

one small thing

One Small Thing's Response to 'Swift, Certain, Tough: New Consequences for Drug Possession' White Paper, October 2022

About One Small Thing

One Small Thing's vision is a justice system that can recognise, understand, and respond to trauma. Our mission is to redesign the justice system for women and their children. We do this by:

- Redesigning the way the justice system responds to women and their children in a way that can be replicated and scaled nationally- we are currently building Hope Street, a pioneering residential community for women and children.
- Educating prison residents to understand how trauma can affect them and equip them with the skills to respond; and train frontline staff to understand and respond effectively to trauma and adversity.
- Influencing politicians and policy makers to encourage culture change across the justice system and the people who work within it.

One Small Thing Response Summary

We welcome the acknowledgement in the White Paper that too many people committing minor drug possession offences are being drawn into the criminal justice system. However, we do not believe the proposals put forward in this paper will adequately address this issue. The suggested three tier model could lead to further criminalisation, with particular concern for the impact on women, young people and racially minoritised groups.

Diversionary schemes exist in the UK for drug-related offences, where if appropriate people are diverted into support and health interventions, however these initiatives do not include a financial penalty. The proposals outlined mean that those who cannot afford to pay for a 'drug awareness course' would face prosecution. As the tiers increase, measures such as a period of mandatory drug testing, or confiscation of driving license and passport are disproportionate.

Considering that the factors behind women's involvement in drug-related crime are often rooted in poverty, trauma, violence and coercion, we are concerned that a drug awareness course provided at their own expense will not be a feasible or effective intervention. Any new proposals should recognise these root causes, alongside the disruptive impact of mandatory courses or drug testing where childcare and employment cover need to be arranged at short notice.

Our response is informed by our work with women affected by the justice system, alongside the views of our Women's Involvement Advisor Lilly Lewis, who drew on her own lived experience in the justice system to respond to this White Paper.

Tier 1 Proposals

Tier 1: A person should be issued with a fixed penalty notice as an alternative to prosecution, which requires them to attend and pay for a drugs awareness course. If they do not attend the course, they will pay an increased financial penalty. Failure to pay will result in the fine being registered at court for enforcement or prosecution for the original offence.

Whilst it is hard to comment on the detail of the proposed drug awareness courses without having any information of the content, we are disappointed that this diversionary effort includes a financial penalty and concerned about the Home Office's suggestion that these courses could be offered above cost. Considering that the failure to attend the course in Tier 1 could result in a fine being registered at court for enforcement or prosecution, it is hard to see how this model won't, in effect, criminalise poverty and enable those with the means, to avoid further involvement in the criminal justice system.

We are concerned that the proposals in Tier 1, and the implications of failure to pay the fixed penalty notice, will unnecessarily involve women in the criminal justice system where other support may be more appropriate. Despite this new tier system being aimed at 'recreational' users, the paper doesn't clearly describe how those caught in possession will be grouped or assessed. It has been recognised that '*despite being a minority in all aspects of the drug trade, women tend to be most involved in the lower levels of the drug trade, where the greatest concentration of arrests occur*'¹ – presumably where they might encounter the tier system were they to be found in possession. Considering that the factors behind women's involvement in drug-related crime are often rooted in poverty, trauma, violence and coercion, we are concerned that a drug awareness course provided at their own expense will not be a feasible or effective intervention.

There are also questions about what impact the Drug Enforcement Notice issued in Tier 1 will have in the long term. Although, as described in the white paper, the Drug Enforcement Notice would not form part of an individual's criminal record, the entry made on the Police National Computer may be disclosed as part of an enhanced Disclosure and Barring Service (DBS) check. According to research by Unlock, nearly 70% of the 27 million enhanced DBS checks between 2012 and 2019 were on women². As Lilly Lewis, our Women's Involvement Advisor highlights:

'Lots of women work in social care and adding this to women's DBS could see her lose her job or make it difficult to find work, further impacting her financial status.'

Tier 2 Proposals

Tier 2: Instead of being charged, a person would be offered a caution which would include, where proportionate, a period of mandatory drug testing alongside attendance at a further stage drugs awareness course.

Our concerns previously discussed relating to the financial burden of the proposed drug awareness courses and the disproportionate potential long-term effects on women's career prospects, apply to the proposals in Tier 2. The additional actions that would be taken in this Tier also present further areas of concern, particularly the proposed period of randomised mandatory drug testing. With only 24-hours' notice, this has the potential to be disruptive to an individual's everyday life and could affect jobs, families and education –

¹ [Sentencing of women convicted of drug-related offences](#), Penal Reform International, 2020

² ["Angels or witches": The impact of criminal records on women](#), Unlock, 2021

not to mention the stigma associated with having to change plans, or needing to explain your absence to a teacher, employer or childcare.

Additionally, for many women attending a drug testing appointment with only 24-hour notice would be extremely difficult, meaning they become liable to face arrest or charge for non-compliance. Women typically do a higher proportion of unpaid care work such as caring for elderly relatives and childcare, and it's not always possible to change plans with such short notice. Women also experience lower job security than men and are more likely to be paid hourly, meaning absence from work could result in reduced pay – with racially minoritised women being twice as likely to be on zero-hours contracts as white men³.

