the Czech Republic where they were forced to hand over their passports and money, taken to a house and forced to have sex with men who visited. Later, Linh was taken to the UK in the back of a lorry and left near a train track. She met a woman who promised to find her a job. She was then trafficked within the UK, forced into prostitution and cannabis production.

Hibiscus supported Linh for five months while she was in prison, working closely with her criminal solicitor and immigration solicitor as well as the first responder, until she was recognised as a victim of human trafficking by the competent authority. Her charges were then dropped and she was released into safe accommodation with specialist support.

Findings and recommendations of No Way Out (2012): action needed

Many of the proposals made in our 2012 No Way Out briefing remain relevant, including the need for a well informed national strategy for the management of foreign national women in the justice system, taking into account the following recommendations:

- Nationality should not prejudice court decisions and foreign national women should be included in any objectives to divert women from custody, both in the context of the remand and sentenced population.
- Where there is evidence of coercion, exploitation and duress this should be considered integral to all decisions within criminal justice proceedings in compliance with the United Nations Protocol to Protect Victims of Trafficking.
- Unless they pose a threat to UK security, those arrested on passport charges at point of departure en route to their country of origin should not necessarily be charged with a criminal offence. Instead they could be allowed to return to their country of origin where matters can be dealt with.
- Foreign national prisoners with contested or uncertain immigration status should be guaranteed independent immigration advice and should not have to enter a plea on a criminal matter until legal advice has been provided.
- Decisions on the management of foreign prisoners and detainees should include consideration of the welfare and human rights of their children.
- Courts should be fully informed about dependent children, where necessary deferring sentencing until suitable arrangements are put in place. If the mother faces a custodial sentence, where the child is under six months, then she should be assessed for a place in a mother and baby unit prior to sentencing.

We reiterate the above proposals and set out our updated findings and recommendations in the following section.

Findings and recommendations

Findings

1. Foreign national women are still over represented in prison, especially on remand.

- 1.1 Despite a reduction in the number and proportion of foreign national women in custody they remain over represented, particularly on remand. Most are imprisoned for non-violent offences, predominantly theft, fraud and false document offences, and many have dependent children. There is a perception of bias in remand and sentencing decisions amongst foreign national women and the services that support them.
- 1.2 It has long been recognised that foreign national women in the criminal justice system face particular disadvantages.⁴⁶ Yet the only strategy in place is the government-wide policy to remove from the UK any offender deemed not to have the right to be here. This is a barrier to fair and proportionate treatment of those facing proceedings for non-violent, minor offences, many of whom may legitimately remain in the UK long term.
- 1.3 Little is known about foreign national women's access to out of court disposals and community sentencing although police report that they are less likely to use out of court disposals. There is no strategic approach nationally or locally to providing appropriate interventions and ensuring equitable outcomes.
- 1.4 Recent changes to court practices, including Transforming Summary Justice⁴⁷ and Better Case Management⁴⁸ in the Crown Court, have contracted the timescales for prosecutions. This can mean that the criminal justice process concludes before the NRM process is complete. It also allows less time to enable women to make disclosures about the background to their alleged offence.
- 1.5 Research shows that the falling number of pre-sentence reports (PSRs) produced between 2012 and 2017 is strongly linked to a decline in community sentencing and that an increase in the use of PSRs could reverse this.⁴⁹ A PSR can be particularly important for foreign national women.
- 1.6 The use of custody could be reduced if suitable accommodation was made available. When bail is refused, children may not be taken into account as they should be.⁵⁰ Where the defendant is pregnant, this should also be taken into account. The impact of maternal imprisonment can be particularly traumatic for dependent children of foreign national women.
- 1.7 The limited availability of official data about foreign national women in the criminal justice system and failure to monitor outcomes impede both understanding of their over representation in custody and progress to address this.
- 1.8 Foreign national women are more likely than British women prisoners to belong to a minority ethnic group.⁵¹ Disparities in the treatment of, and outcomes for, minority ethnic women and girls in the criminal justice system can only be overcome using a gendered approach.⁵²

2. There is a continuing failure to identify and avoid prosecuting victims of trafficking and modern slavery.

- 2.1 There are no official data on the number or experiences of victims of trafficking who are wrongly prosecuted for offences carried out due to exploitation. This constrains any meaningful assessment of the extent to which criminal justice agencies are discharging their legal responsibilities towards victims of trafficking who present as offenders.
- 2.2 Evidence collated by Hibiscus and from inspectorate reports suggests that, despite police and prosecution guidance, there is a disturbing failure to identify, protect and support victims of trafficking at an early stage and avoid prosecuting them for offences committed as a consequence of their exploitation by traffickers.⁵³
- 2.3 College of Policing guidance is clear that where an individual raises the section 45 defence⁵⁴ *before* a police interview, he or she should be offered a separate interview about their experience of trafficking and a NRM referral should be made. However the guidance fails to specify that where this is raised *during* a police interview the same steps should be taken.
- 2.4 Defence lawyers often do not ask the right questions in order to establish whether their client may be a victim of trafficking and some fail to advise women where appropriate about the section 45 defence.
- 2.5 It can be difficult for defence lawyers to apply successfully for proceedings to be moved to a different court in order to safeguard defendants going through the NRM process. Difficulties in obtaining suitable bail accommodation can lead to such defendants being remanded in custody.
- 2.6 Some training is available for judges and magistrates in relation to trafficking and in relation to women's caring responsibilities but more is needed. The Equal Treatment Bench Book, which includes new sections on Modern Slavery, Intercultural communication for those speaking English as a second language and Effective Use of Interpreters, is a welcome resource.
- 2.7 The National Probation Service (NPS), HM Prisons and Probation Service (HMPPS) and Community Rehabilitation Companies (CRCs) are not 'first responders' (with a duty to refer to the NRM). The government advises that further information and training on this will be provided later in 2018. The NPS is starting to raise awareness of human trafficking and modern day slavery and has established a working group.

3. Foreign national women have distinct needs requiring specialist, women-specific support but provision is patchy in prison, in the community and throughout the criminal justice process.

- 3.1 Some foreign national women experience insecure immigration status, social isolation, coercion or trafficking and legal barriers to working or claiming benefits, leading to an increased risk of poverty. Many are inherently vulnerable within the criminal justice system due

to language and cultural barriers, and report feeling disempowered and confused. Their difficulty is compounded by the interaction of criminal justice and immigration proceedings and the NRM process.

3.2 Foreign national women need independent legal advice as early as possible, including legal aid immigration advice before entering a plea, and while in prison, but this is rarely provided.ⁱⁱ In an adversarial system the quality of legal advocacy is key, but defence lawyers often fail to raise factors such as abuse and trafficking early in the criminal justice process. They often lack expertise in the interaction between criminal and immigration proceedings and may not appreciate the risks of deportation if a woman receives a custodial sentence of over 12 months.

3.3 Interpreting services are widely viewed as inadequate. Not enough time is allocated to interpreters, especially where there is a history of trauma. There is no requirement for a qualified female interpreter to be provided even if requested.

3.4 Foreign national women report feeling more isolated and less safe in custody than British women, except those supported by specialist services such as Hibiscus, who report tangible gains. Prisons face significant challenges in meeting the needs of foreign national women and trafficked women in prison, due to a lack of information about prisoners before their arrival, the churn of women serving short sentences and a lack of resources for 'non-core' activities.

4. Foreign national women in prison receive little or no access to rehabilitative opportunities in prison and poor resettlement planning and support.

4.1 Official data and prison inspectorate reports show that access to open conditions, Release on Temporary Licence (ROTL) and Home Detention Curfew (HDC) remain very limited for foreign national women in prison. This is despite the fact that most have been convicted of non-violent, often minor, offences and many may not ultimately be deported.

4.2 Most foreign national women receive very poor levels of resettlement support. In implementing the Transforming Rehabilitation reforms, the government failed to require 'through the gate' service providers to address their distinct needs. Confusion over the respective responsibilities of prisons, the NPS and CRCs has created additional difficulties for foreign national women, who are at increased risk of getting 'lost in the system'.

4.3 Where foreign national women are released from prison with no recourse to public funds and no right to work, probation services rely on charitable organisations to offer support, which is often unavailable. It may be impossible for these women to escape a cycle of reoffending linked to their own or their children's survival.

5. A small number of foreign national women continue to be held in prison for immigration purposes after the completion of their sentence. This is unacceptable.

ⁱⁱ According to BID UK's most recent legal advice survey, only 3 out of 50 detainees received any advice about their case from an immigration solicitor while they were in prison. (BID (2018) Legal advice survey – Spring 2018, BID: London)

Recommendations

1. The UK and Welsh governments must adopt a strategic approach to achieving equal treatment and better outcomes for foreign national women in the criminal justice system.

1.1 The Ministry of Justice's Female Offender Strategy provides the framework for developing a clear set of expectations and measures to improve outcomes for foreign national women, in partnership with the Home Office.⁵⁵ These should also be included in the blueprint for women offenders being developed in Wales and in the forthcoming UK government strategy on victims. Consultation with specialist services and foreign national women must inform implementation.

1.2 The measures adopted should ensure compliance with the public sector equality duty and with Rules 54 and 55 of the Bangkok Rules (UN Rules for the Treatment of Female Prisoners and Non-Custodial measures for Women Offenders), which require prison authorities to address the distinct needs and multiple discrimination often experienced by women from different religious and cultural backgrounds.

1.3 The Ministry of Justice must ensure that contractual arrangements for offenders' support and supervision address the needs and circumstances of foreign national women, in accordance with section 10 of the Offender Rehabilitation Act 2014.

1.4 The Ministry of Justice and Home Office must work together to ensure and monitor women's access to accredited, independent interpreting and translation services, including suitably qualified female interpreters where requested.

1.5 Foreign national women must be given equitable access to:

- out of court disposals
- bail as an alternative to custodial remand
- community sentencing where appropriate
- open conditions, ROTL and HDC for women who are imprisoned
- custody planning and resettlement support in preparation for release.

The policy of removing those who do not have the right to be in the UK must not be an automatic barrier to community-based outcomes/resolutions.

1.6 Criminal justice and immigration agencies should consider the dependent children of foreign national women, both in relation to establishing the strength of community ties and to take account of the impact on any children of their mother's imprisonment. The barriers that can

deter foreign national women from disclosing that they have children need to be understood and tackled. Children's best interests should be taken into account throughout the criminal justice process.⁵⁶

1.7 The principle of 'explain or reform' adopted by central government, following the Lammy Review of racial bias in the criminal justice system, must be extended to include foreign national status. Criminal justice agencies should publish data disaggregated by gender, ethnicity, foreign national status, religion, status as a victim or potential victim of trafficking, and offence category. This data should:

- include outcomes at the point of arrest, guilty plea and conviction rates, all sentencing disposals, prison receptions, remands, releases and recalls;
- inform local authority joint strategic needs assessments and commissioning decisions;
- be appropriately shared by the police, courts, CRCs and NPS and scrutinised for evidence of disproportionality or unmet need;
- specify at what stage of the criminal justice process women have been identified as potential victims of trafficking and modern slavery, whether an NRM referral has been made or 'duty to notify' form completed and by which first responder;
- enable criminal justice inspectorates to monitor progress.

2. Trafficked women should not be prosecuted.

2.1 Measures to ensure this should include:

- victims of trafficking are identified at the first point of contact with the criminal justice system or as soon as possible after that point;
- detention is only used where there is no reasonable alternative;
- the principle of non-prosecution of victims of trafficking is consistently upheld and
- the NRM process is adequately resourced to operate efficiently and fairly for women who do face prosecution, including provision of suitable, safe accommodation.

