



CRIMINALISATION OF MODERN SLAVERY SURVIVORS BRIEFING

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About modern slavery

Definitions of modern slavery and human trafficking sometimes differ between government agencies, researchers and members of civil society. However, here we use 'modern slavery' as an umbrella term for severe exploitation including criminal exploitation, in-line with Home Office usage. Modern slavery can occur in almost any industry.

Exploiters instil fear and prevent victim-survivors from leaving, often resorting to threats of harm against them or their family. Some traffickers fabricate fake debts such as a 'transportation fee', or loan money to people with no chance of paying the money back, only to impose impossibly high interest that they claim can only be "repaid" through working for free. Some exploiters take advantage of the trust a victim-survivors places in them as a family member, friend, or romantic partner. This trust in the perpetrator is one of many reasons it often takes time, support, and legal advice for a survivor to recognise that they have been exploited.

Criminalisation of victim-survivors

There are many ways in which victim-survivors of modern slavery are criminalised, often due to activity they were forced to commit by exploiters such as drug or gang-related activity, theft, or fraud.[1] However, survivors can be at risk of criminalisation even where they are not victims of criminal exploitation. For example, survivors of adult or child sexual exploitation may face arrests or cautions for activity relating to sex work.[2]

Survivors can be criminalised for reasons relating to but not caused by their exploitation. The same vulnerabilities which led to exploitation can also put people at risk of coming into contact with the criminal justice system, particularly children and women marginalised because of race, ethnicity, disability, or care experience. Victim-survivors may also be criminalised for defending themselves against their perpetrator, but this phenomenon is better understood in the United States where a number of civil rights groups actively monitor cases of this nature. More than half of women in prison or under community supervision are victim-survivors of gender-based violence or abuse, including exploitation.[3]



I was trafficked for the purposes of sexual exploitation and repeatedly arrested for soliciting. My trafficker told me to plead guilty and take a conviction, to avoid an investigation. **I have been fined thousands of pounds.**

Despite having since been proven to be a victim, there has never been any attempt or mention of having these fines refunded.

**- Survivor and advocate,
interviewed by After Exploitation**

Criminalised survivors of modern slavery often face life-long disadvantage from receiving a criminal record.

The Organisation for Security and Co-operation in Europe (OSCE), of which the UK is a member, recognises a number of disadvantages entrenched by criminalisation, including the presence of trauma, social and economic disadvantage, restricted access to the labour market and justice, social stigma and generational impacts.[4]

Experts with lived experience of modern slavery told After Exploitation as part of their evidence submission to the Independent Criminal Sentencing Review 2024-25 that having a criminal record restricted their access to education, employment, and travel.

“I was unemployed... a single parent of four children. I registered for a course with my local college so that I could lift them out of poverty and give them a better quality of life. I was sent a DBS application along with my offer. I was unable to attend the college.”

**- Advocate and survivor of child sexual exploitation,
interviewed by After Exploitation**

Preventing the criminalisation of victim-survivors

Under international law, survivors should not be punished for crime they were compelled to commit. This is called the ‘non-punishment principle’.[5] Governments also have a responsibility to identify and support victim-survivors, including those in contact with the criminal justice system.[6] In reality, the burden often falls on survivors to self-identify as survivors and share their experiences of exploitation in order to prevent their criminalisation.

Section 45 defence

In the UK, Section 45 of the Modern Slavery Act 2015 creates a statutory defence to protect survivors from being convicted for crimes they were compelled to commit due to exploitation. However, more than 100 offences are exempt, including weapons offences despite some victim-survivors of criminal exploitation coming into possession of a weapon due to duress or self-protection.[7] No data is collected on how often Section 45 is used in practice, despite calls from the charity sector to record and publish this data.[8]

