

June 2020



CLINKS
RESPONSE

Women and Equalities Committee inquiry into Covid-19 and the impact on people with protected characteristics

About Clinks

Clinks is the national infrastructure organisation supporting voluntary sector organisations working in the criminal justice system (CJS). Our aim is to ensure the sector, and those with whom it works, are informed and engaged in order to transform the lives of people in the CJS and their communities. We do this by providing specialist information and support, with a particular focus on smaller voluntary sector organisations, to inform them about changes in policy and commissioning, to help them build effective partnerships and provide innovative services that respond directly to the needs of their users.

We are a membership organisation with over 500 members, including the voluntary sector's largest providers as well as its smallest. Our wider national network reaches 4,000 voluntary sector contacts. Overall, through our weekly e-bulletin Light Lunch and our social media activity, we have a network of over 13,000 contacts.

Due to the disproportionate numbers of – and/or specific needs and unequal outcomes experienced by – people with protected characteristics in the criminal justice system, our network includes individuals and organisations who provide tailored support to these groups, such as older people, women, Muslim people and black, Asian and minority ethnic (BAME) people (and the intersections between such groups). Our support to these sections of our sector includes coordinating and representing a network of women's centres and specialist women's services and working alongside and as an ally to BAME organisations including as a member of EQUAL and Her Majesty's Prison and Probation Service (HMPPS) External Advice and Scrutiny Panel for the implementation of the Lammy review recommendations.

About this response

Clinks welcomes the opportunity to respond to this inquiry. In our submission, we focus on the impact that Covid-19 has had on women, BAME people, and older people in contact with the criminal justice system, as well as the impact on voluntary sector organisations who work to support them.

People with protected characteristics are over represented and have different needs and experience unequal outcomes, including health inequalities, in the criminal justice system. This puts them at greater risk of both Covid-19 and any potential inequalities arising from the implementation of measures in response to Covid-19 in prisons and the community. Additionally, prisons in particular, have been a flashpoint in the battle against the virus across the world.



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The impact of Covid-19 on the voluntary sector as a whole has been estimated to represent a loss of £4bn over 12 weeks by the National Council for Voluntary Organisations (NCVO). The criminal justice voluntary sector within is facing a number of specific challenges, including a significant impact on volunteering, which the sector relies heavily upon and a lack of clarity regarding eligibility for government support such as the furloughing scheme, in part due to substantial numbers of organisations in the sector being in receipt of public funds. Added to this, specialist organisations working with people with protected characteristics within our sector were already more financially vulnerable alongside experiencing increased and more urgent service user need prior to the onset of the pandemic.

Our submission draws on evidence gathered from a variety of sources, including:

- The Reducing Reoffending Third Sector Advisory Group (RR3)¹ that has a current special interest group (SIG) on Covid-19 to formally channel policy discussions and suggestions into the Ministry of Justice (MoJ) and HMPPS
- Clinks' bi-weekly survey of voluntary organisations working in criminal justice to track the impact of Covid-19
- Regular network meetings with the women's criminal justice sector, the health and justice sector, and organisations working across England and Wales to collect evidence of the impact of Covid-19 on service delivery and service users
- Information provided by the Zahid Mubarak Trust on behalf of a working group of BAME specialist organisations working in criminal justice who are convening regularly to discuss issues relating to race equality during the Covid-19 crisis.²

Summary of recommendations

Recommendation 1

The Government's £750m package of support for the voluntary sector is a welcome first step, but more is needed and a process should be put in place to ensure that the support reaches organisations that are working with people with protected characteristics.

Recommendation 2

MoJ and HMPPS should collect and publish the data on the number of coronavirus cases and deaths amongst prisoners and criminal justice practitioners, broken down by protected characteristics.

Recommendation 3

There should be ongoing engagement between the voluntary sector supporting Muslim people in the criminal justice system and HMPPS/MoJ, to ensure the prison service meets the needs of Muslim people in prison during Ramadan, in order for guidance and support to be offered to people fasting, and for the prison regime to operate in a way that is flexible to the needs of those observing Ramadan but also to facilitate social distancing.

Recommendation 4

The voluntary sector needs clarity and communication in the process and delivery of the ECTR scheme in order to support those who are released into an environment with limited services, in particular those with protected characteristics.

Recommendation 5

MoJ and HMPPS should collect and publish data on the ethnicity of those eligible for release and those released under the ECTR scheme, so as to monitor and ensure that release opportunities are not being influenced by conscious or unconscious bias.