2.2 The Lord Advocate in Scotland's guidance on the non-prosecution of victims of human trafficking and exploitation offers a model of good practice and transparency. The Director of Public Prosecutions should consider whether aspects of the model or other appropriate measures should be adopted in England and Wales in order to achieve greater consistency in prosecutors' non-prosecution decisions.⁵⁷

- 2.3 HM Inspectorate of Constabulary and Fire and Rescue Services should audit implementation of their 2017 recommendations for improving police identification of victims of trafficking, and application of the section 45 defence for those who are coerced into offending. Similarly, HM Inspectorate of the CPS should review compliance with its guidance on non-prosecution.
- 2.4 Where the indicators of human trafficking set out by the United Nations Office on Drugs and Crime⁵⁸ are present, a woman should be immediately referred for a voluntary interview with a specialist agency in a safe, independent space, to establish whether she may have been trafficked. Strong safeguards must be in place, with access to legal advice, to ensure she understands that the interview is not mandatory.
- 2.5 The Home Office should implement measures to strengthen and increase awareness of the section 45 defence.
- 2.6 College of Policing guidance should be amended to make clear that where section 45 is raised during a police interview, the interview should stop and the individual should be offered a separate interview and NRM referral.
- 2.7 We endorse the Equality and Human Rights Commission's recommendation for a requirement on public authorities, including health authorities, schools, prisons, probation services, competent authorities and voluntary organisations performing a public function, to record and report suspected victims of trafficking, and their recommendations for improvements in the treatment of victims of trafficking.⁵⁹
- 2.8 The cross-government work to improve accommodation provision for women offenders and those at risk of offending⁶⁰ must respond to the specific needs of foreign national women and trafficked women, including those with dependent children. This must include supported 'safe house' accommodation where needed, to reduce remands into custody.
- 2.9 Where an individual facing prosecution is referred to the NRM, the prosecution should be adjourned for sufficient time to allow a 'conclusive grounds' decision to be made. Support and protection must be provided to the individual, including suitable bail accommodation for the duration of proceedings. There should be an expectation on prosecutors and defence lawyers to make enquiries regarding progress in reaching a conclusive grounds decision.
- 2.10 HM Courts and Tribunal Service (HMCTS) should consider how it can be made easier for proceedings to be moved to a different court where necessary in order to safeguard defendants going through the NRM process.

3. Criminal justice agencies and legal practitioners must work with specialist women's services to improve the treatment of foreign national women.

- 3.1 Police and Crime Commissioners, the police, probation providers and courts should work closely with women's specialist services that have relevant language and cultural knowledge, facilitating co-location and making use of liaison and diversion workers where possible. This will enable referral of foreign national women to services and accommodation, and support effective out of court disposals and community sentencing. This objective must inform commissioning processes and funding priorities.
- 3.2 HMCTS' £1bn transformation programme⁶¹ must take full account of the needs and interests of foreign national women defendants and include them in the equality impact assessments of the proposed changes.
- 3.3 HMPPS and the Ministry of Justice must ensure consistent access to independent, accredited interpreting and translation services throughout the criminal justice process, including female interpreters where requested, to ensure women understand and can participate in criminal justice and immigration proceedings and the NRM process, and to inform decision making by relevant agencies.
- 3.4 Government should work with specialist agencies and foreign national women to develop information resources that target foreign national women, trafficked women, the police, prosecution and defence lawyers, the judiciary and magistracy and prison and probation workers, including safer custody departments in prison. The resources should raise awareness of obligations in relation to foreign national and trafficked women, and improve women's own understanding of the criminal justice system, immigration procedures and the NRM.⁶²
- 3.5 Criminal defence lawyers should receive training on the specific factors affecting foreign national women and trafficked women, including for example:
- the questions they should ask in order to establish whether their client may be a victim of trafficking;
 - when it is appropriate to advise women about the availability of the section 45 defence;
 - matters to raise in defence and in mitigation;
 - an awareness of the potential impact of criminal justice proceedings on immigration matters;
 - the interaction between criminal proceedings and the NRM process.
- 3.6 The Judicial College should continue to develop information and training on factors affecting foreign national women and trafficked women as part of the social context within which the judiciary operate and should monitor awareness and use of the Equal Treatment Bench book.

- 3.7 The Sentencing Council should review the need for further sentencing guidance on the particular vulnerabilities of foreign national women and the proportionality of imprisonment, including in its forthcoming guidelines on modern slavery and immigration.
- 3.8 Training for offender managers should include cultural awareness relevant to their client groups and indicators of human trafficking and coercion. Ministry of Justice commissioning processes should include this as a requirement. The HMPPS Guide to working with women offenders should be amended to address specific considerations for foreign national women.
- 3.9 The NPS and CRCs should ensure that pre-sentence reports always draw the court's attention to relevant factors and pressures, including where the defendant is a potential or known victim of trafficking, and the related processes and protections connected to this status, such as the section 45 defence and NRM referral. There should be a presumption against the use of oral 'on the day' pre-sentence reports for foreign national women. If an adjournment is required for the production of a written report, the defendant should not be remanded in custody unnecessarily.
- 3.10 Specialist support must be provided for foreign national women in prison and upon release, to comply with Rules 54 and 55 of the Bangkok Rules and section 10 of the Offender Rehabilitation Act 2014. Contracts for 'through the gate' services should include a specific requirement to meet the needs of foreign nationals.
- 3.11 HMPPS and the Ministry of Justice should work with women's prison governors, probation services and community agencies to ensure there are programmes of information and support funded for foreign national women offenders, including victim support services where relevant, both in prison and in the community. These efforts should be focused on strengthening and supporting specialist services, as well as improving mainstream provision, through close joint working. The planned roll out of prison key workers must ensure that sufficient time and training is available for key workers to offer adequate support to foreign national women in prison. Local commissioners must evidence consultation and partnership working with specialist organisations and be held to account for this.
- 3.12 The Ministry of Justice, HMPPS and Home Office must work together to address the lack of support available for foreign national women who are released from prison with no recourse to public funds and no right to work, in order to avoid a continued cycle of reoffending.
- 3.13 The Ministry of Justice and HMPPS must work with the Home Office to ensure foreign national women have access to free, independent immigration advice throughout proceedings, including in custody before entering a plea in criminal proceedings.

3.14 Initial training for all prison staff should include recognising the indicators of trafficking and modern slavery and understanding the NRM process. Every women's prison should designate a staff member as a single point of contact for trafficking and modern slavery, with additional training to enable them to make NRM referrals as first responders.

4. The Ministry of Justice and the Home Office must work together to ensure that women are never detained in prison for immigration purposes after the completion of their sentence.

Virginia's story – Impact of Home Office delays

Virginia came to this country from South Africa in 2003 as a visitor and obtained a student visa to study IT. Her life back home had been very hard and she was abused and beaten by her husband who threatened to kill her on several occasions.

When her student visa expired in 2006 Virginia applied for further leave to remain in the UK. Although she received confirmation from the Home Office that they had received her application, Virginia did not hear from them again nor get any decision until ten years later in 2016, when she received a letter refusing her application.

By this time Virginia had been living in the UK for 13 years and had met her current partner who is a British citizen. They have been unable to marry because the Home Office has not responded to Virginia's requests to return her passport. She has tried to make the best of living in limbo and in very difficult circumstances. Virginia was a qualified support and care worker for people with learning disabilities and mental health needs and had obtained a NVQ Level 2.

Unfortunately, in order to be able to work and earn a living, Virginia resorted to using false papers. She was prosecuted for this in 2010 and received a suspended sentence. Virginia wanted to regularise her status and her solicitor tried in vain to get a response from the Home Office regarding her application. In 2015, Virginia tried again to gain work with false papers because she wanted to pay bills and buy food. She was convicted and spent 4½ months in prison. She was not able to attend her son's funeral in South Africa and was offered no support in prison to help her cope with her bereavement. Virginia concludes:

I still can't pay any bills as I am not allowed to work. I am under a great deal of emotional strain and cannot get any medication because I have no recourse to public funds. I consider the way I am being treated is extremely unfair, especially because of the extremely long delay in my immigration case and the difficulties I have been in as a result. I hope the authorities would be more understanding of my situation.

Foreign national women in prison

Offence categories

Whilst there is no official data about the offences for which foreign national women are imprisoned,ⁱⁱⁱ Hibiscus' quantitative analysis (see Methodology) shows a predominance of non-violent offences amongst imprisoned foreign national women (both remanded and sentenced). The most common offences were fraud (18%), theft (18%) and false document offences (10%) (see Figure 1). These are all indicator offences for trafficking and coercion.

Figure 1: Ten most common offences for which women are in prison (Hibiscus' quantitative analysis)

Offence	%
Fraud	18%
Theft	18%
False document	10%
Drug importation	8%
Assault	4%
Shoplifting	3%
GBH	3%
Cannabis production	3%
Child abuse	3%
Sham marriage	3%
Other offences	27%

A parliamentary answer confirmed that three-quarters of foreign nationals (men and women) entering prison under sentence in 2015 were there for non-violent offences.⁶³

Over two thirds (67%) of Hibiscus' Vietnamese clients were charged with cannabis production, a key indicator offence for trafficking, although it is worth noting here the small number of women involved.

Drug courier offences

Foreign national women may be particularly vulnerable to committing drug courier offences, however the number of importation offences has decreased significantly in recent years.⁶⁴ Historically drug courier offences led to disproportionate custodial sentences being imposed on women who were exploited to transport drugs for organised criminals who largely escaped prosecution.

In February 2012, new sentencing guidelines for drug offences became effective in all courts in England and Wales. An explicit aim was to reduce the length of sentences for drug 'mules' and so make them more proportionate. Research examining their early impact, drawing on data from the Court Proceedings Database and the Crown Court Sentencing Survey for importing/exporting a Class A drug, found that the length of the average custodial sentence for drug trafficking fell following introduction of the guidelines, largely due to taking defendants' roles into account. However around 10% of mules received very long sentences due to the continued use of drug weight in sentencing.⁶⁵

ⁱⁱⁱ This data was previously produced as part of the Offender Caseload Management Statistics, which were last published in 2010.

Remand

Just under half (49.7%) of the women included in Hibiscus' quantitative analysis were being held on remand. No official data is routinely published about the use of remand for foreign national women but statistics provided in response to PRT's freedom of information request show a marked disproportion amongst those remanded in custody. 18.8% of those remanded in custody were foreign national women, who comprise only 8% of the women's general population in England and Wales.⁶⁶

Short sentences

In Hibiscus' quantitative analysis, 49% of sentenced women in prison were serving short sentences. A fifth were serving sentences of six months to one year, with 15% serving three to six months and 14% serving one to three months.

Countries of origin

Eight of the twelve most common countries of origin for foreign national women in prison on 31 December 2017 were EU countries (see Figure 2), and these have generally remained consistent since 2013. There has however been a notable decrease in the number of Vietnamese women imprisoned in England and Wales, from 32 women in 2013 to 7 in 2017. The overall numbers are too small to draw wider conclusions.⁶⁷

Figure 2: Most common countries of origin for all foreign national women in prison on 31 December 2017 (Ministry of Justice statistics)⁶⁸

Country of origin	Number of women in prison
Romania	43
Republic of Ireland	30
Poland	29
Nigeria	22
Bulgaria	16
Netherlands	16
Latvia	14
Jamaica	14
Zimbabwe	12
Czech Republic	10
Hungary	10
Portugal	10

These proportions are to a large extent reflected within Hibiscus' quantitative analysis. The most common nationality amongst this group was also Romanian (17%), with 9% being British black, Asian or minority ethnic women, 8% Nigerian and 8% Polish women. 60% of clients overall were EU nationals.

Black, Asian and minority ethnic foreign national women

Black, Asian and minority ethnic women are more likely than white women in prison to report being foreign nationals. This was the case in six of the eight women's prison inspection reports published since February 2014.⁶⁹ In a recent inspection of HMP & YOI Peterborough (Women), nearly half (48%) of the foreign national women were from minority ethnic groups.⁷⁰ Ministry of Justice snapshot data shows that on 30 June 2017:⁷¹

- 84% of British women in prison were white compared with 53% of foreign national women
- 3% of British women in prison were Asian/Asian British compared with 11% of foreign national women
- 7% of British women in prison were black/African/Caribbean/black British compared with 27% of foreign national women.

David Lammy MP's review of racial bias in the criminal justice system highlighted disparities in police treatment of women and girls from ethnic minorities.⁷² Recent reports by PRT⁷³ and Agenda and Women in Prison⁷⁴ encourage a focus on the intersectional discrimination experienced by Black, Asian and minority ethnic women and girls in the criminal justice system and this should include foreign national status. For example, black girls are five times more likely than white girls to be arrested for robbery and over three times more likely for fraud.⁷⁵ Black women are more than twice as likely to be arrested as white women.⁷⁶

Some women say they feel targeted by the police because of their ethnicity. A young Roma woman reported:

I went once prison when I was 18 years old. It was very bad experience for me...When I came out from prison the police officer they know me and when they see me in the street they stop me every time...when we wear long skirts...you don't do anything and they stop you and they start following you.

Over representation of Roma women in the criminal justice system

In England and Wales, the prison population is categorised by Self Defined Ethnicity (SDE) codes. Foreign national women are not familiar with the British system, nor with the concept of self-defined ethnicity and it is unclear whether this is explained and whether these categories bear any resemblance to ethnic identities in their home countries.

For example, a large number of Hibiscus' clients are Roma women, originating from the Balkans or Central Europe. There is no SDE code for this, and these women tend to be categorised upon entry to prison as 'W9 – any other white ethnic background' in the prison population list. The official data currently collected almost certainly underrepresents the number of Roma women in the criminal justice system.

A recent prisoner survey by HMIP at HMP & YOI Peterborough reported that 10% of women in the prison identified as Gypsy, Romany or Travellers. However, Hibiscus' workers have observed that Roma women are reluctant to disclose at the time of arrival in prison that they are Roma, creating a further barrier to gathering accurate data.

