

Research Paper

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Sentencing Women: Considering the factors that influence decision-making

Interviews with sentencers and probation officers

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This research report is dedicated to all the women I have worked with so far and to all the women I will work with in the future. To all the women who found themselves involved in the criminal justice system, I do hope that this report will assist to pass the message that the Government and all agencies need to work together to ensure that women's needs remain on the agenda and are appropriately addressed.

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Overview

It is widely accepted that women are disproportionately imprisoned in comparison to their male counterparts (Tombs, 2004; Home Office, 2007; PRT, 2011a). The official numbers support that (MoJ, 2010a; 2010b). This is contrary to what might have been expected after the Corston report (Home Office, 2007) and all the positive developments in the women's agenda. The literature suggests that the increase in women's imprisonment may not reflect any changes in their offending patterns (Heidensohn and Gelsthorpe, 2007; Home Office, 2007; MoJ, 2009; 2010b; 2012d; Hedderman, 2012) but rather may be more to do with changes in policy, sentencing and the law (Hedderman, 2010; Heidensohn and Silvestri, 2012).

There has been little research about the sentencing of women after the Corston report (Home Office, 2007). Therefore, I decided to interview judges, magistrates and probation officers in order to explore the factors that influence decision-making when sentencing women and understand what sentencers take into account when they sentence or remand women to custody.

I was also curious to explore participants' awareness of women-specific needs and gender-specific community resources and the influence this knowledge may have on the sentencing process. Finally, I invited participants to comment on how they use community options and prison remand for women.

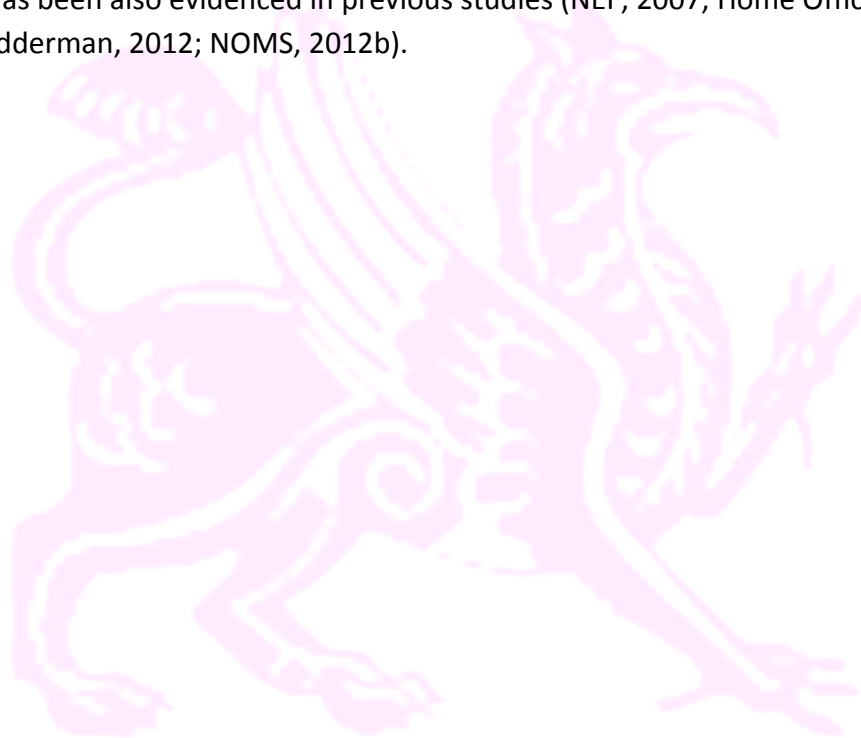
My findings echo previous research, and add some further insights – and this is in fact the study's strongest finding. What it shows is that, in my view, very little has changed since Baroness Corston's challenging report into the treatment of women by the criminal justice system. This should give us cause for concern about the inappropriate use of imprisonment with women, which can happen for two main reasons:

- A lack of resources within the criminal justice system (such as housing and mental health provision)
- A basic lack of knowledge among sentencers about the alternatives to custody that are already available; in particular the various community centres that work with women.