Recommendation 6

The ECTR scheme criteria needs to be relaxed to enable social distancing within prisons, and take into account vulnerabilities of groups in prison with protected characteristics, and the use of compassionate ROTL needs to take into account both age of older prisoners and families of women in prison as factor of extreme vulnerability.

Recommendation 7

With many voluntary sector organisations expecting to experience cash flow problems in the next three months, the £750m package of support for voluntary sector organisations announced by the government should be increased, and the criteria needs to widen to equip organisations not only with the means for a Covid-19 response plan, but to address the fact that Covid-19 will continue to have a further impact on existing inequalities for people with protected characteristics – making voluntary sector support for these people more important than ever. This must be distributed in such a way that voluntary sector organisations working in the criminal justice system with people with protected characteristics are able to continue to operate both during and after the Covid-19 pandemic.

How have people been affected by the illness or the response to it, and have there been specific impacts on people due to them having a protected characteristic? Have there been unforeseen consequences to measures brought in to ease the burden on frontline staff?

Vulnerabilities to Covid-19 and experiences in prison

The latest figures (Wednesday 29 April) from the MoJ show that 337 prisoners have tested positive for Covid-19 across 71 prisons, 337 prison staff have tested positive for Covid-19 across 63 prisons; by 20 April, 13 Covid-19 related deaths were reported in prisons.³ However, there is no data available regarding the impact of the pandemic on protected characteristic groups in prisons.

Women

Women in contact with the criminal justice system already face poor health outcomes, making up a disproportionate number of self-harm incidents in prison, despite only making up 5% of the prison population. Seven in 10 women in prison reported that they had been a victim of domestic violence, and nearly half of women reported needing help with a drug problem on entry to prison. Women also have poor outcomes in terms of the wider social determinants of health on release, with 38% leaving prison without settled accommodation, and a high risk of mortality upon release.⁴

Pregnant women have been identified as a clinically vulnerable group by the Chief Medical Officer in relation to the Covid-19 pandemic. The guidance on social distancing states that those who are pregnant 'are at increased risk of severe illness from coronavirus (Covid-19)' and need to be particularly stringent in following social distancing measures.⁵ As of 22 April 2020, there were 70 women in prison who were either pregnant or had young children in mother and baby units.

BAME people

Over a quarter (27%) of the prison population, 22,619 people, are from a minority ethnic group⁶ despite making up just 14% of the general population. As detailed extensively by David Lammy in his review of the treatment of, and outcomes for BAME individuals in the criminal justice system, BAME people experience a wide range of disparities in the criminal justice system. This includes health inequalities, and underlying health conditions are prevalent among this group that make them more susceptible to Covid-19 in prisons.

The Lammy Review pointed to a lack of consistently collected and published data relating to ethnicity in the criminal justice system. This is reflected in the lack of published information about the number of Covid-19 cases and deaths by protected characteristics and raises concerns around the potentially disproportionately negative impact of Covid-19 on BAME prisoners and staff.

Although Covid-19 doesn't discriminate along racial, ethnic or social-cultural lines, existing structural and racial disparities and inequalities may lead to some communities being affected more than others. Early data from the US, broken down by race, is alarming. As of early April 2020, 72% of Covid-19 related deaths in Chicago were amongst black community despite them representing only one-third of the city's population.⁷ Emerging evidence from the UK suggests that Covid-19 is having a disproportionate effect on people from BAME backgrounds.⁸ Early analysis also points to an overrepresentation of minority ethnic health and care professionals among coronavirus fatalities.

The British Medical Association have called for the government's review into the disproportionate impact of Covid-19 on BAME communities to be informed by real-time data collection if it is to have real effect.

Professor Richard Coker, in the report commissioned by the Prison Reform Trust and Howard League for Penal Reform, warned that the risk of exposure to the virus to prisoners and staff is "far, far greater" than the risks to individuals in the wider community.⁹

As the number of prisoners and staff affected by Covid-19 continues to rise, it is vital the MoJ and HMPPS collect and publish the data on the number of coronavirus cases and deaths amongst prisoners and criminal justice practitioners broken down by protected characteristics.

Muslim people

It is of considerable importance that the current Covid-19 pandemic is unfolding over the period of Ramadan, anticipated to run from the 23 April 2020 to the 23 May 2020. The majority of Muslim prisoners will be looking forward to observing fasting as their religious duty – not consuming any food or water from dawn to sunset.

During this time it is vital that Muslim people in prison are enabled to observe Ramadan.