Hibiscus has seen an increase in Roma women from Eastern European countries serving prison sentences for minor offences such as shoplifting and theft. Many of these women, first time offenders, were not offered community alternatives to custody.

Reasons for coming to the UK

Hibiscus' qualitative analysis shows a diversity of circumstances. Some women came to the UK to escape violence in their home country or as asylum seekers. Most came with a visa and had overstayed; some had arrived legally and had not overstayed. A few entered the UK with a fake passport; others came because they were promised a job or a better life by men who they trusted, but who were really using them to transport drugs or for prostitution. A small number had been born in the UK and lived here throughout their lives, but were classed as foreign nationals due to their parents' nationalities.

Overview of prison conditions for foreign national women

Over half (56%) of all foreign national women prisoners in England and Wales can be found in three women's prisons: HMP Bronzefield in Surrey (27%), HMP & YOI Peterborough (18%) and HMP Downview in Surrey (11%).⁷⁷ The remaining 44% are dispersed across the prison estate.

HMP & YOI Peterborough has a Foreign National Unit for women classified as being 'subject to immigration action by the Home Office'. This includes all prisoners who are 'considered for or subject to deportation or removal proceedings', as well as 'those whose immigration status is unknown or unresolved'. A recent inspection found that foreign national women held here received good support, including in-reach services from Hibiscus.⁷⁸ Prisoner survey results suggested they had fared better than British nationals in areas such as mental health support. However foreign national women on the wing were still not being considered for open conditions despite an earlier inspectorate recommendation that they should be. They also reported much poorer experiences than British women in custody planning, making complaints and preparing for resettlement.

Most foreign national women in prison are held in non-specialist units, where HMIP has found that the quality and extent of support varies considerably. The experience of Hibiscus suggests that prison officers often have limited understanding of language and cultural differences and of the vulnerabilities of foreign national prisoners from minority ethnic groups. Problems can escalate as a result, for example prison officers misconstruing certain behaviours as offensive or aggressive and taking disciplinary action.

Bangkok Rules⁷⁹ 54 and 55 – women from different religious and cultural backgrounds

Foreign national women are disproportionately likely to belong to ethnic and religious minorities. The United Nations Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders (known as the Bangkok Rules, 2010) to which the UK is a signatory provides as follows:

Rule 54: Prison authorities shall recognise that women prisoners from different religious cultural backgrounds have distinctive needs and may face multiple forms of discrimination in their access to gender- and culture-relevant programmes and services. Accordingly, prison authorities shall provide comprehensive programmes and services that address these needs, in consultation with women prisoners themselves and the relevant groups.

Rule 55: Pre- and post-release services shall be reviewed to ensure that they are appropriate and accessible to indigenous women prisoners and to women prisoners from ethnic and racial groups, in consultation with the relevant groups.

Language and communication

Over half (57%) of the women within Hibiscus' quantitative analysis did not speak any English and language barriers were the main challenge they reported. This meant they were unable to understand court hearings and contributed to feelings of isolation in prison.

Hibiscus have observed a growth in the number of people in the criminal justice system for whom English is not their first language, and report that this is a bigger problem for women and girls due to more limited access to education. This obviously puts them at a disadvantage in criminal justice and immigration proceedings.⁸⁰

A recent inspection of HMP Send found that women from minority ethnic groups were less likely to understand written English than white women.⁸¹ Recent research reveals the disadvantages faced by Muslim women without English language skills, particularly older women, who have had to rely

on other prisoners to interpret for them. There is no guarantee of continuity as women acting as interpreters may be released or transferred without warning.⁸² Other research has found women being reprimanded for speaking other languages and told they must speak English on the telephone.⁸³ Some staff of Women in Prison report that interpreting services are very rarely available to women, causing problems in all areas of women's prison experience but posing particular problems for women in accessing healthcare; however, there are examples of good practice. HMP Downview runs ESOL English lessons for foreign national women and is trialling creative writing classes for foreign nationals as well as encouraging women to take part in the debating society to help improve their English.

Prison Service Instructions require interpreting and translation services to be used in circumstances such as the conducting of ACCT assessments for prisoners who are identified as being at risk of suicide or self harm.^{iv} In HMP Bronzefield, HMIP found in 2016 that prison staff were aware of the needs of foreign national women, interpreter arrangements were very good and frequently used.⁸⁴ However in HMP Drake Hall in 2017 the Inspectorate found that reception information was available in few languages; the prison relied too much on prisoners to interpret and too little on telephone interpretation, especially in confidential settings such as medical consultations or reception interviews; and it was difficult for women to stay in contact with family.⁸⁵ One woman told us:

...it's very difficult as well with the language barriers...I met a lot of women ... in the prison that didn't understand so many things.

Hibiscus report that women on remand with language difficulties are especially vulnerable and unable to challenge poor legal representation. They seem to have fewer visits from their solicitor than English speaking prisoners. This is especially concerning for women awaiting trial for serious offences. There have been cases where non-English speaking clients waited up to a year for trial with only a couple of visits from their solicitor.

Sentence planning and custody planning

All prisoners, including foreign nationals, should have a custody plan or sentence plan. For those likely to be deported this may include preparation for release in their home country, as well as rehabilitative activities. However the recent HMIP prisoner survey at Peterborough found that foreign national women were much less likely than British women to have a custody plan.⁸⁶ Sentence planning will stop if a prisoner is given a deportation order.⁸⁷

Independent immigration advice

HMIP found that in HMP Eastwood Park independent immigration advice was not available.⁸⁸ By contrast, the HMIP report on HMP Bronzefield stated that women had weekly access to groups offering legal advice and support, as well as visiting immigration officers.⁸⁹

Safety in custody

In HMP Drake Hall, inspectors found foreign nationals were much less likely to feel safe on their first night (23%) than British nationals (63%) and significantly more likely to feel unsafe at the time of the inspection (35% compared with 13% of British nationals).⁹⁰

^{iv} See PSI 64/2011: Management of prisoners at risk of harm to self, to others and from others (Safer Custody). The PSI provides that any prisoner identified as at risk of suicide or self-harm must be managed using the Assessment, Care in Custody and Teamwork (ACCT) procedures. ACCT is described as a 'prisoner-centred, flexible care-planning system' aimed at reducing risk.

HMP & YOI Peterborough (Women) – Foreign National Unit: Prison inspection findings

A recent inspection of HMP & YOI Peterborough (Women), the only women's prison with a dedicated foreign national wing, found that provision for foreign national women was good and noted the valuable support provided by external agencies including Hibiscus.⁹¹ Sixty-six foreign national women were in the prison, including two women who had come to the end of their sentences and were due to be deported. Inspectors noted the provision of weekly specialist input on immigration and deportation and the consistent use by prison staff of a translation service. The inspectorate found that women valued being together in the wing, where they could offer each other support.

However, the prisoner survey revealed that foreign national women found it harder to make a complaint (44% found this an easy process, compared with 71% of British nationals). They were less likely to have a custody plan (25% compared with 41% of British nationals) and to have staff helping them to achieve their objectives or targets (33% compared to 49%). They were also less likely than British nationals to be helped with preparation for their release (40% compared to 65%).

On the other hand, inspectors found that foreign national women were significantly less likely than British nationals to report having had problems on arrival in prison (60% compared to 95%). They were more likely to feel their applications were treated fairly (70% compared to 58%) as well as their complaints (46% compared to 34%).

60% of foreign national women reported that they had received help with mental health problems, compared to 36% of British women. Foreign national women were also more likely to say that they would report any problems with bullying or victimisation by staff (74% compared to 60%) or by other prisoners (71% compared to 42%). Hibiscus case workers suggest that this is due to their close joint work with dedicated prison officers on the wing, making it a good example of the positive outcomes to be achieved where statutory services work closely with specialist community based women's organisations.

Pregnancy and birth

In Hibiscus' qualitative analysis of the 76 women who disclosed that they had children, ten gave birth and/or were pregnant while in prison.

Women from minority ethnic groups are overrepresented amongst those who require perinatal care in prison, with a high proportion being foreign nationals.⁹² In their report 'All Babies Count', the NSPCC and Barnardo's recommend further research into the experience and needs of foreign national prisoners who are pregnant or have babies in prison, and how these can be met.⁹³

It has been suggested that there is inconsistent practice in admissions to Mother and Baby Units (MBU).⁹⁴ Foreign national prisoners may be more likely to apply for an MBU place as they are more likely to be serving longer sentences and kinship care is less likely to be available to them,⁹⁵ as is a safety net of social services in their country of origin.⁹⁶ They make up a disproportionate number of pregnant women arriving in prison and where they have to give birth in custody they can rarely have a family member as a birthing partner. This is especially troubling where pregnancy results from rape or enforced prostitution.⁹⁷

Birth Companions' Birth Charter for Women in Prison recommends that women without family, or whose family and friends live too far away to attend the birth, should have access to an alternative source of support.⁹⁸ Prison officers assigned to escort women to hospital should receive training or guidance and should only be present during labour if invited by the woman. However these recommendations are not always adhered to; in a recent television interview, a foreign national

woman who gave birth while on remand reported officers being in the room uninvited while she was in labour, with no one to support her.⁹⁹

Foreign national women who are not eligible for child benefit may be unable to purchase essential items for their babies. These are women whose family probably live abroad and may be unable to send baby clothes and other items.¹⁰⁰

Birth Companions

Birth Companions volunteers have supported women in HMP Holloway and HMP Peterborough during birth and the postnatal period. Prison staff and midwives called a 24-hour phone line to mobilise these volunteers. The support, tailored to a woman's wishes, included breathing, massage, advocacy and help with breastfeeding. An external evaluation found that *“women who come into contact with Birth Companions feel much less alone, better informed and more able to cope”*.¹⁰¹

Dependent children and family contact

Minority ethnic and foreign national women are more likely to report that they have not had a visit during their first week in prison, compared with white and British women.¹⁰² An in-depth study of 103 foreign national women prisoners found no evidence that account was taken of children's wellbeing with regard to arrest, bail and facilitation of contact.¹⁰³ Thirty-eight per cent of the women in prison in Hibiscus' quantitative analysis disclosed that they had dependent children. A fifth of these women (21%) said their children were aged five years or under; half did not confirm their children's ages. Nearly two thirds either did not have children or did not wish to disclose this.

The Bangkok Rules – Women with dependent children

International law requires the government to provide facilities that enable newly arrived women prisoners to contact their relatives and have access to legal advice and information about prison rules and regulations, the prison regime and where to seek help in a language that they understand, as well as consular representatives for foreign national women.¹⁰⁴

Women should be allowed, before or on admission to prison, to make arrangements for the care of children for whom they are responsible, including the possibility of a reasonable suspension of detention, taking into account the children's best interests.¹⁰⁵

Where relevant bilateral or multilateral agreements are in place, the transfer of non-resident foreign national women prisoners to their home country, especially if they have children there, should be considered as early as possible during their imprisonment, following the application or informed consent of the woman concerned.¹⁰⁶

Of those who disclosed that they had dependent children, more than half (54%) said that their children were in the UK, while 28% said their children were living abroad. Nearly a fifth (19%) of women did not want to say where their children were living. Amongst the women who did disclose this, over half (55%) said that their children were living with family members. Of those whose children were living in the UK, 16% were in care.

Although this analysis concerns a small number of women, the data reflect wider evidence about mothers in prison which suggests that 54% of children with mothers in prison are cared for by family or friends (25% by grandmothers and 29% by other family members or friends), while 12% are taken into care.¹⁰⁷ Hibiscus' experience is that the children of foreign national women in prison are more likely to be taken into care.

Maintaining contact with children can be difficult, often involving high travel costs because of the locations of women's prisons, some with very poor transport links. Whilst there is the possibility of accumulated visits,¹⁰⁸ in reality visits may be too traumatic for children and many women have no contact with their children between arrest and deportation. Prison Service Instructions allow for adjustments to facilitate family contact including telephone access and visits.¹⁰⁹ However in HMP Bronzefield foreign national women received only one free, seven-minute phone call each month and for some the prohibitive cost of making calls made it very difficult to maintain contact with family abroad.¹¹⁰ For prisoners whose children are living in their country of origin the experience of separation can be particularly traumatic due to concerns about their safety and wellbeing.

Hibiscus staff have observed a particularly strong stigma attached to imprisonment among many foreign national women, especially African, Eastern European or Asian women, making them reluctant to contact their families and disclose their imprisonment. This contributes to feelings of isolation and adds to challenges upon release. These findings are reinforced in research about Muslim women, some of whom may be foreign nationals.¹¹¹

Ifede's story - Maternal imprisonment

Ifede is a Nigerian woman who was convicted of fraud and served three months in prison. Her son was doing his GCSEs at the time of her imprisonment. She told us:

Somebody send money to me, abroad, and I have to go and collect it and my passport was in Home Office...so I have to get an extra passport and show my face...and they arrested me. And I said 'yes, it's true I did it'...