Tier 3 Proposals

Tier 3: A person would likely be charged for their offence. On conviction, a new civil court order could be applied for which would enable the court to impose the following conditions: (i) exclusion order; (ii) drug tagging; (iii) passport confiscation; and (iv) driving licence disqualification.

We believe the Drug Court Order, in particular the driving license and passport confiscation proposed under Tier 3, to be disproportionate. Additionally, the lack of evidence described in the White Paper for initiatives such as drug tagging and exclusion orders is also problematic.

We are concerned about the impact these proposed drug court orders could have on women, as described by Lilly Lewis, our Women's Involvement Advisor:

'These orders could massively impact women. Firstly, women who are mothers may be referred to social services creating devastating effects for them and their children. In the current financial crisis it is unlikely women would have extra or additional income for fines, and if having to attend courses they may struggle with childcare arrangements. Confiscating a women's driving licence could make it difficult for her to take her children to school and she could even lose her job. Lots of women work in social care and adding this to women's DBS could see her lose her job or make it difficult to find work further impacting her financial status, this could see women in abusive relationships going back to the abuser for financial support.'

Wider impacts

We are concerned that these new proposals will disproportionately affect women, young people and racially minoritised groups.

'I feel this will criminalise more women and we may even see more women using recreational drugs as a coping mechanism as a direct result of being involved with the criminal justice system. This will also have a huge impact on young people. This group are more likely to experiment with recreational drugs and be less able to pay fines - this will criminalise them from a young age'. Lilly Lewis, Women's Involvement Advisor

The White Paper states that, 'There should also be no difference in how individuals are treated based on age, gender, ethnicity, and other protected characteristics'. However, considering the racial disparities that exist now in how drugs are policed, there is a notable lack of explanation of how this new Tier system will address current unequal outcomes and

³ [https://www.tuc.org.uk/news/tuc-bme-women-twice-likely-be-zero-hours-contracts-white-men#:~:text=White%20women%20are%20also%20significantly,compared%20to%202.4%20per%20cent\).&text=The%20latest%20figures%20published%20by,compared%20to%20the%20previous%20y.](https://www.tuc.org.uk/news/tuc-bme-women-twice-likely-be-zero-hours-contracts-white-men#:~:text=White%20women%20are%20also%20significantly,compared%20to%202.4%20per%20cent).&text=The%20latest%20figures%20published%20by,compared%20to%20the%20previous%20y.)

institutionalised racism in policing and sentencing. Analysis of Ministry of Justice data by Agenda and Women in Prison shows that *'For every 100 white women sentenced to custody at crown courts for drug offences... 227 black women received custodial sentences'*⁴. Given the data shows that racially minoritised women are more likely to receive harsher sentences, along with the heightened policing of racially minoritised communities, it is particularly worrying that the police, along with the proposed expansion of drug testing on arrest, will be able to contravene the Tier system's linear approach at their discretion; *'At all stages of this three-tier framework the police may choose to charge the offender where they feel it to be a more suitable punishment'*.

'When it comes to black and minoritised communities, I feel you may see specific areas targeted and more racial profiling under these new proposals.' Lilly Lewis, Women's Involvement Advisor

Conclusion

Instead of focusing on policies that create novel routes into the justice system, we urge the government to invest similar energy and resources into current strategies that aim to increase access to health and support services, and reduce involvement in the criminal justice system. One of the strategic priorities of the Female Offender Strategy is fewer women coming into the criminal justice system, however the National Audit Office has reported that the government has not prioritised investment in this work, and has allocated limited funding and resources towards achieving the strategy's aims⁵. The Lammy Review set out clear recommendations to tackle racial disproportionality in the justice system that should also be drawn upon for any new proposals in this area.⁶ Importantly, we would like to see the government take a trauma informed approach to how they respond to drug use, and invest in health and community services that can support women holistically.

'I don't think these new drug proposals are in any way trauma informed and you may find even that recreational drug use is used as a coping mechanism for other overlapping issues such as domestic abuse, poor mental health and coercion. If we don't work in a trauma informed way, we will not find out these underlying factors. I feel that the government could most definitely put more emphasis on trauma-informed ways of dealing with women, supporting them to get the correct help they need either via women's centres or other agencies. I do not think the punishment described in this white paper will have any positive impact on any woman who has been through trauma.' Lilly Lewis, Women's Involvement Advisor

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We welcome the opportunity to share more information and discuss our response further.

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⁴ ["Double disadvantage" The experiences of Black, Asian and Minority Ethnic women in the criminal justice system](#), Agenda and Women in Prison, 2017

⁵ [Improving outcomes for women in the criminal justice system](#), National Audit Office, 2022

⁶ <https://www.gov.uk/government/publications/tackling-racial-disparity-in-the-criminal-justice-system-2020>