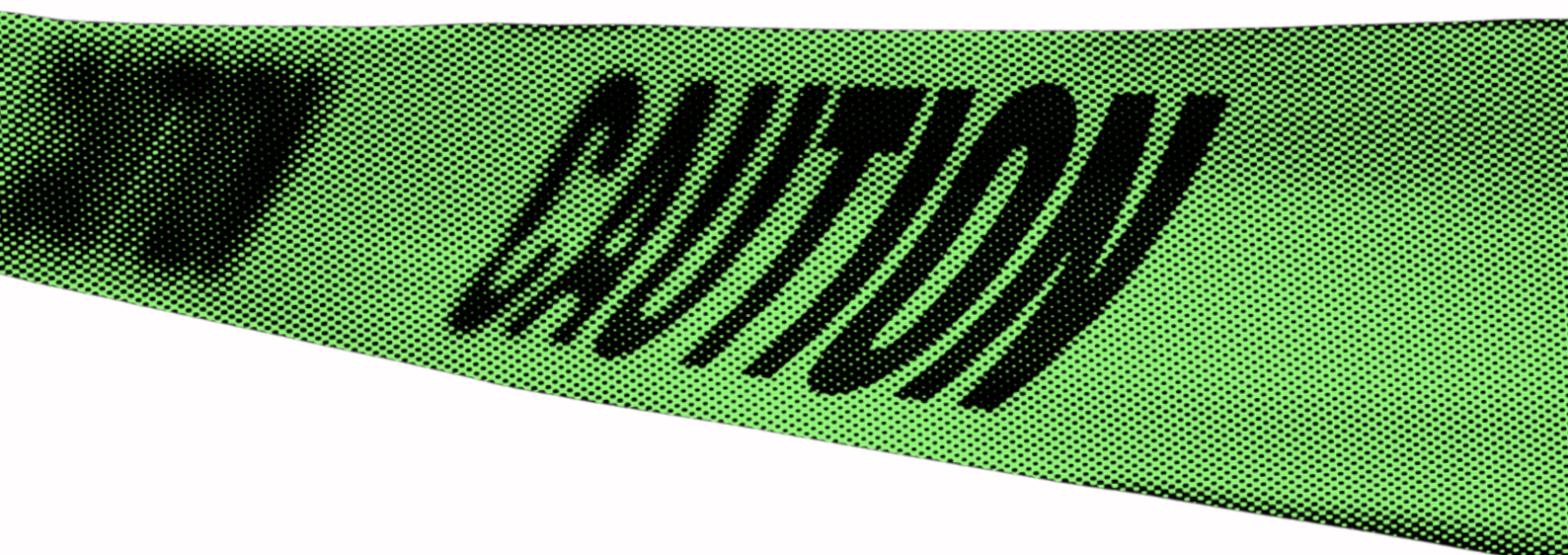
Identifying victim-survivors

Training on modern slavery and the Section 45 defence remains poor amongst those in the CJS and related agencies, including the police, solicitors, judges and magistrates. According to Hope for Justice, often “criminal defence solicitors aren’t even aware” of relevant guidance on modern slavery or the Section 45 defence.[9] Meanwhile, front-line professionals within the CJS are influenced by representations of ‘perfect’ and ‘imperfect victims’, which in turn impacts which survivor are identified and informed of their rights.[10]

Due to a lack of appropriate, specialist legal support for those in the criminal justice system, criminalised victim-survivors are often encouraged to plead guilty as their experiences of modern slavery are not recognised or the practitioner’s understanding of the Section 45 defence is too poor to trigger engaging with the mechanism. For complex cases such as drug cultivation or smuggling, victim-survivors are sometimes encouraged to plead guilty in order to speed up the process. Frontline organisations supporting victim-survivors throughout the CJS, such as Hibiscus, report a systemic failure to inform women about these defences and missed opportunities for their victimisation as a mitigating factor for their sentences.

CPS guidance

There are significant challenges facing survivors who need cases against them quashed. Hope for Justice reports that their clients receive inconsistent access to legal aid in order to challenge convictions relating to their exploitation, including minor offences such as road traffic offences. Meanwhile, understanding of the need for specialist representation within the Legal Aid Agency remains poor, with some requests rejected on the basis that more local lawyers could be found to represent clients.[11]