I know that I made a mistake...but it's not something that you're supposed to send me to prison. My son was doing his GCSE exam...The parents saw me on that day when they arrested me...took care of my son. They took me to prison. We thought that I would come back. They sentenced me for three months.

My son was just...I left my home in the morning, I couldn't see him again...

Give them [mothers] ...work to do. It is better than putting them in the prison with their children at home. Nobody can take care of them like their mother, no way.

Whenever my son came to see me, oh my gosh, this is not my son I left...I was crying, I was like, 'I don't want him to come'. He said, 'I just want to see my mum'. They brought him. I couldn't recognise him again...I didn't recognise him...

Ifede faces deportation proceedings and is unable to work legally. She attends Hibiscus' specialist women's centre for support. The long-term effect of arrest and imprisonment remains with her and her son:

I'm telling you I'm really depressed. If I see police, if I hear siren...til now it is still in my body since 2006...If I hear some things now. I am not at myself at all. Everything about me just change.

My son will never forget it.

Most of the women we spoke to had dependent children and the impact of their imprisonment on the children weighed heavily upon them. None felt that their children's best interests had been taken into account in decisions by the police or courts. Separation during police custody or imprisonment was traumatic at the time and had a longer term, negative effect. One woman, convicted of cultivating cannabis, spent 3½ years in prison. At the time she had three children, aged between six and 18 years. She described the trauma of separation and her feelings of guilt:

I always crying I don't eat for a few day. I don't do nothing... I keep crying every day for my daughter and all my money I earn I spend on the phone with her ...

...my ex-husband ... a lot of time he late...I crying as my daughter have to stay ... 6 years old ...stay up to 6 o'clock, so every day I really don't want to live, to be honest. Up to now I still upset about that. I think I don't know why my life they turned right...upside down now.

Long after her release from prison, this woman continued to find it hard to face the world and had suicidal thoughts. Another woman, who was born in Nigeria but had lived in the UK since she was a young child, described the long-term impact on her family:

Being in prison you lose a lot of things. It's not just your kids that you lose. You actually lose yourself...you are no longer the same person as you were before. You're afraid. Any little things, you start jumping. You have nightmares...Even your kids will jump as well. It's not fair... it's going to be with them for the rest of their life.

Physical and mental health

11.5% of the women included in Hibiscus' qualitative analysis disclosed that they suffered some sort of mental health condition and 8% struggled with substance abuse. 17.5% reported that they had experienced trauma some time before being arrested.

Women told us that the experience of being arrested, detained, going through court proceedings and serving a custodial sentence had been highly traumatic for them and their children, and that the effects of this had been long lasting. One woman explained how she had started to experience health problems in prison, including attacks of anxiety and depression. Another explained the long term impact of criminal justice proceedings:

Never can I forget...I try to do my life but never do I forget.

Rehabilitation, release and resettlement

For the many foreign national prisoners considered liable for deportation,¹¹² it is virtually impossible to access rehabilitation and resettlement support.

• Home Detention Curfew (HDC)

Prisoners serving sentences of three months up to four years may be released early under HDC, or electronic tagging. Foreign national prisoners will not be eligible for HDC if they have been notified of a decision to make a deportation order and in other specific circumstances,¹¹³ but if these restrictions do not apply they should be considered for HDC in the normal way. Any intention to deport or other information from the Home Office will be taken into account when conducting a risk assessment, which may make it very unlikely that HDC will be granted. Hibiscus has only had two clients in the last five years who were granted HDC, and none recently.

- **Access to open conditions and Release on Temporary Licence (ROTL)**

In Hibiscus' experience, the opportunity to gain work experience when leaving prison is denied to foreign national women as they are deemed more likely to abscond. Being a foreign national should not affect the right to be considered for ROTL but in fact it does operate as a barrier.

Denial of ROTL to foreign national women

We are currently seeing the vast majority of our clients being denied ROTL on the basis that they are subject to immigration issues, specifically deportation proceedings. Our clients are aware of legislation issued by NOMS [the National Offender Management Service] that states "those prisoners who have not exhausted deportation appeal rights in the UK but who are liable for deportation must have their release on licence considered on an individual basis subject to assessment against the strengthened risk assessment".

Despite the fact that clients who are liable to deportation have the right to apply for ROTL and be risk assessed, this hardly ever happens and residents are barred from ROTL as soon as OMU workers are informed about immigration issues. Our clients often report feeling discriminated against and this creates frustration and anger.

Hibiscus Service Manager

Prison service instructions require that prisoners should have their categorisation reviewed 'regardless of immigration status and location';¹¹⁴ but recent prison inspectorate reports are critical of the fact that foreign national women are not being considered for open conditions and ROTL as often as they should be.¹¹⁵ As at 31 December 2017 only two foreign national women were held in open conditions.¹¹⁶ Prison inspectors at HMP & YOI Peterborough (Women) were dismayed to find that foreign national women are still automatically excluded from open conditions if they are likely to be deported, despite a recommendation in 2013 (repeated in 2018) that this should not be the case.¹¹⁷

Current practice makes it virtually impossible for foreign national women in prison to access the rehabilitative opportunities afforded by ROTL.¹¹⁸ ROTL is not available at all to prisoners who are detained solely on immigration grounds¹¹⁹ and will not be available to the vast majority of foreign national women prisoners who are held in closed conditions.

- **Resettlement support**

As the Peterborough inspection report illustrates, there is very little resettlement support for foreign national women although many of them will in fact remain in the UK long term.¹²⁰ Support from specialist women's services is vital for those with nowhere else to turn. One woman told us:

... When I came out there was no housing for me. I was told to go back to the police station or go to the hospital and get a bed for the night.

... If it was not for Hibiscus, as well as Women in Prison, I would have absolutely nothing or even be where I am today. Very likely I would have probably gone and do something else and I would end up back in the prison.

Another woman explained how bailiffs seeking to recover court fees had caused further trauma to her and her son:

I said, you know what, I am just sick and tired, take everything you want... I don't know what I'm going to eat...My [teenage] son was there. He was crying... 'Mummy what do they want, do they want to kill us?'...

Another woman explained:

[Hibiscus] are life savers...giving you direction, this is what you could do...

However Women in Prison report that foreign nationals are often excluded from resettlement and rehabilitation services run by the voluntary sector due to funding restrictions. Even where such restrictions do not exist, the barriers of having no access to public funds and statutory services can make it impossible for charities to help foreign nationals.

Where women are released into the community with no recourse to public funds, Women in Prison report that this can pose unique difficulties. For example, women may be asked to report to an immigration centre as well as probation services, which may be some distance apart. If women cannot make the journey due to lack of funds, they risk being recalled to prison. Women in Prison have worked with some women who have previously been housed by immigration but due to their offending have been told that immigration can no longer support their level of need. With no recourse to public funds they are unable to access housing and find themselves stuck in a cycle of offending.

Impact of criminal record on ability to gain employment

The High Court ruled in March 2018 that three women forced into prostitution as teenagers (two of whom were children at the time, the third being 18 years old) would no longer have to disclose related convictions to potential employers.¹²¹ However it remains the case that for many women, having to disclose a criminal record makes it harder to find work even though they may well legitimately remain in the UK long term.¹²² This is particularly the case for those who have previously worked in childcare or healthcare where enhanced checks are required. Insecure immigration status, particularly for women facing deportation or removal proceedings, adds to these challenges. A number of women commented on support they had received from Hibiscus and Working Chance to gain new skills and obtain employment.

A 20 year-old Roma woman said that it was very hard to get a job now that she had a criminal record, and that this put her at increased risk of removal from the United Kingdom:

When you have a criminal record it's very hard to find a job...if you want to work in this country and you have a criminal offence you can't get a job...Even immigration has to understand this...

Women felt that these difficulties were a second punishment:

I do a mistake but I pay for this mistake...I try to work now but ... they destroy my life...

One woman was not able to work because of her immigration status, added to which she had a criminal record. She explained how this left her vulnerable and helpless:

We learn our lesson, we suffer for it. Let us go out and work and not be dependent on anybody... If you go through CRB they see 'bad record' they are not going to give you job... so we are dependent on people...

Imprisonment can make it even harder for women to regain control of their lives. One woman who had spent 3½ years in prison commented that with the health problems she now experienced including depression and anxiety, she did not feel able to work.

Immigration detention, removal and deportation

Hibiscus' qualitative analysis found that over half (53%) of women had problems relating to their immigration status. Since 2017 Hibiscus' workers report that immigration problems are now the main problem raised by their clients, including women on remand. Amongst the women we spoke to, immigration proceedings were experienced as a second sentence.

Sara's story - Impact of deportation proceedings

Sara is Nigerian and has lived in the United Kingdom for nearly 40 years, since childhood. She had Indefinite Leave to Remain but never obtained British citizenship. She had never had any immigration difficulties before she was arrested and was not familiar with the immigration system. After being sentenced to over 12 months in prison for the offence of false accusation, Sara was now fighting deportation proceedings with assistance from Bail for Immigration Detainees (BID) and Hibiscus. She had nine children, all born in the UK. She was told by an immigration official that if she was deported to Nigeria, she could have contact with her children via Skype.

Eight weeks after her release from prison, Sara went to the immigration centre in Croydon and was immediately taken from there to an immigration removal centre where she remained for three months. BID secured her release and she is now signing in regularly with the immigration authorities. Sara explained how these proceedings created additional challenges for her upon release from prison:

When I came out of the prison... when I went to the housing...I was told that I've not been in prison long enough so there's no way they can help me with housing and they needed to see my immigration letters... I got a letter from my bank saying that immigration said I should go back to my country, I had no right to open an account... When I also tried to go back on benefit I was told that immigration said I'm not entitled...Immigration basically ... destroyed me...

When she was in hospital after giving birth, Sara telephoned the immigration authorities to explain she would not be able to sign in. She was told that they might have to come and collect her. This made Sara frightened that social services would take her newborn baby if she was detained. She contacted BID who helped her. Although the immigration authorities have taken no further action, Sara feels in limbo. The deportation proceedings have not been discontinued and she is unable to travel:

I have been out over three years but I'm still facing immigration – it's like a new sentence.

• Removal of 'foreign national offenders' from the UK

The deportation or removal of 'foreign national offenders who have no right to be in the UK' is an explicit priority of the UK government.¹²³ Criminal justice agencies are likely to view a foreign national suspect, defendant or prisoner as someone who may be of interest to the Home Office for removal or deportation regardless of their circumstances, which will in turn have an impact on their criminal justice proceedings.

The extent to which Windrush immigrants have been wrongly caught up in deportation proceedings due to criminal convictions is unknown. There are wider questions of inequality where individuals who have indefinite leave to remain, including those who arrived in the UK as children and indeed some who grew up in the care system, have not undertaken the process and expense of obtaining British citizenship and therefore find themselves vulnerable to deportation if they are convicted of an offence.

- **Access to legal representation and advice**

There is limited availability of free legal assistance and representation for people who cannot afford to pay. Asylum seekers are entitled to legal aid for their asylum cases and solicitors can apply for exceptional case funding for other cases. Hibiscus supported one client who was granted legal aid funding and went on to win an appeal against deportation.¹²⁴ Beyond these narrow remits, access to legal aid is very limited for people who are subject to immigration control.

- **Immigration detention**

Immigration detention is an administrative process, separate from the criminal justice system, which has faced consistent criticism for lack of judicial oversight, excessive use of detention and a failure to consider community alternatives. A 2015 joint inquiry by the All Party Parliamentary Groups on Migration and Refugees found that immigration detention was over used and recommended the introduction of a 28 day maximum time limit.¹²⁵ There has also been widespread criticism of the practice of holding some foreign nationals in prison for immigration purposes after they have completed a custodial sentence, rather than moving them to an immigration removal centre or indeed considering a community alternative. Submissions to the 2016 Shaw review reported that ‘detainees held in the prison estate found access to legal advice more difficult, reducing their ability to progress their immigration case, and to seek independent scrutiny and release from detention, as well as affecting their physical and mental wellbeing’.¹²⁶

People kept in prison after the end of their sentence become ‘detainees’ and have more rights and better conditions, similar to those of a remand prisoner.¹²⁷ Speaking to women held in HMP Holloway for immigration purposes, before the prison’s closure, Stephen Shaw noted that the women criticised the lack of immigration expertise amongst prison officers as well as the application of the Incentives and Earned Privileges system to detainees, restrictions on clothing and other possessions and the poor working of the personal officer scheme. The women felt that those who did not speak English were treated less well, and complained of delays in immigration processes. Mr Shaw commented:¹²⁸

I was concerned that Immigration Officer cover at Holloway appeared insufficient given that one-third of the total prison population were foreign nationals. I do not know how far the position in Holloway reflects a wider problem.