My work with women in the criminal justice system was a trigger for me to explore the situation in courts where there are no gender-specific services. I wanted to understand the effect this lack of provision may have on the way information is communicated to sentencers. I could not avoid discussing the results without offering my own insights resulting from my work as a practitioner. Also, I considered this to be a way to augment

research with professional experience. Bryman (2004) mentions: 'The training and personal values of the researcher cannot be ignored' (p. 7), followed by Corbin and Strauss (2008) who suggested researchers 'use our experience to bring up other possibilities of meaning' (p. 80). It is hoped that readers will appreciate the authenticity I attempted to bring into the research project.

This study is a reminder to all stakeholders that women in the criminal justice system are very vulnerable. The appropriate support is only given when those involved in sentencing recommendations or decisions are fully aware of their needs and the options available to them. Women have different health, wellbeing and social needs from men; these needs can be more appropriately addressed in the community especially since their offending is rarely violent and they seldom pose a risk to the public. This is a message that came through this research but has been also evidenced in previous studies (NEF, 2007; Home Office, 2007; PRT, 2011; Hedderman, 2012; NOMS, 2012b).



Report outline

This report is divided into four main sections:

In the **Introduction**, I present evidence from the existing literature. My aim is for the reader to understand how society has treated women's offending behaviour and sentencing patterns over the years based on how previous research has explored and evidenced them.

The **Methods** section outlines the way I conducted my research. I explain the use of semi-structured interviews as a guide to explore the research participants' views and the qualitative approach used to investigate the research aims.

In the **Results** section, I provide an overview of the main themes revealed through the interviews. Sentencers' and probation officers' views are presented side by side, to enable comparison. I also compare my findings with those of previous relevant research.

Finally, I use the **Discussion, and Conclusion and Recommendations** sections to present my analysis of the significance of the research findings. In particular, I make recommendations about what I feel could be done differently to allow for better outcomes for women in the criminal justice system.

Introduction

Setting the scene

Since women have tended to commit far fewer offences than men, they were virtually absent from the study of criminology until the 1960s and those who offended were mainly stereotyped due to their attributed feminine roles (Heidensohn and Gelsthorpe, 2007).

Heidensohn (1968) wrote about how women were not considered in the general theories of crime and she paved the way for other researchers to contribute to the understanding and exploration of female offending with robust scientific research that challenged existing myths and misconceptions (Klein, 1973; Rasch, 1974; Smart, 1976; Pollock, 1978; Gelsthorpe and Morris, 1990; Naffine, 1997; Gelsthorpe, 2002). The work of these writers also furthered our wider understanding of the influence that culture and society has on gender roles and expectations (Daly and Chesney-Lind, 1988) and addressed the issue of gender in a way that brought the social control of women to the surface (Heidensohn, 1985).

Another view, that women are committing crime as a result of gender “liberation” (Adler, 1975), is still alive (Heidensohn and Silvestri, 2012) – and especially noticeable in media portrayals of women in the criminal justice system (Jewkes, 2004; Chesney-Lind, 2006; Ringrose, 2006; Young, 2009).

Sentencing of women

Impact of gender stereotypes

It has commonly been assumed that women were, and still are, treated more leniently within the criminal justice system; however since their offending is less serious than men’s (Morris, 1987; Hedderman and Gelsthorpe, 1997; Gelsthorpe, 2002; Steward, 2006) or because of factors that are considered at the sentencing stage (Flood-Page and Mackie, 1998), it would be expected that they receive fewer custodial sentences than men.

Contrary to that assumption, research has suggested that women are treated more punitively than men by the criminal justice system. It has been suggested that this is the case because those who offend do not conform to the conventional female role expectations (Pollak, 1950; McClean and Wood, 1969; Devlin, 1970; Nagel, 1981; Eaton, 1986; O’Dwyer et al., 1987) or are seen as bad (Carlen, 1983) or deviant (Heidensohn, 1981). The concepts of ‘double deviance and double jeopardy, of stigma and of the importance of formal and informal controls in the lives of women’ have influenced their treatment within the criminal justice system (Heidensohn and Silvestri, 2012, p. 350). Other authors have also referred to the above (Gelsthorpe, 2004; Heidensohn and Gelsthorpe, 2007). The low

number of women who offend means that those in touch with the criminal justice system are seen as out of the norm and punished more severely than men (Heidensohn, 1996).