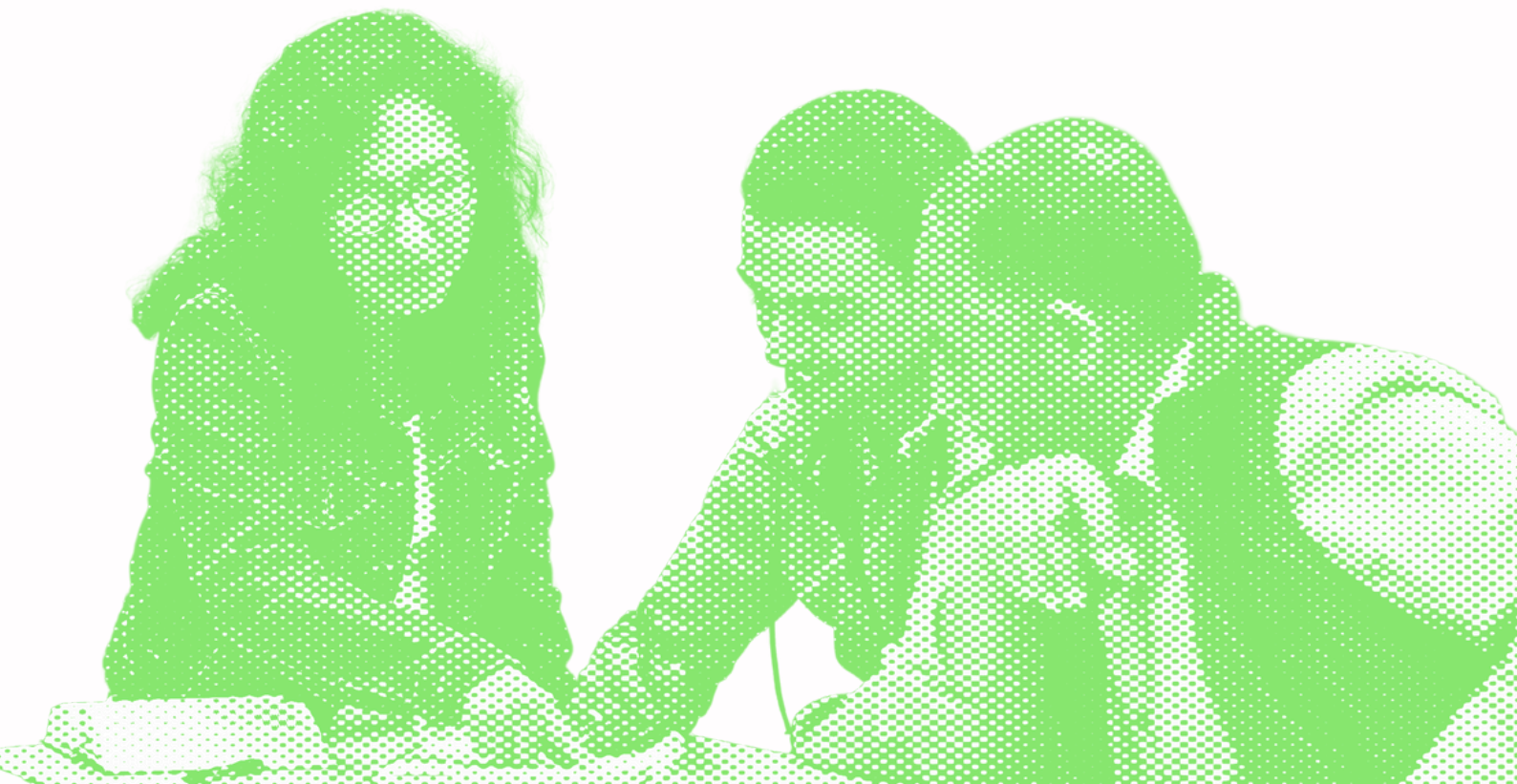


Training

Hibiscus reports inconsistent awareness of modern slavery amongst frontline professionals tasked with identifying those at risk, including police, judges, probation officers and prison staff. In some instances, personal data about imprisoned survivors was shared with anonymous callers, highlighting a lack of understanding amongst prison staff about the risks facing survivors. This leads to victim-survivors being viewed as perpetrators rather than individuals in need of protection and support, particularly Black and minoritised migrant victim-survivors who are already over-represented at every stage in the CJS.

Training provided by agencies, including both mainstream services and those with a duty to identify modern slavery, is often one-off and lacks real-world detail. Research by After Exploitation and BASNET in 2024 found that a majority of local authorities offer e-learning on modern slavery, rather than classroom training, whilst one in four offered no training on modern slavery at all. Systemic barriers to disclosure, like immigration reprisals or the role of gender and racial biases, are rarely discussed.[12] Agencies are not required to publish the training they offer or measure the effectiveness of these trainings.