Mr Shaw recommended that immigration staffing levels in prison be reviewed, and that ‘there should be a presumption against immigration detention of victims of rape and other sexual or gender-based violence’.¹²⁹ The government accepted the ‘broad thrust’ of the Shaw review¹³⁰ and has introduced a presumption that ‘at risk’ individuals will not be detained¹³¹, but there have been ongoing criticisms of failures to protect vulnerable individuals.¹³²

Return to country of origin

Some women want to return to their home country. In Hibiscus’ qualitative analysis, 87 out of 182 women indicated whether they wanted to stay in the UK or return to their home country. Of those, 45% wanted to return, while 54% wanted to remain.

Many women, who had travelled to the UK to escape danger such as abusive relationships or other forms of violence, wanted to claim asylum because they feared for their lives if they returned home. Others wanted to return home to join their families. Some of these women had been forced into prostitution and arrived in the UK as a result of being tricked into transporting drugs across the border. Once they escaped the men who had exploited them, they stayed in the hope of a better life. Having been in prison, they preferred to return home.

Several women originally wanted to return home, but later changed their minds when they realised that they might never be allowed to re-enter the UK or would have to wait years before doing so. Most of these women had children in the UK.

Wanting to be with their dependent children appeared to be the most influential factor in determining whether women wanted to stay in the UK or return to their home country. Forty-two per cent of the 182 women disclosed that they had dependent children. Of these, 60% said that their children were in the UK while 22% said that their children were abroad. The children who were abroad were usually living in the woman's country of origin with family members. Nearly a fifth of women (18%) did not say where their children were living.

Of the women who had children living in the UK, 44% said that they wanted to stay here while only 11% wanted to return to their home country. The remaining 46% of women did not disclose their preference. Of the women who said that their children were living abroad, 59% wanted to return to their home country to join them.

Trafficked women in prison

The UK government has made a commitment to “lead the way in defeating modern slavery”, which the Prime Minister has called “the great human rights issue of our time”.¹³³ At the heart of this commitment is the requirement, in line with international law, not to prosecute those who commit offences as a direct result of their experience as victims of human trafficking and modern slavery.

In its most recent examination of the UK, the Council of Europe’s Group of Experts on action against Trafficking in Human Beings (GRETA) welcomed the appointment of the Independent Anti-Slavery Commissioner but reiterated their 2012 recommendation for the UK to establish an independent national rapporteur to ensure independent monitoring of state institutions, as well as calling for the time between NRM referral and removal from custody to be reduced.¹³⁴

Foreign national women are more likely than British women to be victims of human trafficking and modern slavery and to have been coerced into offending as part of that experience, although modern slavery legislation is increasingly being used to tackle offences committed against British women, men and children. Foreign national trafficked women are also vulnerable to committing false document offences where their papers have been stolen by traffickers or if they have been given false documents. Such offences may occur long after women have escaped their traffickers. There is no official published data about the prosecution of victims of trafficking, nor the stage of the criminal justice process at which they were identified as a potential victim of trafficking, the stage at which proceedings against them were discontinued (if at all) and how long they were detained.

The National Referral Mechanism (NRM) process

Alongside other specified public authorities, where the police have reasonable grounds to believe an individual may be a victim of human slavery or trafficking they are obliged by law to notify one of the two competent authorities (in this case the Modern Slavery Human Trafficking Unit, part of the National Crime Agency) which will then take forward the NRM process in respect of that individual, provided they agree to this.

Based on the information then available, the competent authority will decide whether the individual is a potential victim of trafficking or modern slavery (a ‘reasonable grounds’ decision). If so, the potential victim is entitled to a place within government funded safe house accommodation and must be granted a 45-day reflection and recovery period. During this time the competent authority will gather further information in order to decide whether on the balance of probability it is ‘more likely than not’ that the individual is a victim of human trafficking or modern slavery (a ‘conclusive grounds’ decision).

In the event of a positive conclusive grounds decision, the victim may be granted discretionary leave to remain in the UK for one year to allow them to co-operate fully in any police investigation and subsequent prosecution; this may be extended if required. If the victim is not assisting a police investigation and/or criminal proceedings, the Home Office may consider a grant of discretionary leave to remain in the UK dependent on the victim’s personal circumstances.

Reforms to the NRM process were announced in October 2017 in order to streamline the process and make it more transparent, including creating a single Home Office unit to handle all referrals and decide whether individuals are victims of modern slavery, and an independent expert panel to review some negative decisions, at ‘conclusive grounds’ stage only.¹³⁵ The reforms have been criticised by some for not going far enough.¹³⁶

Hibiscus' trafficking caseload analysis

Hibiscus analysed caseload data from 45 victims and potential victims of trafficking whom they supported in prison between February 2013 and March 2017, mostly in HMP Peterborough where Hibiscus works within the local human trafficking strategy. In most cases (33), Hibiscus project workers were the first to identify the women as victims of trafficking. In other cases, women had already been identified and referred to first responders at the time of arrest and before arriving in prison. The vast majority had been trafficked with the false promise of paid employment.

Cristina's story - Prosecution of trafficking victim

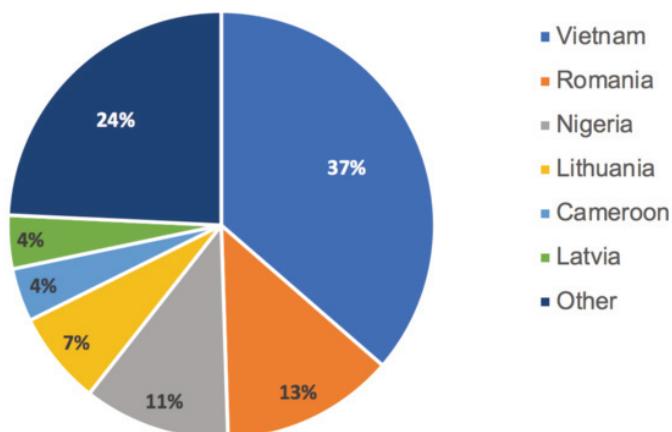
Cristina is a Romanian national who came to the UK when she was 19 years old, having begun a relationship a few months previously. Her boyfriend treated her well until they arrived in the UK, when he forced her to enter into prostitution and started hitting her regularly. Cristina tried to escape and went to the police. She explained everything to police officers but was left alone when leaving the police station. Her boyfriend had followed her there and picked her up in front of the police station, throwing her mobile phone in the bin and forcing her into the car.

Cristina was exploited for years before being arrested by the police during a raid. She was convicted and sentenced to six years for controlling prostitution, despite being a victim herself. Later, while in HMP Peterborough, she disclosed everything to a Hibiscus project worker and the immigration officer who acted as a first responder in her case. Although she was officially recognised as a victim of modern slavery, Cristina remained in prison until the end of her sentence and was deported to Romania on her early release date.

Countries of origin and routes travelled to the UK

Over a third (36%) of the 45 women victims and potential victims of trafficking included in Hibiscus' analysis came from Vietnam, 13% originated in Romania and 11% in Nigeria.

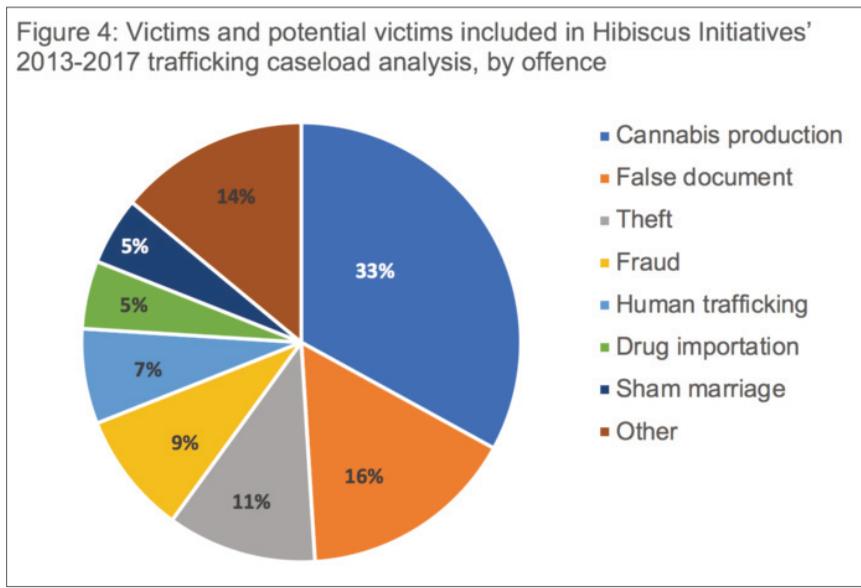
Figure 3: Victims and potential victims included in Hibiscus Initiatives' 2013-2017 trafficking caseload analysis, by nationality



The women reported a variety of routes into the UK, several having travelled via one or more other countries. Some had been trafficked within the UK.

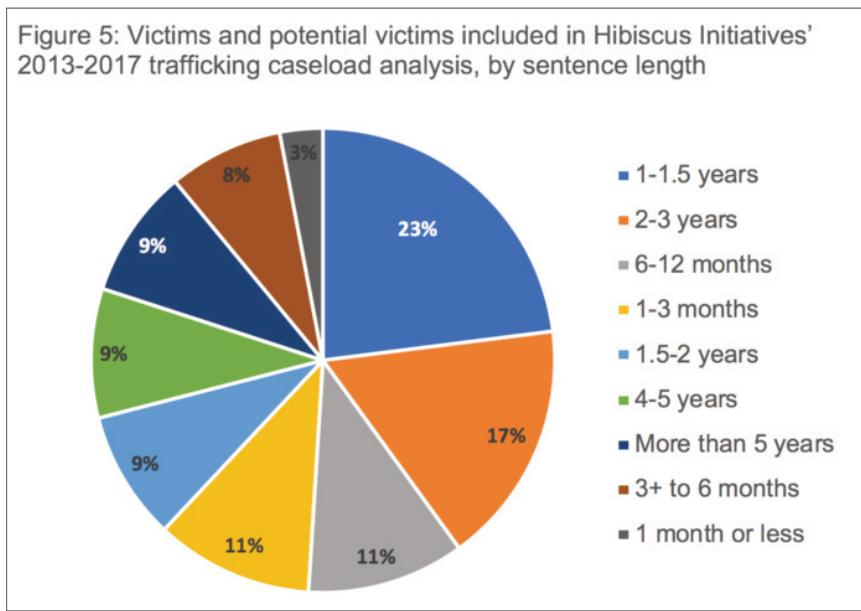
Offence categories

One third of the women were in prison charged with cannabis production, with 16% in prison for a false document offence and 11% for theft. These are all offences commonly associated with having been trafficked and coerced into offending ('indicator offences').¹³⁷



Remand and custodial sentencing of victims

Over a fifth of the women (22%) were held on remand, with 78% under sentences ranging from under a month (3%) to over five years (9%). The largest proportion (23%) were serving sentences of one to one and a half years. Those who were there under sentence, despite receiving positive 'reasonable grounds' decisions, did not benefit from the 45-day reflection and recovery period. Some decided to return to their country of origin rather than exploring options of criminal appeal against their conviction or remaining in the UK.



History of trauma

These women were all in a fragile emotional state. For many the experience of being trafficked had led them to develop mental health problems or had exacerbated existing conditions including post-traumatic stress disorder, psychosis, bipolar disorder, emotional problems, anxiety and depression.

Language needs

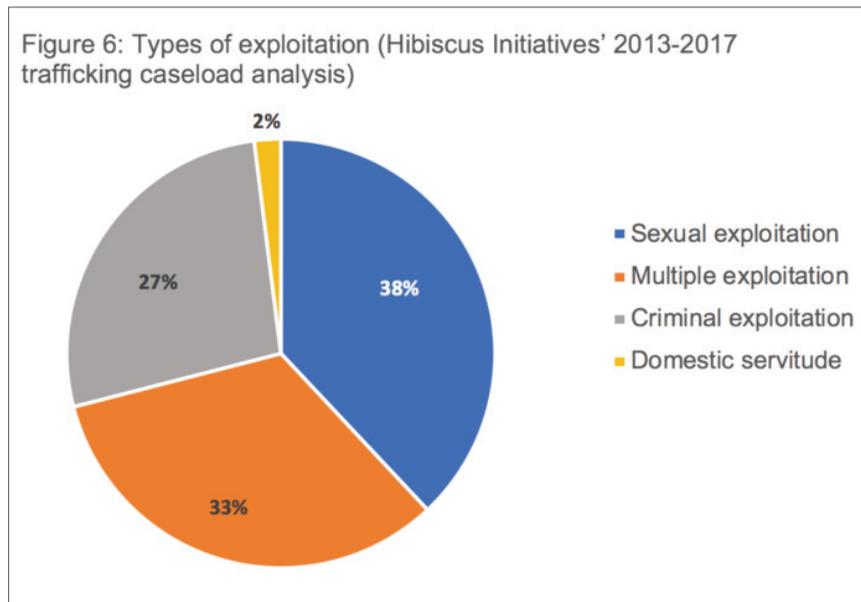
Just under half of the women (49%) could communicate in English, at a level ranging from basic to fluent. The remainder (51%) did not speak any English and required an interpreter.