Maslaha is a specialist organisation which seeks to change and challenge the conditions that create inequalities for Muslim communities in areas such as education, gender, criminal justice and health, have created a series of resources, with input from medical professionals and imams giving religious and medical advice on observing Ramadan during lockdown.¹⁰ Maslaha provide specific advice around particular health conditions such as diabetes and heart conditions, as well as the basics of health during Ramadan, and mental health and wellbeing.

A key issue highlighted by Maslaha is that the medical and religious advice for anyone feeling unwell during Ramadan is that they should break the fast and seek urgent medical advice. The urgency of the need for this medical advice is even greater in the context of Covid-19, meaning that HMPPS must have the knowledge and facilities to seek medical attention for Muslim people in prison immediately should they start to feel unwell.

HMPPS must also ensure that Muslim prisoners are provided with meals at the time of *iftar* when the fast is broken. Alongside this, they should also ensure that any medication that can be taken by a prisoner at this time is provided.

The resources produced by Maslaha also highlight medical and religious advice that if medication needs to be taken throughout the day it is permissible to break the fast to do this. It is vital that HMPPS and NHS England Health and Justice services have awareness of this advice and make it accessible to prisoners.

HMPPS and NHS England Health and Justice services should also be aware of and follow the British Islamic Medical Association's 'Ramadan rapid view', which includes a comprehensive table of risks and recommendations for people with particular health condition when fasting.¹¹

Older people

Public Health England's social distancing guidance states that people aged 70 or older, regardless of medical conditions, are at increased risk of severe illness from Covid-19 and need to be particularly stringent in following social distancing measures, as do those under the age of 70 with underlying health conditions.¹²

17% of the prison population are aged 50, or over 13,890 people. Of these, 5,157 are in their 60s and a further 1,813 people are 70 or older.¹³ Many older people in prison experience chronic health problems prior to or during imprisonment as a result of poverty, poor diet, inadequate access to healthcare, alcoholism, smoking or other substance misuse issues.¹⁴ Although there is no accepted definition on the age that someone should be considered 'older' in prison, accelerated ageing is frequently cited as the key justification for including 50 to 59 year olds in the older prisoner definition.¹⁵

Early release from prison as a measure to address Covid-19 outbreaks in prison

The government has enacted emergency legislation to allow for Coronavirus Restricted Temporary Release. The rationale for this is to limit the spread and impact of Covid-19 in the prison estate, protect the health of staff and prisoners, maintain safety and order, and minimise the impact of the pandemic on the NHS by allowing more space for shielding and isolating vulnerable prisoners.

Women

Recognising this risk and the need for pregnant women to practice social distancing, on the 31 March 2020 the MoJ and HMPPS announced that pregnant women in custody who do not pose a high risk of harm to the public would be temporarily released from prison to protect them and their unborn children from Covid-19, as part of a wider early temporary release scheme to mitigate the impact of Covid-19. Prisoners in Mother and Baby Units meeting the same risk assessment are also to be released with their children.¹⁶ However, as of 22 April 2020, of the 70 women in prison who are either pregnant or have young children and were identified as eligible for early release due to Covid-19, only 18 have been released.

In addition, the guidance on the End of Custody Temporary Release (ECTR) scheme states that temporary releases may be targeted at specific prisons to relieve particular pressures in relation to Covid-19. Given that the male prison estate is more over crowded than the women's estate, this targeting might lead to a disproportionately smaller number of women being released under the ECTR scheme despite the health inequalities they experience.

A key issue of concern in relation to temporary releases that has been highlighted in RR3 Covid-19 SIG meetings is the lack of clear and timely information that is being communicated to the voluntary sector working in the criminal justice system and thus reducing the sectors ability to mobilise support for women who are released and alleviate any disproportionate impact that the virus and measures to respond to it might have on them. The voluntary sector is poised to offer this support and Clinks has worked with HMPPS to develop a process for this. However the RR3 SIG has highlighted that for this to be fully maximised the sector needs as much information and as early as possible regarding the ECTR scheme, including for pregnant and post-natal women as a priority group.

The MoJ and HMPPS have announced new guidance on compassionate release on temporary licence (ROTL) during Covid-19, which facilitates potential release for people defined as extremely vulnerable by Public Health England for those who do not meet the eligibility requirements of the ECTR scheme. This can be applied for by pregnant women and women with babies in custody. However, this does not go far enough, as it does not take into account women with children who are not with them in prison, which might lead to elderly relatives, vulnerable to Covid-19 due to their age, having to look after children while their mothers are in prison.

BAME people

The ECTR guidance states that not everybody who meets the eligibility criteria for Coronavirus Restricted Temporary Release has to be or will be released and there is a level of governor and HMPPS discretion built into the criteria.