Specialist organisations must be at the heart of designing and delivering meaningful, trauma-informed training in the criminal justice system informed by lived experience, socio-political, economic and cultural factors. Equally, all agencies must commit to continuous learning and accountability mechanisms to create meaningful change. Without this training, wrongful prosecutions and the imprisonment of vulnerable victim-survivors will continue.



Community sentencing

Whilst alternatives to prison are welcome in many cases, community sentences still impact survivors' quality of life and should not be used as standard. For example, use of curfews, exclusion zones, and surveillance as part of community sentences still rob survivors of the liberty already taken from them by exploiters. Similarly, victim-survivors of exploitation and abuse experience distress wearing electronic tags if they have had their movements monitored by their perpetrator or have had restraints used on their wrists or ankles. Community-based methods can mitigate risk, through regular telephone reporting between probation, support services, and the person criminalised, which has been shown to be a more effective response where individuals have mental health conditions.[13]

Impact on groups subjected to marginalisation

Ethnicity and gender

Data shows that the growing length of prison sentences disproportionately affect women and minoritised groups, with a “surge in the use of custodial sentences for minor offences” in recent years.[15] It is clear that extra checks and balances are needed, in light of the skewed nature of sentencing decisions. However, new Sentencing Council guidelines intending to ensure pre-sentence reports (PSRs) are written for individuals aiming to address disparities in sentencing outcomes have now been delayed due to political pressure on the Council.[16] PSRs provide the context to judges and magistrates needed for proportionate and fair sentencing, such as the nature of the offender's background and the circumstances around the offence. Sadly, this is a missed opportunity to meaningfully address discrimination of overlapping identities, including immigration status, ethnicity, and socioeconomic backgrounds. Hibiscus, supporting women at HMP Bronzefield and Peterborough, reports a rising number of women offending as a way to meet their needs and imprisoned despite “clear vulnerability”. Information on peoples' identities, vulnerabilities, and the circumstances around their offending should be made available as standard in our view, as current sentencing fails to recognise these factors. This failure is reflected in national data, with more than half of women in prison or under community supervision having experienced violence, including exploitation.[17] Before sentencing, groups subjected to marginalisation face increased risk of imprisonment due to more disproportionate surveillance and policing.[18] Black and minoritised people are overrepresented in the Criminal Justice System as a whole, including through stop and search, arrest, prosecution, conviction, remand, custodial sentences, and in the prison population,[19][20] whilst Black women are less likely to be referred for support as victims of crime.[21]

Immigration

Migrant victim-survivors are often doubly criminalised due to hostile immigration policies. Trafficking victim-survivors who are foreign nationals are often caught between both the CJS and immigration system, where they are first criminalised for their exploitation and then punished through imprisonment, detention, and deportation. This cycle of criminalisation is worsened by a lack of access to legal representation, communication barriers, and policies that prioritise immigration control over their protection.

Prisons, and de facto incarceration such as immigration detention centres, actively restrict victim-survivors' access to support and legal protections, leading to poor rights-based knowledge and difficulties accessing help in the community. This prevents victim-survivors from challenging their criminalisation or asserting their status as a victim of trafficking.