Separation from children and family

Nearly a third of the women (31%) disclosed that they had children. Of those, nearly two thirds (64%) had children living abroad, while 36% had children living in the UK. Women who have been trafficked may face additional challenges of re-establishing links broken by the grip of traffickers. This trauma will be compounded where the mother's escape from traffickers has resulted in threats to children and consequently their relocation.¹³⁸

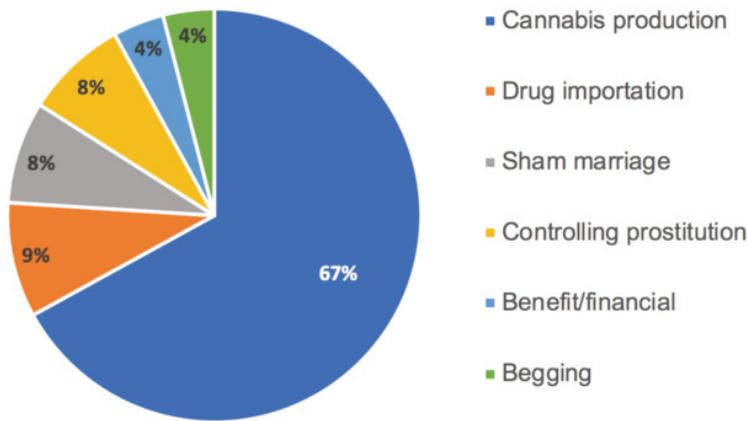
Exploitation types

The women had been subject to different forms of exploitation, multiple types in many cases.



More than one in four women (27%) had been subject to criminal exploitation. By far the most common type of criminal exploitation was cannabis production, followed by drug importation, sham marriage and controlling prostitution. For a small percentage of women the form of criminal exploitation was benefit fraud or begging.

Figure 7: Types of criminal exploitation (Hibiscus Initiatives' 2013-2017 trafficking caseload analysis)



Competent authority decisions

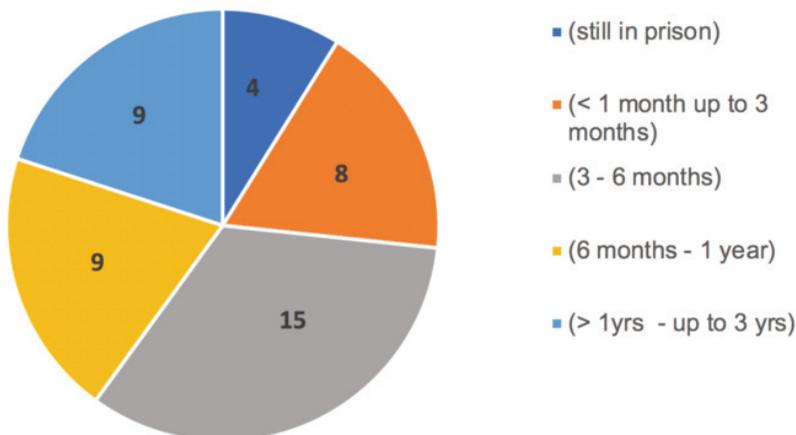
Most of the women (32) agreed to be referred to the NRM. Over a third (12) of these received positive conclusive grounds decisions that they were victims of trafficking. Ten women received positive reasonable grounds decisions and were awaiting conclusive grounds decisions at the time of completing the analysis. Three women received negative conclusive grounds decisions, a further three received negative reasonable grounds decisions, and the remaining four were awaiting reasonable grounds decisions at the time of completing the analysis.

Discharge from prison

Twenty two women received positive conclusive grounds decisions or were awaiting a decision following a positive reasonable grounds decision. Of these, nine were released into a safe house in the community; seven were released into the community with outreach support; three were still in prison at the time of completing the analysis; two were deported post-sentence; and one was removed under the Early Removal Scheme.

All the 45 women had disclosed information about their exploitation and were identified by Hibiscus as being victims or potential victims of trafficking. The time these women spent in prison ranged from one to three months to up to three years, with four women remaining in prison at the time of completing the analysis.

Figure 8: Time spent in prison for all victims and potential victims of trafficking that Hibiscus Initiatives encountered in this period



Of the 12 women who received positive conclusive grounds decisions before the analysis was completed, the time they had spent in prison ranged from one to three months to up to three years, with one woman still in prison. Of the ten women awaiting a conclusive grounds decision, the time they had spent in prison ranged from one to three months to up to three years, with two women still in prison at the time of completing the analysis.

The fact that these women came so far through the criminal justice system before being identified as victims of human trafficking or modern slavery reflects a disturbing lack of progress in achieving compliance with the law.

International law

Human trafficking is defined in international law as the illegal trade in human beings for the purposes of commercial sexual exploitation or forced labour. It is a form of modern slavery and is one of the fastest growing criminal industries in the world.¹³⁹ Article 4 of the Council of Europe Convention on Action against Trafficking 2005 (the Trafficking Convention) defines trafficking as involving three things:

- Recruiting, moving or harbouring a person;
- In particular ways, such as by using force, deception, the abuse of power or the abuse of a position of vulnerability;
- For the purpose of exploitation, like forcing someone to be involved in prostitution, forced labour or domestic servitude.¹⁴⁰

Victims of trafficking should not be punished for offences that they commit as a result.¹⁴¹ The Bangkok Rules recognise the need for ‘maximum protection’ to be put in place to avoid the secondary victimisation of foreign national women who are trafficked into offending.¹⁴²

UK law and policy

The Modern Slavery Act 2015 encompasses human trafficking for all forms of exploitation.¹⁴³ The Act introduced measures to enhance the protection of victims of slavery and trafficking. It established the role of the Anti-Slavery Commissioner, who has a UK-wide remit to encourage good practice in the prevention, detection, investigation and prosecution of modern slavery offences. The relevant statutory agencies have a duty to co-operate with the Commissioner.¹⁴⁴ The majority of the Act’s provisions apply to England and Wales only, but certain provisions extend to Scotland and Northern Ireland, where similar legislation has been introduced.¹⁴⁵ The Independent Anti-Slavery Commissioner resigned in May 2018 due to concerns about lack of progress.¹⁴⁶

Unseen UK’s women’s anti-trafficking emergency refuge (Water)

Unseen runs a safe house in South West England for women who are classified as survivors of modern slavery and human trafficking. The service takes referrals from all over the country. This project acts as the first stage on each survivor’s long and difficult journey towards rebuilding their lives. The service helps survivors recover their self-esteem, build their confidence and gain the key skills vital for their future independence. The project allows survivors to access a range of services, including:

- Medical care and treatment
- Counselling
- Legal advice and assistance
- Holistic therapy sessions
- Education
- Financial assistance
- Immigration advice
- Assistance to return home or to reside in the UK

Identification and protection of victims of modern slavery

The NRM is the UK's victim identification and support process, created in 2009 following ratification of the Council of Europe Convention on Action against Trafficking in Human Beings.¹⁴⁷ At the core of every country's NRM is the process of locating and identifying "potential victims of trafficking". From 31 July 2015 the NRM was extended to all victims of modern slavery in England and Wales.¹⁴⁸

The NRM is intended to make it easier for the many agencies that might be involved in a trafficking case to co-operate, share information about potential victims and facilitate their access to advice, accommodation and support;¹⁴⁹ however it has been widely criticised. There is a perceived lack of adequate and consistent training for those responsible for victim identification. Some professionals too often fail to recognise incidences of trafficking; even where victims have disclosed their experience in whole or in part they still may not be identified as trafficked until much further down the line.¹⁵⁰

Survey by Soroptimist International of Great Britain and Northern Ireland

Soroptimist International of Great Britain and Northern Ireland published a report in July 2018 about the prevalence of human trafficking and modern slavery and public awareness and understanding. The research is based on over 9,000 survey responses gathered by Soroptimists during the last year and will inform awareness training.¹⁵¹

Statutory defence for victims of modern slavery

Section 45 of the Modern Slavery Act 2015 is intended to ensure that victims of human trafficking and modern slavery who have been compelled to commit a criminal offence are not prosecuted¹⁵² and is supported by CPS guidance¹⁵³. Police, prosecutors, defence lawyers and the judiciary need to be able to identify when suspects or defendants are in fact victims of human trafficking. Yet the evidence gathered by Hibiscus between 2013 and 2017 suggests ongoing failures to do so and this is supported by the findings of recent inspectorate reports on the responses of the police and the CPS.¹⁵⁴

Defence advocates argue that the statutory defence is not working well for victims. Further guidance is needed to clarify the concept of 'direct consequence' embedded in the defence. The effectiveness of the defence needs to be monitored to assess whether the 'reasonable person test' acts as a barrier to victims accessing protection from unjust criminalisation.

The police are obliged to investigate where they believe someone may be a victim of trafficking and are under a statutory duty to notify the competent authority of their belief. Subject to some exclusions, under section 45 an adult is not guilty of an offence if they were compelled to do it, if the compulsion is attributable to slavery or relevant exploitation, and if a reasonable person in the same situation and with their relevant characteristics (age, sex and any physical or mental illness or disability) would have had no realistic alternative.

The Criminalisation of Migrant Women¹⁵⁵

In their 2012 study, Dr Liz Hales and Professor Loraine Gelsthorpe interviewed 103 women in prison or immigration detention who had been detained or arrested on charges potentially linked with entry to or exit from the UK or work under the control of others. Amongst these women, 43 exemplified all the key indicators of being a victim of trafficking. However only 11 of these 43 women were processed through the NRM. For two of the women, this did not happen until their sentences had been completed. Four women were offered this option but three declined because they were serving short sentences and wanted to go home. The fourth was too frightened to disclose her experiences fully.

In a recent inspection of the police response to human trafficking and modern slavery, HM Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) found signs of progress, identifying examples of good practice in Greater Manchester, West Yorkshire and Cumbria. However the report found ‘low awareness among investigators of the section 45 defence’ and concluded that ‘many victims are not being identified, or given the full safeguards and protection that they should receive’. The report goes on to explain:¹⁵⁶

Lack of awareness of the statutory section 45 defence means that officers attending incidents or crime scenes may not consider or gather sufficient evidence to help determine whether individuals are offenders or potentially victims forced to commit offences. Some victims, therefore, may be viewed solely as suspected offenders, when a higher level of awareness among officers might make such victims more likely to receive the safeguards to which they would be entitled under the Modern Slavery Act 2015.

During the inspection, some officers who were aware of the section 45 defence commented on what they believed to be its cynical and routine use by offenders. In particular, officers referred to employers of people working in cannabis factories training them to use the section 45 defence on contact with the police. Officers must consider each case with an open mind, explore fully the circumstances and question people sensitively. In this way, they can identify victims accurately and work to protect them.

The Inspectorate was concerned to find that ‘[s]ome officers primarily treat potential victims of modern slavery and human trafficking as immigration offenders’ and recommended:

Immediately, forces should ensure that all victims carrying out criminal acts under compulsion attributable to slavery or exploitation are afforded the protection of early and continuing consideration of the applicability of the section 45 defence.

City of Houston Anti-Human Trafficking Strategic Plan¹⁵⁷

The City of Houston aims to be recognised as the national model for addressing human trafficking in the USA. Its strategic plan includes goals to raise public awareness about, and reporting of, human trafficking; increase victim identification by implementing direct outreach efforts; have a co-ordinated, multi-disciplinary and diversionary system in place to improve service delivery to identified victims; and institutionalise the response to human trafficking from within the City of Houston, ensuring it is structurally addressed.

In one practical measure aimed at improving victim identification by the police, individuals who commit certain specified offences (such as prostitution related offences) are automatically referred at first point of contact for interview by specialist officers, to establish whether they may be victims of trafficking. Cards and posters including questions aimed at prompting self-identification of victims are being developed.

CPS guidance is clear about the process that should be followed by both police and prosecutors:

Where an adult suspect is apprehended for committing a criminal offence and it is clear from their circumstances that they are a victim of trafficking or slavery, the offence has been committed as a direct consequence of their situation and they were compelled to commit it, the police or Immigration Officer may decide not to arrest but to remove them to a place of safety...