The case is that women are not only be punished by the criminal justice system but also suffer informal sanctions (that is, from their families and wider society) (Carlen, 1983; 1985). In addition, they suffer a double-punishment, where they can be imprisoned not only for their offence but also for their domestic circumstances or non-conventional lifestyles (Worrall, 1981; Carlen, 1983; Farrington and Morris, 1983a, 1983b); and the failure of society and the system to support their needs (Matthews, 1981; Carlen, 1983; Smith, 1984).

Women-specific needs

Women have been generally viewed as having two pathways that may lead them into crime (Gelsthorpe and Morris, 2002). The first, indirect, pathway is their position in society. The other pathway is the link between these 'social and structural problems and more immediate "criminogenic factors"' (Gelsthorpe and Morris, 2002, p. 288).

Family circumstances, including childcare, have always been significant factors in the lives of women in the criminal justice system (Eaton and Morris, 1983; Eaton, 1983; 1986; Calderbank et al., 2011). Other areas where female offenders need support, when compared to males, relate to substance misuse, poor mental health and emotional wellbeing, lack of education or skills, financial difficulties and history of abuse (Walmsley et al., 1992; Morris et al., 1995; Mair and May, 1997; Social Exclusion Unit, 2002; Home Office, 2007; Calderbank et al., 2011). Whereas some of these can be equally relevant for both genders, the ones associated with female criminality are of a different quality and level of importance and have a different impact on women (Howden-Windell and Clark, 1999). These may include factors that are discussed in the literature review below, i.e. that women tend to take more responsibility for childcare than men and may sometimes be drawn into offending via their relationships with men.

Has women's crime actually increased?

Official statistics do not give a completely clear picture as to whether women are lately committing more crime than previously. There is considerable scope for argument about the issue because an increase in the amount of crime recorded may be more to do with changes in policy, sentencing and the law (Hedderman, 2010; Heidensohn and Silvestri, 2012) or reflect a change in the treatment of women rather than being attributable to any definite shift in criminal behaviour (Gelsthorpe and Morris, 2002).

However, what has been claimed is that girls' and women's behaviour has been more readily criminalised (Alder and Worrall, 2004; Hedderman, 2004; Worrall, 2004; Home Office, 2005). The research of Hough et al. found that judges described an increase in the severity of sentencing of both males and females, which, it was argued, is a reflection of both a more punitive legal framework and legislation introduced under perceived pressure

from the media and politicians. However, Hough et al. found that magistrates did not share that view (Hough et al., 2003).

In fact, the statistics themselves suggest an anomaly. Although there is an increase in the arrests of girls and women, the number of violent offences committed by them has actually fallen (MoJ, 2010a). This may suggest a tendency to arrest women for offences that would not previously have resulted in arrest.

The experience from the US is very similar and Swartz and others (2009) suggested that more violent offending had been recorded recently for girls as a result of changes in legislation, where low-level assaults, for example, led to a disproportionate representation of girls in the criminal justice system, a change to what was happening before. The debate in the US started with Steffensmeier and colleagues (2006) who analysed crime data and concluded that there had not been a significant closing of the gap in the number of violent offences committed by men and women (Heidensohn and Silvestri, 2012). Lauritsen and colleagues (2009) suggested that this may be due to 'both the economic marginalization of poor women plus the civilizing effects of more women being present in public life, where they act as "capable guardians" and restrain male violence' (Heidensohn and Silvestri, 2012, p. 341).

Use of remands in custody

There are two main explanations of why women are more likely than before to be remanded to custody, and these are as follows:

a) Women are remanded to prison disproportionately to their offending:

The statistics suggesting they are more likely than men to be remanded to custody for non-violent offences (Tombs, 2004; Home Office, 2007; PRT, 2011a). The numbers provided strongly suggest that remands of women in custody have become used to an extent that is disproportionate to the amount and nature of their offending, which is thereby punitive.

Between 1999 and 2009, 66 per cent of women in the UK were remanded to prison for offences that were not imprisonable, a much higher proportion compared to 8 per cent of their male counterparts (Hansard, 2009). The increase in women's imprisonment in the United States is, it is suggested, the result of "equal" sentencing, as that ignores some of women's unique needs and particular circumstances (Immarigeon and Chesney-Lind, 1992; Chesney-Lind, 1997).