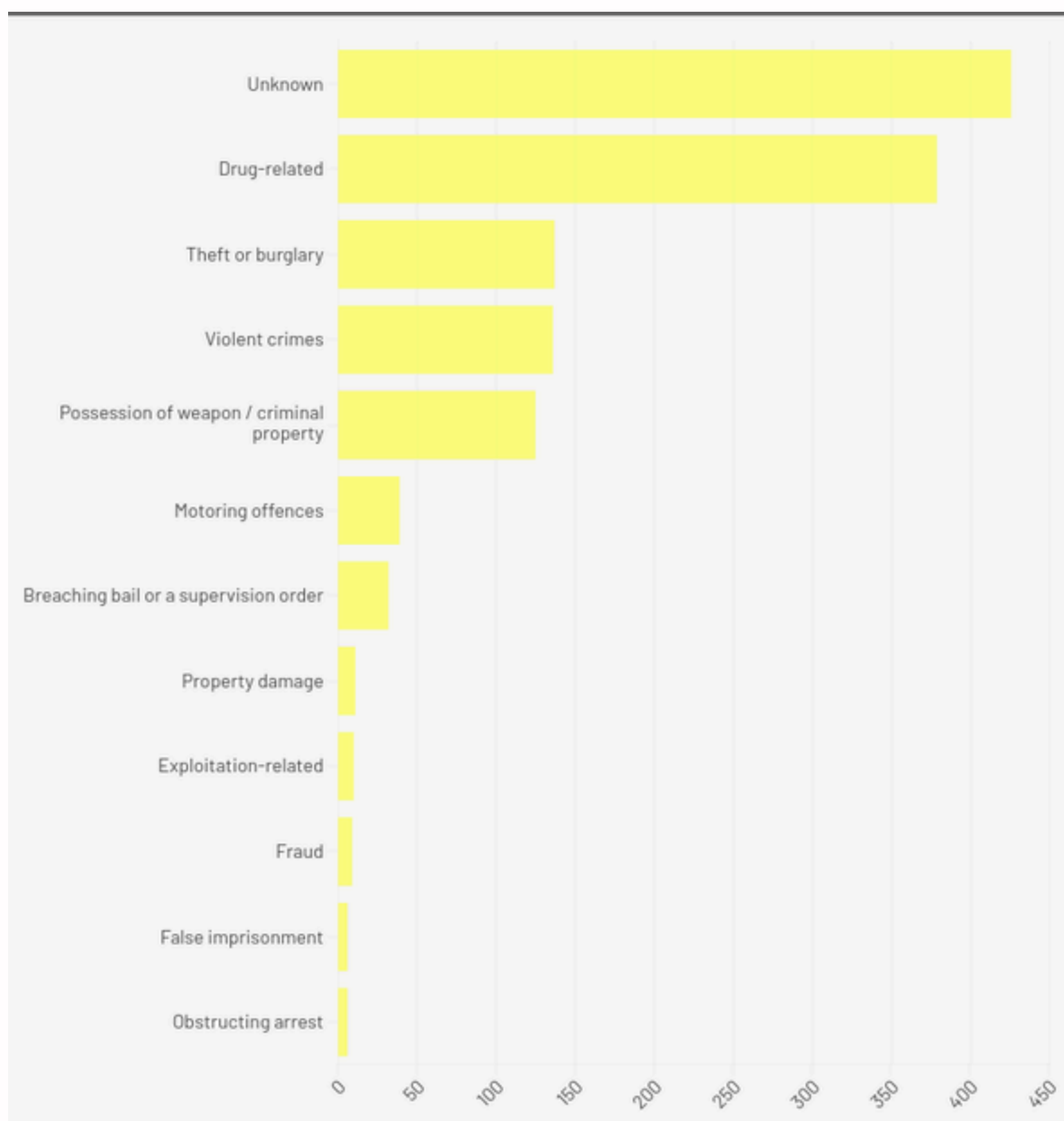
The Nationality and Borders Act 2022 introduced Public Order Disqualifications (POD), a mechanism allowing the Home Office to withhold support and identification from non-UK victims of modern slavery and human trafficking as a result of their offending history. Survivors with a sentence of 12 months or more are liable to be targeted under this policy, in which the victim-survivor is disqualified from entering the National Referral Mechanism (NRM). A positive NRM decision can help ensure a crime of modern slavery is adequately recorded, [19] can be used in evidence in legal proceedings, and acts as a gateway for survivors to access support ring-fenced for victims of modern slavery. Withholding access to consideration under the NRM can be a contravention of international law, including the non-punishment principle for victims of human trafficking.[21] Civil society groups have warned that the overlap between forced criminality and exploitation leaves many survivors at risk of losing support under the POD, with 443 potential victims of trafficking were disqualified from the NRM under the POD exemption in 2023.[22] Access to entitlements from within prison remain inconsistent for incarcerated victim-survivors of modern slavery. Research by Hibiscus Initiatives and the Prison Reform Trust finds that “interpreting and immigration legal advice varies considerably” in prison whilst “resettlement support is generally poor”.[23]

Similarly, at the point of arrest, criminalised survivors who have migrated to the UK are unlikely to access tailored support, such as appropriate interpreters or translated copies of paperwork as standard, in order to avoid criminalisation in the first instance. More broadly, we are also concerned that more extreme sentencing for minor immigration offences, such as entering the UK without leave, pose additional threats to survivors of exploitation who are forced, coerced or compelled to cross borders as a result of their trafficking.