In cases where the suspect is arrested for a minor criminal offence and there is evidence to show that they may be a victim of trafficking, if they are an adult and agree to a referral, the police can refer them through the ... NRM ... to confirm their trafficking status..... If after investigation, there is clear evidence that a defence might apply, the custody officer may decide not to charge.

In all other cases, the CPS will make the decision. In cases referred to the CPS for a charging decision and for which a defence under section 45 could apply, a prosecutor will require proper information to inform a decision on charge and make an assessment on the availability of the defence.¹⁵⁸

A recent inspection of the CPS response to the Modern Slavery Act 2015 found examples of good practice in Wales and the West Midlands, but did not consider the extent to which prosecutors were following their own guidance on non-prosecution of victims of trafficking and slavery.¹⁵⁹ CPS guidance concerning prosecutions for immigration offences states as follows and refers to the CPS guidance on Human Trafficking and Smuggling:¹⁶⁰

When it comes to the notice of the prosecutor that the suspect has committed an immigration offence whilst in a coerced situation and may be a victim of human trafficking, prosecutors are advised to make further enquiries of the investigating officer and or the UK Human Trafficking Centre and consider the public interest factors when considering whether to proceed with a prosecution.

In his first strategic plan (2015-2017) the Independent Anti-Slavery Commissioner committed to “promoting the use of the statutory defence for modern slavery victims who are compelled to commit an offence as a direct consequence of their enslavement to ensure that victims are not criminalised”.¹⁶¹ In 2016 the Commissioner reported that he had engaged with the CPS to ensure that their prosecution policy includes the statutory defence for victims of modern slavery and that guidance has been issued to police forces on Section 45 of the Modern Slavery Act which “embeds victims’ protection”. However it remains unclear to what extent compliance with the guidance is being monitored.

Like the police, prosecutors have raised concerns that the statutory defence is being used cynically and that it is difficult on the one hand for them to improve their identification of genuine victims, and on the other hand for them to disprove victim status where the statutory defence is asserted.

Before his resignation, the Anti-Slavery Commissioner was reportedly working with the Independent Police Complaints Commission (IPCC) to establish a process by which the IPCC could investigate if a victim of modern slavery has been wrongly prosecuted.¹⁶² The evidence collated by Hibiscus for this report suggests that such cases may be widespread.

Where a foreign national victim of modern slavery is prosecuted, the consequences are likely to be severe, as illustrated in Linh’s story (page 9). Apart from facing the trauma of arrest, detention and court appearances, if the victim pleads guilty or is convicted after a trial, she may face a custodial sentence and may well be liable for deportation to her country of origin. Some victims of human trafficking are entitled to legal aid for an application for leave to enter or remain in the UK, but this will not always be the case.¹⁶³ Even if she is not deported, a criminal record may prevent her from being granted Indefinite Leave to Remain in the UK.¹⁶⁴

Comparison across jurisdictions

The law in all UK jurisdictions provides for the non-criminalisation of victims of modern slavery. The Modern Slavery Act and Northern Ireland Act include a statutory defence for victims who find themselves prosecuted for crimes they were compelled to commit as a direct consequence of their trafficking.

The Scotland Act provides for guidance to be issued by the Lord Advocate on the non-prosecution of victims of human trafficking and exploitation. This guidance requires that where the individual has been identified as a victim of human trafficking or exploitation, the case must be referred to the National Lead Prosecutor for Human Trafficking and Exploitation who will make the final decision on whether to prosecute. The Anti-Trafficking Monitoring Group (ATMG) considers the Scottish guidance to be exemplary practice for monitoring and enhancing understanding of criminal practices and has recommended that this be adopted in other UK jurisdictions.¹⁶⁵

The criminal justice process and the role of specialist women's services

Achieving equal treatment of foreign national women in the criminal justice system

There is no strategic focus at national or local level on ensuring the equal treatment of foreign national women by the police, the courts and probation services. Achieving this would require the police, prosecutors, defence lawyers, prison and probation workers and the judiciary to understand and be able to respond appropriately to the distinct needs of foreign national women and the multiple disadvantages that they may face.

The co-location of specialist advisers in police stations and courts, and of probation workers in specialist women's services, would raise practitioners' knowledge and understanding, aid communication and ensure that women can participate effectively in their proceedings and have fair access to community disposals. Where this is not possible, liaison and diversion officers could offer a close link with specialist services in the community both as a source of expertise for the police and CPS to draw upon, and to provide support for women. High quality, independent interpreting and translation, provided by a female interpreter where requested, are also essential for many women, as well as timely access to immigration, criminal and family law advice.

Agencies should gather and analyse information disaggregated by gender and nationality in order to gauge, for example, whether foreign national women have equal access to out of court disposals, bail and community sentences.

Interpreting and translation services

The police are required to provide accredited, independent interpreting and translation services where needed¹⁶⁶ and there is CPS legal guidance on interpreting and translation¹⁶⁷. Independent, accredited interpreters should be provided in court¹⁶⁸, to comply with the right to a fair trial. However practice is inconsistent and there are concerns about the timeliness and quality of interpreting services at the police station and in court, the role and time allocated to interpreters and the structures in place to ensure defendants understand the proceedings.

The House of Commons justice committee in 2013 criticised the quality of interpreting and translation services.¹⁶⁹ Recent official data suggest low complaint rates;¹⁷⁰ however more in depth, gender-informed research is required to establish progress on the ground. The majority of complaints in 2017 were about the non-attendance or lateness of interpreters or the quality of interpreting; the proportion of complaints in each of these areas has increased since 2013.¹⁷¹ In at least one recent case, a Hibiscus staff member who was a native speaker of her client's language witnessed inaccurate interpreting during a police interview, which toned down or omitted the client's allegations of abuse and coercion.

Existing protocols do not include a requirement to provide a suitably qualified female interpreter if requested. This may inhibit disclosure of abuse, trafficking or mitigating factors surrounding an alleged offence. Hibiscus case workers have experience of women who have been trafficked or sexually exploited being interviewed by male police officers and without a female interpreter:

We have traumatised women who can actually hardly speak about their experience and having only men is another barrier – sensitivity, shame etc and women having to describe intimate exploitation...

Hibiscus service manager

Police and CPS guidance

Police guidance is clear about the need for sensitive treatment of foreign national suspects, although it is not gender specific. However our research suggests that police practice may not always conform to the guidance. A Nigerian woman, who was going through asylum proceedings at the time of her arrest, described the experience:

I was jobless...I got apprehended. I was not given a chance to like call somebody... You're so confused, you're so devastated...you don't know what to do...what's going to happen...I don't know how to describe it...

Talk about the police, it's horrible, completely horrible...

A major source of anxiety for many foreign national women is the fear of immigration removal or deportation. Following an arrest, police must not only prove the identity of foreign national detainees but also their nationality and immigration status, to determine whether they may be deported following conviction.¹⁷² If so, the police may serve a 'Notification to a non-UK citizen that they may be liable for deportation' although the suspect may ultimately not be deported. The police should take account of the possible impact of receiving such a notification amid the trauma of arrest. The same woman explained:

From the police I kept hearing 'deportation, deportation, deportation'...I had a haemorrhage...it was bringing back that brain trouble thing...

College of Policing Authorised Professional Practice¹⁷³

Foreign nationals may require additional support and information to enable them to understand why they are being detained, and to make decisions while in custody. Custody officers should be aware that confusion and lack of familiarity with the UK criminal justice system may influence the behaviour of foreign nationals in custody...

Specific needs of an individual are best determined by appropriate, effective and respectful questioning. Officers should document relevant responses in the custody record and communicate these as part of the handover process.

Foreign nationals who are arrested and detained in the UK may have formed a negative view of the police in their own countries.... Language and cultural differences may also induce anxiety and vulnerability in a detainee as their perceptions of custody may be influenced by their particular background, experience or situation.

Custody officers and staff must be aware of the potential increased vulnerability of individuals who may be victims of human trafficking, extortion and/or abuse (often in the illegal sex trade).

Custody officers should also consider that a foreign national person entering custody may be less likely to have established support networks that are able to help with the care of dependents, or support them with housing and healthcare on release.

CPS guidance about foreign nationals is not gender specific and is limited to consideration of non-prosecution of victims of trafficking and modern slavery,¹⁷⁴ meeting language needs,¹⁷⁵ prosecuting immigration offences¹⁷⁶ and administering foreign national conditions as part of a conditional caution, requiring that person's removal from the UK.¹⁷⁷ Developing the guidance to include a broader, gender-specific awareness of the challenges faced by foreign national women is likely to be beneficial.

Out of court disposals

Early intervention and joined-up working, in close partnership with specialist women's services, are key to breaking the cycle of victimisation and offending in which some foreign national women can become trapped. Models of good practice and whole systems approaches by the police in some parts of the country are profiled in PRT's report 'Fair Cop? Improving outcomes for women at the point of arrest'.¹⁷⁸

It can be more difficult for the police to identify foreign nationals and to be satisfied that they will be able to locate them following arrest. Police officers report that this acts as a barrier to bail as well as the use of out of court disposals. Practical steps must be undertaken to overcome this and ensure foreign national women have equitable access to these measures.

No data is available on the extent to which foreign national women receive out of court disposals and the only targeted initiative is guidance on using foreign national conditional cautions which require the recipient to leave the UK. Rehabilitative, reparative or punitive conditions may only be included in this sort of caution where they will not delay removal or may not be completed by the removal date. The National Police Chiefs Council strategy on out of court disposals has recently reiterated this priority.¹⁷⁹ However many women may ultimately be entitled to remain in the UK long term, as highlighted by HMIP which confirmed that 'around 70% of the women detained at Yarl's Wood are released back into the community'.¹⁸⁰

London strategy for diversion of foreign national women offenders

In order to improve the availability of effective out of court disposals and community sentencing for foreign national women offenders, Hibiscus has proposed to the Mayoral Office of Policing and Crime (MOPAC) in London that specialist advisers with relevant language and cultural knowledge should be co-located with the police and courts.

Confusion and perceptions of bias in the court system

A number of women expressed distress and confusion at not being able to speak for themselves in court, a lack of trust in their legal representatives to speak on their behalf, and a perception that the court was biased against them as foreign nationals. One woman explained that she felt her voice was not heard by either her lawyer or the judge during the proceedings and described her distress at being behind a glass screen:

You need to don't say nothing...your lawyer is there...only to watch....then we can't talk, ... we can't do nothing...

Another woman felt that she had been racially discriminated against and that a lesser sentence could be achieved if you knew how the system worked. Women commented:

They never talk for you they just want to finish the case and then that's it, bye bye.

They don't care about your life, your children.

The new requirement for all defendants to disclose their nationality at their first court appearance has been criticised as at odds with the right to a fair trial and may heighten women's mistrust of the criminal justice system.¹⁸¹ One outcome may be an increase in not guilty pleas. Black, Asian and minority ethnic women are more likely than white women to plead not guilty and foreign national women are more likely than British women to be from a minority ethnic group.¹⁸² Not guilty pleas may indicate mistaken arrest, lack of trust in the system or lack of legal advice and may result in more severe sentencing for those convicted.¹⁸³

Conversely, through their casework in prison, Hibiscus staff have observed many of their foreign national clients from minority ethnic backgrounds or with refugee status pleading guilty at the time of arrest as they believed they had been advised by their solicitor and the police that this would enable them to go home from the court. A number of women said they had wanted to plead not guilty but were discouraged from doing so. Hibiscus has referred some women to alternative solicitors for a second opinion which has led to their acquittal.

Long periods in custody awaiting trial with a not guilty plea, from several months to up to a year, was another reason given by Roma women for pleading guilty. A number of Roma women arrested for petty crimes said they faced a dilemma whether to plead their innocence, potentially leading to a long spell in prison on remand, or plead guilty and receive a reduced custodial sentence, which might reunite them with their children more quickly.

The role of probation services

Hibiscus has raised concerns with the Ministry of Justice about poor delivery of probation services for foreign national women. This appears to stem from a lack of strategic direction, with attention focused on delivering the government's deportation priority at the expense of rehabilitation.¹⁸⁴ The only mention of foreign nationals in the latest annual report of HMPPS (formerly NOMS) relates to their removal or transfer to prison abroad.¹⁸⁵

Extract from Hibiscus' letter to the Ministry of Justice, October 2017

It has become clear to Hibiscus that the TR [Transforming Rehabilitation] system is simply not working for foreign national/migrant women. It is not that there is inconsistency in meeting their specific rehabilitation needs: in many instances their needs are not addressed at all and during their time in prison for many there is much less support available than previously. There seems to be continuing confusion on the demarcation of responsibility between the NPS [National Probation Service] and CRCs [Community Rehabilitation Companies]; often women are unprepared for release, lacking tailored release plans and with a limited or no understanding of the licence conditions. Changes to a woman's immigration status are not unusual and can lead to women being suddenly released with no release plan in place at all...