NOMS statistics have demonstrated a significant increase in the female prison population (Carlen and Worrall, 2004) - up to a 114 per cent rise in the last 15 years (PRT, 2011b). The Home Office explained that the interaction of three factors contributed to that growth: an increase in the number of women appearing before the courts, an increase in the proportion of women receiving a custodial sentence and an increase in the length of their

prison sentences (Heidensohn and Gelsthorpe, 2007). Later, Hedderman (2012) argued that from 2003 on, changes to sentencing guidelines introduced by the Criminal Justice Act 2003 led to more women being given short prison sentences (of six months or less) for offences that were not violent, such as theft and fraud.

According to the Corston report (Home Office, 2007), only half of the women remanded received a custodial sentence, whereas a 2010 report from the Ministry of Justice (MoJ, 2010a) found that in fact between 2005 and 2009, two-thirds of women remanded went on to receive a prison sentence. The above reports also noted an increase in the number of women who have been either remanded to custody without receiving a custodial sentence at the end or who have received a very short prison sentence (from 55 per cent in 2005 to 66 per cent in 2009 according to the MoJ study).

Hedderman (2010) found that the increase in the female prison population between 1997 and 2008 was 68 per cent, whereas the male prison population rose by only 35 per cent over the same period. Theft and handling account for 34 per cent of sentenced receptions in prison for women (MoJ, 2012d). Meanwhile, the number of women on remand has fallen by 12 per cent in the year to 31 March 2012. This may reflect a shift in attitudes, as well as knowledge of women's issues and better use of existing resources. Women on remand now make up 13 per cent of the female prison population (MoJ, 2012d).

As the variety of points of view expressed and the large number of different sets of statistics used illustrate, the picture is changing and so the debate continues. What is clear, however, is that the number of women held in remand or sentenced to prison for minor offences, even though it might be falling, still remains disproportionately high when compared to men.

b) Women are remanded in prison for breaching bail conditions of non-imprisonable offences:

One way in which women may find themselves in prison for non-imprisonable offences is when they are sentenced for failure to comply with a court order or they commit another minor offence while on bail (Blakeborough et al., 2007; Brown, 1998; Hucklesby, 2001; Hedderman, 2010 and 2012; Easton et al., 2010). In 2009, 13 per cent of women in custody – 1,052 – had been imprisoned for breaching orders for non-imprisonable offences (MoJ, 2010b; Calderbank et al., 2011). In the 12 months to June 2012, for example, 81 per cent of women entering custody under sentence had committed a non-violent offence, compared with 71 per cent of men (MoJ, 2012d; PRT, 2013).

Gelsthorpe and Loucks (1997) raised concerns about these issues, arguing that magistrates may have been reluctant at times to fine women, which 'carries the risk that, skipping a step on the sentencing ladder this time round, will lead to an even more severe sentence being imposed in the event of a subsequent conviction' (p. 56). This also means that probation

resources are used inappropriately in these cases where a supervision order is imposed instead of a fine (Moxon et al., 1990).

The use of Suspended Sentence Orders (SSOs), in particular, has come under scrutiny. Used appropriately, SSOs can act as a way to prevent custody in cases where they are used as a direct alternative to a custodial imprisonment rather than as a threat of imprisonment (Patel and Stanley, 2008). However, the increase in their use has led to even more women being imprisoned – for breaching orders, rather than for committing imprisonable offences (Hedderman, 2010; Calderbank et al., 2011; NOMS, 2012).

In 2010, the number of SSOs given to women was very high compared to previous years, when 15 per cent of all SSOs were given to women (MoJ, 2010b). Relevant to that, Deedes (2009) wrote about how women with complex needs may be further disadvantaged, as changes in ‘legislation, government attitude, pressure from the media, changes in probation culture and ethos...’ (p. 34) have led to an increase in recalls to prison of women on licence.

Interviewing sentencers – evidence from previous research

Four themes emerge consistently from the existing research with sentencers, as factors that influence their decision-making when sentencing women: their understanding of the different needs of men and women; their use of custodial remands as a form of protection; their awareness of available community resources; and their interpretation of the principle that everyone is equal under the law.

Gender differences

A difference between male and female defendants, highlighted by magistrates, was that women in court were generally considered as needing help with their lives, at a practical and an emotional level (Gelsthorpe and Loucks, 1997). Some sentencers also viewed women as having been coerced into criminal activity by partners (Gelsthorpe and Loucks, 1997).