Imprisonment of victim-survivors

Frequency of imprisonment

Prison is not an acceptable setting for survivors of exploitation to rebuild their lives. Yet, data obtained by After Exploitation and openDemocracy found that as many as 368 people in UK prisons were believed to be survivors of modern slavery between March 2023 and 27 June 2024. This figure is likely the tip of the iceberg. Of 1,316 offences* issued to modern slavery survivors between March 2023 and June 2024, available data showed that reasons for imprisonment related to:



Frequency of imprisonment

The data shows that survivors are imprisoned for a range of offences, and sometimes imprisoned for multiple crimes. The most common offence amongst survivors was drug-related (n=379), suggesting poor awareness of the relationship between drug offending and exploitation at the point of initial investigation and prosecution, with indicators only being identified after the survivor is imprisoned and harm is already done.

One of the most common offences we see, with the women we support in prison, is drug importation: usually of cannabis or cocaine. When recounting their stories, the women usually tell us that someone in their community asked them to take this in exchange for payment. The women often tell us that they were struggling financially and took the opportunity to try to alleviate this

- Hibiscus project worker

The data obtained by After Exploitation and OpenDemocracy also shows that many offences relate to theft or burglary (n=137), whilst some victims of modern slavery were imprisoned for very minor offences, such as theft from a shop (n=20).

Prison is not providing the rehabilitation people need, leaving many trapped in the cycle of incarceration for petty crimes only to be imprisoned again, according to Hibiscus Initiatives. Tackling the root causes of offending, including offences triggered by poverty, trauma and mental health needs, is vital in order to safeguard vulnerable people from imprisonment, including survivors of modern slavery.



Conditions in prison

Imprisoned survivors are unable to consistently access entitlements to mental health support, safe and secure housing, or financial subsistence as per their rights under the Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT) and the European Convention on Human Rights (ECHR).[24] Survivors of modern slavery suffer the same adverse outcomes as a result of imprisonment as the wider population, including higher rates of mental illness,[25] whilst suffering the effects of having their liberties deprived multiple times: first by exploiters, and then by the state.

Hibiscus reports that the women they work with sometimes have indicators of exploitation, but this information is not passed through the criminal justice system to prison systems.

Survivors who have been exploited and are also marginalised due to ethnicity, gender or other characteristics also face additional barriers to support in prison. Their service users report that they experience prison safeguards in a racialised way, and that mental health concerns are taken less seriously amongst marginalised people in prison.

During my stay in prison, three black women committed suicide. They killed themselves because no one was listening to them. They were on suicide watch but never received the appropriate support they were crying for.

Staff members were telling them to 'do whatever they feel like' when they were expressing that they wanted to commit suicide. Finally, the worst happened and one day out of extreme desperation, they banged their head harshly on the wall.

- Hibiscus service user

Victim-survivors are more likely to have adverse experiences depending on ethnicity. More than half of Black (53%) and mixed ethnicity (58%) women report 'a form of verbal abuse/intimidation, physical or sexual assault, theft, and other types of victimisations from staff' in the prisons. 81% of Asian women report this treatment from other prisoners, compared to 60-65% across other ethnicities.[26]

Recommendations

1. Sentencing frameworks

Sentencing frameworks must take into account existing vulnerabilities of those being sentenced, including experience of exploitation, ethnicity, gender, immigration status, and poverty. Pre-sentence reports should be utilised in the courts before forming an opinion of a sentence to provide comprehensive insights into these vulnerabilities, ensuring informed and equitable sentencing decisions.

2. Sentencing practices

The UK must move away from custodial sentencing which disproportionately impacts victim-survivors of exploitation and abuse, women, Black and minoritised groups, and those living with insecure immigration status. Survivors should never be knowingly imprisoned: instead, non-harmful, community-based solutions for survivors of exploitation must be considered.

3. Safe reporting

Survivors' immigration status should not prevent them from being able to disclose their experiences to the authorities for fear of deportation or criminalisation. Victim-survivors must be able to report crime securely, without their information being used for immigration enforcement.

4. Prevention

Specialist organisations that provide wrap-around, trauma-informed, rights-based support to victim-survivors before and during contact with the criminal justice system must be sustainably funded. All criminal justice agencies must improve training for professionals encountering victim-survivors, including the police, lawyers, judges, magistrates, and prison staff. Criminalised victim-survivors must not be turned away from the National Referral Mechanism (NRM).

5. Data collection

Data on survivors' experiences within the criminal justice system must be improved, including through the recording of Section 45 defence usage and outcomes.

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