We know from other outcomes in the justice system that there is potential for discretionary decision making and conscious or unconscious bias to combine in ways which lead to unequal outcomes for certain groups, in particular BAME people.

It is therefore vital that the data on the ethnicity of those eligible for release and those released is collected and published so as to monitor and ensure that release opportunities are equitably applied.

Older people

Older people in prison are at increased risk of Covid-19 outbreak in prisons due to a high proportion of them not meeting the eligibility criteria for the ECTR scheme. Under the ECTR scheme, MoJ has stipulated that people with convictions for violent and sexual offences are not eligible for release. 45% of men in prison aged over 50 have been convicted of sex offences.¹⁷ This means that a large proportion of those who are most vulnerable to Covid-19, due to both age and aforementioned co-morbidities and accelerated ageing, are still residing in prisons where there are confirmed Covid-19 outbreaks.

4,000 people were to be released from prison to enable social distancing within prisons, however as of 22 April 2020 only 18 pregnant women and 16 men have been released. This means those most vulnerable to Covid-19 may find social distancing within prison harder. Due to overcrowding in prisons, it is challenging to facilitate social distancing. Of the older prison population, approximately a third are not being held in single-cell accommodation.¹⁸

Considering this, it is welcome that the MoJ and HMPPS have announced a use of compassionate release on temporary licence (ROTL) scheme during Covid-19, which facilitates potential release for people defined as extremely vulnerable by Public Health England for those who do not meet the eligibility requirements of the ECTR scheme. However, the list of those who are extremely vulnerable does not include elderly people, despite social distancing guidelines saying people aged over 70 are at risk of severe illness from Covid-19. Given the above information on the accelerated aging process associated with prison, it is recommended that this scheme is extended to take age into account, and that older people in prison be defined as those over 50 rather than the Public Health England definition of those over 75.

Additionally, as with the ECTR scheme, the voluntary sector must be kept informed of developments on the use of the compassionate ROTL scheme through regular communication.

The impact on the voluntary sector supporting people with protected characteristics in the criminal justice system

Women

The current crisis has had an impact on the ability of voluntary sector organisations to operate. Clinks' recent survey found that 15% of voluntary sector organisations working in the criminal justice system that support women have stopped all service provision, and 48% have had to reduce their services a lot. 35% of organisations supporting women said that most of their frontline staff are unable to work. These organisations are vital in supporting a cohort that already have poor mental health outcomes who are now dealing with a scaled back and isolated prison regime and an uncertain external environment on release.

BAME people

52% of organisations that support people from BAME communities in the criminal justice system have had to reduce their service provision a lot, and 17% have had to stop all service provision. 20% of organisations that support people from BAME communities said that all their staff are unable to work during the Covid-19 outbreak.

Muslim people

Voluntary sector organisations delivering specialist services to Muslim people in prison, who may provide faith services that play a crucial role in supporting Muslim prisoners with their mental well-being, rehabilitation and helping prepare for release to reduce re-offending, have had to scale back significantly. Responses to Clinks' survey found that 55% of voluntary sector organisations that support people from faith communities have had to reduce their service provision a lot.

Older people

The prison regime is generally designed to work for younger men, meaning many older people in prison rely on voluntary sector services, such as RECOOP's 'Lobster Pot'¹⁹ and Rubies²⁰ group, to cope in prison. However, due to Covid-19, 56% of voluntary sector organisations that deliver services to older people in contact with the criminal justice system have had to reduce their services a lot, and 29% say most of their frontline staff are unable to work due to current restrictions.

As 45% of older men in prison have been convicted of sex offences, upon release they face stringent requirements relating to accommodation and approved premises. If this cohort come to their release date but lack the support of the voluntary sector to guide and support them with issues such as accommodation, they could face homelessness. 69% of voluntary sector organisations who support older people in contact with the criminal justice system provide services to older people in the community who have served a custodial sentence, according to Clinks' latest survey. It is essential that such organisations are supported to deliver services to enable a safe and supported release for older people in prison, and that adequate information is shared with the voluntary sector to enable them to support older people.

Furthermore, there is a concern that beyond the initial Covid-19 emergency response, the impact of Covid-19 on people with protected characteristics, who already experience entrenched inequalities, will continue to be felt for a long time, especially when voluntary sector organisations who support them – who were stretched before the Covid-19 outbreak – face a substantial loss in income and funding and in turn ability to deliver services to people with protected characteristics in the criminal justice system.



Reviewing the measures: what needs to change or improve, which could be acted on in three weeks' time?