Although viewed as 'foreign nationals', many have lived here for some time, have childcare responsibilities, have established links here and have often experienced extensive trauma. They are amongst the most disadvantaged and discriminated against in society...

...It may be that the current adverse impact of TR on foreign nationals is an unintended consequence of the complexity of the commissioning processes involved with major systems change; but it is an issue that urgently needs to be addressed.

Community sentencing

Women we spoke to underlined the critical role played by probation services in providing oral or written pre-sentence reports and encouraging community sentencing where appropriate:

What really helped me is that ... I was opportune to get good probation officers ... And the senior probation officer that wrote the probation letter that was sent into court wrote perfectly well...he saw that this woman was genuine. So what he wrote was what the judge used to decide my case and I was not sent to jail.

However most women did not think pre-sentence reports had been written for them and did not recall meeting a probation officer during their court proceedings:

I never had one.

Never saw probation.

I had a probation when I came out from prison not before I went in.

Some women felt they had received more severe treatment because they were foreign nationals:

...my own judgment was too harsh. I didn't know about the presentence report...[My probation officer later] said that if the judge had probably seen a presentence report about me probably my sentence wouldn't have been the more it was, a 20 month sentence, for a first time...too harsh and too quick as well...and I think all that was because I was a foreign national.

Because I don't have the right to be in the country they put me to prison...

The development of the SMART sentencing app should encourage the more effective use of pre-sentencing reports. The Greater Manchester problem solving court offers a model of good practice for encouraging community sentencing for women. For this to work for foreign national women, specialist services must be available to support delivery of community orders and help women to complete their sentences.

There is no published information on the number or proportion of foreign national women receiving a community order as opposed to a custodial sentence, nor about the rate of compliance with community orders by foreign national women or the factors that might improve compliance. The women we spoke to were clear that the support of specialist services like Hibiscus was key in this regard. One woman who received a community sentence of unpaid work found it difficult to attend appointments at the probation office because she felt uncomfortable with other people who were there, including men:

You don't want to see your probation officer, you don't want to see the police. The only person you want to see is Hibiscus...They help you for all...You don't have money...they give me money...they support me. When I was there I meet my probation because they was with me.

Sentencing Council Guidelines

Sentencing guidance in England and Wales makes clear that the impact on children of imprisoning a primary carer should be considered in cases on the cusp of custody.

www.sentencingcouncil.org.uk

Post-release supervision

Effective probation support post-release is essential, particularly in circumstances where increasing numbers of women are being recalled to prison from licence. Official data reveals that between the quarters of October - December 2014 (n= 200) and October - December 2017 (n= 479) the total number of women recalled from licence increased by 140%.¹⁸⁶ PRT is conducting qualitative research to investigate the underlying reasons behind recall of women who have served short sentences.

With no specific requirement included in contracts with 'through the gate' providers to meet the distinct needs of foreign national women, they appear to fall through the gaps. The NOMS (now HMPPS) service specification on custody deems services to foreign nationals as 'additional'. Referring to "additional rehabilitative services to meet specific needs and assist the targeting of

resources at appropriate prisoners” the specification states that such “additional services, while desirable, are not mandatory; they may be offered to individual prisoners based on their level and type of need”.¹⁸⁷ The limited involvement of the third sector in delivering probation services, described as ‘woeful’ in a recent report by the Public Accounts Committee, means many foreign national women who require support from specialist service providers are being failed.¹⁸⁸

The role of specialist women’s services

The foreign national women whose views, experiences and stories form the heart of this report have been supported by Hibiscus, both emotionally and practically, helping them to achieve better outcomes for themselves and their families. This has ranged from support to complete community sentences successfully, to identification as victims of trafficking and being afforded the right to non-prosecution, to escaping domestic abuse and regaining care of their children, gaining employment, and successfully challenging deportation proceedings or receiving practical help on returning to their country of origin. Hibiscus’ support has been a life line for many women in circumstances where they would otherwise have been alone:

If you don’t have Hibiscus you kill yourself because no-one listen to you.

Without Hibiscus I don’t know where I would be now.

Justina’s story (see below) illustrates how support from a specialist service like Hibiscus can transform outcomes for women and their children. There was general agreement amongst the women we spoke to that Hibiscus was only able to help a relatively small number of women, and that services like this should be available to all foreign national women in trouble with the law.

A number of other specialist women’s services, providing equally vital support, are listed at the end of this report. Yet services like these are scarce and those that exist struggle to sustain themselves based on a patchwork of relatively short-term funding streams. Sustained investment in a network of specialist women’s community services throughout the country would enable many more women like Justina to change their lives and those of their children, as well as ensuring women are diverted away from the criminal justice system and from custody where appropriate, through the effective use of community disposals.

Justina’s story - Specialist support transforms lives

Justina is an EU citizen with limited English. Her ex-partner is also an EU citizen and they have a two year old child, of whom Justina was the main carer before her arrest.

Justina’s ex-partner was physically abusive to her during their relationship. She was badly beaten several times and the police became involved. She obtained a restraining order but allowed her ex-partner to return to the property when she discovered he was homeless. The violence continued; on one occasion Justina’s ex-partner came home drunk and started hitting her. She was scared but, unable to escape, she grabbed a knife to defend herself and stabbed him in the chest. Justina was arrested and detained on remand. She did not remember the incident and was distressed whenever she tried to recall it. Her ex-partner escaped serious injury. Justina was initially charged with grievous bodily harm, but was convicted on the lesser charge of unlawful wounding and sentenced to twenty one months in prison.

Upon arrest Justina agreed for her child to be taken into care. Hibiscus offered practical and emotional support, helping Justina with financial, criminal, family and immigration matters and providing language support and advocacy. While in prison, Justina struggled to cope with the

consequences of her domestic abuse. She was detained by the Home Office post-sentence and served with a deportation order. Hibiscus arranged a pro bono barrister to represent Justina at her immigration hearing and worked closely with them. The charity approached an immigration solicitor for help in applying for immigration bail and finding suitable accommodation. Justina was entitled to legal aid for her immigration bail hearing and her solicitor obtained exceptional case funding for the deportation proceedings.

Justina applied for immigration bail but had no suitable address. After six months of immigration detention the court approved Justina's release on immigration bail to a refuge. Hibiscus gave her financial support for essential expenses and she received specialist support at the safe house.

Justina's priority was to be reunited with her child. While she was in prison, social services could not conduct a parental assessment as had been requested by the family court. Since Justina's release, she has been in regular contact with the Hibiscus project worker who has supported her with her family and immigration proceedings, providing travel expenses for Justina to attend court hearings. The project worker accompanied Justina to the family court, where she was granted a residential order for her child.

While in the safe house Justina completed courses for victims of domestic violence and ESOL level 2. She won her appeal against deportation and is now in work. She has moved with her child into her own accommodation, where she feels safe.

Useful organisations

[AIRE Centre](#)

The AIRE Centre aims to assist marginalised and vulnerable individuals to assert European law rights. It does this by taking cases to the European Court of Human Rights, providing legal advice to individuals, lawyers and other advisers, carrying out training and producing publications. Its Trafficking and Domestic Violence Legal Project provides advice and representation for victims of trafficking and domestic violence and training sessions for practitioners.

[Anneli Project, Leeds Women's Aid](#)

The Anneli Project offers safe houses for women who have been trafficked for sexual exploitation. They also offer help with issues around immigration, sexual health, mental health, substance use, money, housing and the criminal justice system.

[Bail for Immigration Detainees](#)

BID provides legal advice and representation to foreign nationals detained in removal centres and prisons to secure their release alongside research and policy advocacy.

[Birth Companions](#)

Birth Companions supports women experiencing severe disadvantage during pregnancy, birth and early parenting. It has widely acknowledged expertise in the needs of pregnant women and new mothers facing severe disadvantage both in prison and the community.

[Diogel Project, Bawso](#)

This project provides secure accommodation and support to victims of trafficking in Wales.

[Fatima House, Father Hudson's Care](#)

Fatima House is a partnership project that offers safe shelter to female asylum seekers.

[Helen Bamber Foundation](#)

The Helen Bamber Foundation supports refugees and asylum seekers who have experienced cruelty such as torture and trafficking. They provide therapy, housing and welfare support, legal protection and creative arts and skills programmes.

[Hibiscus Initiatives](#)

Hibiscus Initiatives is a leading specialist charity, committed to supporting foreign national people involved in the immigration and criminal justice systems, mainly focusing on women. The charity's services include advocacy and welfare advice in prison; assistance and support with return and reintegration to home countries or community resettlement and reintegration in the UK; and mentoring support in prison and the community. Identification and support of victims of human trafficking is embedded in all areas of Hibiscus' work.

[Hope for Justice](#)

Hope for Justice (UK) provide training for front-line professionals, identification and rescue of victims and legal advice and support on matters such as criminal complaints against traffickers and housing, employment and welfare issues.

[Imkaan](#)

Imkaan is the only UK-based, second tier women's organisation dedicated to addressing violence against Black and minoritized women and girls.

[Independent Anti-Slavery Commissioner](#)

The Commissioner encourages good practice in the prevention, detection, investigation and prosecution of modern slavery offences with the aim of increasing the number of victims referred for support and increasing the number of prosecutions and convictions of traffickers.

[Kalayaan](#)

Kalayaan is a London-based charity which provides advice and support to, as well as campaigning with and for, the rights of foreign national domestic workers in the UK.

[Mary Ward Loreto Women Project, Albania Hope](#)

The MWL Women Project aims to reduce the risk of human trafficking and exploitation by helping women get out of poverty by engaging them in activities such as vocational training, business start-up, marketing and event organising.

[Foreign National Help](#)

Foreign National Help supports and accommodates vulnerable foreign nationals in the UK.

[Modern Slavery Human Trafficking Unit, National Crime Agency](#)

The Modern Slavery Human Trafficking Unit is a multi-agency organisation led by the NCA. The unit provides a central point of expertise, support and coordination for the UK's response to modern slavery and the trafficking of human beings.

[Nia Ending Violence](#)

Nia provides services for those who have experienced male violence which includes the London Exiting Advocacy project that works with women exiting prostitution, IDVA Service, for those identified as 'high risk' of domestic violence, and 'Safe Choices', a service which aims to reduce and prevent young women's violent offending.

[Rights of Women](#)

Rights of Women aims to achieve equality, justice and safety in the law for all women. It provides free, confidential legal advice by specialist women solicitors and barristers, produces accessible publications and training about women's legal rights and campaigns to ensure that women's voices are heard and law and policy meets all women's needs.

[Salvation Army](#)

The Salvation Army provides a confidential referral helpline for victims of modern slavery and those who are concerned someone else may be a victim.

[Southall Black Sisters](#)

SBS is a leading organisation for black and minority women and girls in the UK. It is committed to the principles of equality and justice for all but especially abused black and minority women. SBS strives to provide a safe environment for women trapped in abusive relationships or at risk of violence and abuse. Its aim is to enable women to take decisions over their lives without fear and repercussions.

[Stop the Traffik](#)

Stop the Traffik is a global organisation that aims to raise awareness of trafficking and the impact it can have on businesses. They also provide training to businesses on what they can do to prevent the harm and abuse associated with human trafficking.

[Trafficked Girls' and Young Women's Project, Refugee Council](#)

This project sits within the Refugee Council in Croydon, offering specialist advice to girls and young women who have been trafficked to the UK.

[Trafficking Awareness Raising Alliance \(TARA\), Community Safety Glasgow](#)

TARA is a support service in Scotland for trafficking survivors which includes accommodation, advocacy, help accessing legal advice and help speaking to the police.

[Unseen UK](#)

Unseen UK runs a safe house in the South West of England for victims of modern slavery. They also run a helpline and a range of services for survivors including support with resettling and integrating, legal assistance and education services.

[Women in Prison](#)

Women in Prison supports women to avoid and exit the criminal justice system and campaigns for the radical changes needed to deliver support services and justice for women.

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Six years on from the No Way Out briefing which highlighted the over representation of foreign national women in prison in England and Wales, their particular vulnerabilities and the barriers to justice that many face, it is time to review progress. Whilst there has been a decrease in both the number and proportion of foreign national women in prison, the reasons for this reduction are not clear and they remain over represented in prison, largely for committing non-violent, minor offences.

Our research reveals a picture of inadequate legal representation, poor access to interpreting services, disproportionate punishment, failure to protect victims, isolation, fear, trauma and confusion experienced by the women themselves, with similar repercussions for their children. The briefing brings together research evidence and women's voices to make a compelling case for change.

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