Domestic responsibilities have been seen as a mitigating factor for women’s offending (Worrall, 1990). However, being a mother is not always a protective factor, as it can be strongly associated with stereotypes and conventional roles, meaning that society disapproves of mothers offending and therefore treat them very harshly when they offend (Edwards, 1985; Walker, 1985).

Use of remands in custody

Sentencers in previous research on sentencing women considered custody as a last resort, used only either for serious offending (as the only option guided by the legislation) or as an

option that could potentially help the offenders (for example to protect the person from others or from themselves) (Gelsthorpe and Loucks, 1997).

Calderbank and colleagues' (2011) inspection considered the alternatives to custody for women through examining case studies and collecting the views of different professionals in the criminal justice system, such as probation, women centres and the judiciary. They observed that women were not generally remanded unnecessarily to custody; however, that did appear to be the case for repeat offenders who committed non-serious offences 'that in isolation would not pass the seriousness threshold for custody...' (Calderbank et al., 2011; p. 49).

Using community resources

Some sentencers have expressed the concern that their options were limited as there were not many community resources as an alternative to custody for women (Gelsthorpe and Loucks, 1997). The same concern was raised at the recent inspection, which described there being too few programmes and unpaid work placements specific to women and that meant that not every woman suitable for those was able to access them (Calderbank et al., 2011). Regarding the partnerships that probation has developed with other agencies, the report mainly commented on the lack of appropriate mental health support, with the resources available (or not) being different in each region (Calderbank et al., 2011). Another problematic area appeared to be lack of women-specific accommodation, mainly in approved premises and emergency accommodation and especially lack of provision for women with children (Calderbank et al., 2011).

One could, however, argue that the deeper problem is rather a limited knowledge and understanding among sentencers of women's offending patterns and their vulnerabilities (Hedderman, 2004). Earlier research had shown that some sentencers are not well informed about community sentences, in particular their range and benefits and therefore may not make full use of those available to them and impose custodial sentences unnecessarily (Hough et al., 2003; Hedge, 2007).

Everyone is equal under the law

Sentencers in previous research have argued that the treatment of women and men in the criminal justice system is equal (Worrall, 1990; Calderbank et al., 2011). They would also take into consideration personal circumstances and impact on others before passing sentence and said that prison sentence would be used as a last resort (Calderbank et al., 2011).

What has changed after Corston?

There has been a general agreement that women offenders need to be treated differently from men (Heidensohn and Gelsthorpe, 2007; Home Office, 2007). Some of the needs of women in the criminal justice system are different to those of men and it is essential to provide holistic support around these needs at women-only centres, using the model of one-stop shops (Home Office, 2007).

The impact of the Corston report (Home Office, 2007) was such that it led to the creation of the Corston Independent Funders' Coalition (CIFC) - a consortium of grant making trusts and foundations working together to ensure that the women's agenda would be one of the priorities for criminal justice policymaking and funding (Kaufmann, 2012). Part of the wave of developments was a number of publications from the MoJ and the National Offender Management Service (NOMS) giving guidance to working with women in the criminal justice system and supporting their needs (MoJ, 2008a; 2008b). The creation of the Women's Diversionary Fund, jointly by the MoJ and the CIFC was another development with the same purpose (Kaufmann, 2012).

Therefore, there has been sizeable investment into community provision for women, either in one-stop shop centres or diversion schemes, with the aim of supporting women who have come into contact with the criminal justice system, reducing the numbers of those being imprisoned (Kaufmann, 2012) and providing the courts with a variety of community sentence options for women (MoJ, 2012f). Funding was secured from 2009 until 2013 (MoJ, 2012f).¹

The MoJ's consultation on effective community sentences received robust responses in support of keeping women in the community and empowering them through the use of orders appropriate to their needs (MoJ, 2012f). Despite all these positive developments, the advocate appointed by the CIFC reported at the end of her contract that, despite her efforts to influence sentencers' decisions, little progress had been made to divert women away from custody (Kaufmann, 2012).