Clinks welcomes the government's announcement of £750m financial support for charities working to provide support during the pandemic, as an important first step towards supporting the voluntary sector to continue their work through this crisis. We are concerned that this package of support, however, is not enough to provide organisations with the funding they will need to sustain vital services now and into the future.

We are particularly concerned that organisations that specialise in supporting people with protected characteristics are facing significant challenges.

24% of voluntary sector organisations supporting women in the criminal justice system expect to have cash flow issues in the next three months. 18% say they are not able deliver on contract and/or grant requirements at all. 25% of organisations supporting BAME communities expect to have cash flow issues in the next three months. 19% of voluntary sector organisations supporting faith communities in the criminal justice system are expecting to have cash flow issues in the next three months. 29% of voluntary sector organisations supporting older people in the criminal justice system expect to have cash flow issues in the next three months.

Alongside these financial challenges it is likely that these organisations will concurrently see a greater demand on their services. Clinks' 2019 State of the Sector findings show that organisations providing a tailored service for people with protected characteristics are being hit the hardest by rising and complex service user demand in the context of cuts to statutory services the impact of which are likely to be compounded by the impact of Covid-19.²¹

Recommendation 1

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Recommendation 2

MoJ and HMPPS should collect and publish the data on the number of coronavirus cases and deaths amongst prisoners and criminal justice practitioners, broken down by protected characteristics.

Recommendation 3

There should be ongoing engagement between the voluntary sector supporting Muslim people in the criminal justice system and HMPPS/MoJ, to ensure the prison service meets the needs of Muslim people in prison during Ramadan, in order for guidance and support to be offered to people fasting, and for the prison regime to operate in a way that is flexible to the needs of those observing Ramadan but also to facilitate social distancing.



Recommendation 4

The voluntary sector needs clarity and communication in the process and delivery of the ECTR scheme in order to support those who are released into an environment with limited services, in particular those with protected characteristics.

Recommendation 5

MoJ and HMPPS should collect and publish data on the ethnicity of those eligible for release and those released under the ECTR scheme, so as to monitor and ensure that release opportunities are not being influenced by conscious or unconscious bias.

Recommendation 6

The ECTR scheme criteria needs to be relaxed to enable social distancing within prisons, and take into account vulnerabilities of groups in prison with protected characteristics, and the use of compassionate ROTL needs to take into account both age of older prisoners and families of women in prison as factor of extreme vulnerability. Specific recommendations that have come from Clinks' RR3 SIG on Covid-19 include:

- a. The strict eligibility criteria of the ECTR scheme should be reconsidered to enable more people to be released from prison, and should also take into account vulnerabilities as a mitigating factor, to enable older people in prison and others with co-morbidities who are vulnerable to Covid-19 to be released from prison.
- b. The guidance on use of compassionate ROTL should extend the reference to those who are 'clinically extremely vulnerable' to include older people, taking into account accelerated aging that is associated with incarceration, and to include women with children who are residing with elderly relatives outside of prison.

Reviewing the measures: what needs to change or improve, which could be acted on in six months' time?

Recommendation 7

With many voluntary sector organisations expecting to experience cash flow problems in the next three months, the £750m package of support for voluntary sector organisations announced by the Government should be increased, and the criteria needs to widen to equip organisations not only with the means for a Covid-19 response plan, but to continue to provide vital services into the future. Covid-19 will have a longstanding impact on existing inequalities for people with protected characteristics – making voluntary sector support for these people more important than ever.



Conclusion

Clinks will continue to work to support and advocate on behalf of the voluntary sector working in criminal justice, particularly with regards to the services they provide to people with protected characteristics. We will continue to consult with other members of the voluntary sector as well as Ministers and officials through our RR3 SIG on Covid-19, and our bi-weekly survey to remain up to date with the impact of Covid-19 measures on people in the criminal justice system with protected characteristics and the voluntary sector organisations who support them, as new developments occur in this fast-moving environment. In recognition that things are moving at significant pace, we would be glad to provide the committee with additional information on the impact Covid-19 is having on people with protected characteristics in the criminal justice system on an ongoing basis.



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End notes

1. This working group includes Yvonne MacNamara, Chief Executive, The Traveller Movement; Diane Curry, Chief executive, POPS; Neena Samota, St. Mary's University, Raheel Mohamed, Director, Maslaha; Patrick Williams, Manchester Metropolitan University; Anne Dunn, The Zahid Mubarek Trust; Khatuna Tsintsadze, Prison Programme Director, The Zahid Mubarek Trust
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CLINKS

Clinks supports, represents and advocates for the voluntary sector in criminal justice, enabling it to provide the best possible opportunities for individuals and their families.

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