¹ In 2009, the then government announced the investment of £15.6 million into community provision for women, either in one-stop shop centres or diversion schemes (mainly court and police), with an aim to support women and reduce the numbers of those being imprisoned (Kaufmann, 2012). It was also announced that the CIFC will match this fund (Kaufmann, 2012). In 2010 a joint MoJ and CIFC fund was established, known as the Women's Diversionary Fund (WDF) (Kaufmann, 2012). In 2011, the Ministry of Justice and the National Offender Management Service secured a £3.2 million fund to allow the sustainability for one more year (2011-12) of 26 local women projects (Kaufmann, 2012). NOMS then committed to sustain those projects that show effectiveness in diverting women from custody by providing funding for 2012/13 (Kaufmann, 2012) and to further support 30 of the women projects (MoJ, 2012e).

Methods

This was a small-scale qualitative study using semi-structured interviews with sentencers (district judges and magistrates) and probation officers. I considered qualitative methods as the most suitable way to approach my research subject since they enable 'researchers to get at the inner experience of participants, to determine how meanings are formed through and in culture, and to discover rather than test variables' (Corbin and Strauss, 2008; p. 12).

Sample

The sampling was initially purposive, as defined by Burman (2004). I did not select participants randomly but I rather considered them as experts through their experiences of the subject explored by the study (Burman, 2004; p. 415). However, this was also a "convenience" sample, as I had easier access to the people interviewed through my work at a London magistrates' court (information about the details of my role can be found at Appendix I). I was also able to use some of my organisation's established contacts to identify and approach participants. A convenience sample is explained by Bryman as 'one that is simply available to the researcher by virtue of its accessibility' (Bryman, 2004; p. 183).

I approached probation officers using the "snowballing" technique. This allows the recruitment of participants with particular knowledge or experience of the subject being researched, especially when the sample could be otherwise difficult to reach. A drawback of this method is that the final sample may consist of people sharing the same views therefore limiting the generalisation of the results (Bryman, 2004). Nevertheless, snowballing was the best way to gain access to probation officers who had significant experience of working with women: there would be little point in interviewing those who had worked only rarely with female offenders. I asked my colleagues to identify officers with experience of writing pre-sentence reports for women and who may be willing to share their views. I then contacted them and asked them to participate or provide the names of colleagues who, to their knowledge, may have had more experience on the subject.

Regarding the sentencers, the Magistrates' Association assisted me and advertised the project on their website. They invited people to express interest in participating by contacting me by phone or email. For district judges (DJs), I approached link contacts that my organisation has in various courts in London.

In total, I interviewed nine probation officers, along with 16 sentencers (10 magistrates and six DJs).

Data collection

I provided all participants with an information sheet before the interview, explaining the purpose of the study and giving details of what their participation would involve. I also invited them to ask questions before the interview and to sign a consent form. Copies of the Information Sheet and Consent Form can be found in Appendices II and III, respectively.

I assured participants that I would maintain their anonymity throughout the interview transcripts and I explained the rule of confidentiality, using the approach set out by Lofland and colleagues. (2006). This is clearly explained by Corbin and Strauss (2008): 'one of the central obligations that field researchers have with respect to those they study is the guarantee of anonymity via the "assurance of confidentiality" – the promise that the real names of persons, places, and so forth will not be used in the research report or will be substituted by pseudonyms' (p. 51). I did not consistently collect demographic characteristics for participants, as I did not want to compromise their anonymity in any way. None of the participants refused to let me record their interviews.

I also offered everyone the opportunity to review the transcript before I used it for the analysis and asked for everyone's permission to use quotes in the final report. I informed all participants that I would send them a copy of the final report, and also that it would be accessible from the Griffins Society's website.

The interviews lasted between 20-40 minutes, apart from the pilot interview, which lasted for an hour. Following the pilot interview, I revised the interview guide, reducing the number of questions. I conducted the majority of the interviews either face to face or by phone. For one of them, I sent the questions and received the answers via e-mail.

Interview guides

The interview guide was semi-structured, in order to allow respondents to use their own words to answer, without being influenced in any way (Bryman, 2004). Semi-structured questions also facilitate discussion on areas the researcher may not be familiar with (Bryman, 2004).

I took into consideration previous research on sentencing women before designing the topic guide. I read the Sentencing Council's Guidelines (2008) and the Criminal Justice Act around bail decisions (2003). I had my academic supervisor's input at each phase of the development of the guide. The questions for sentencers and probation officers explored the same issues. The two interview guides, different for each group of participants, are provided at Appendices IV and V. Regarding the questions for the sentencers, I made all appropriate adaptations after consultation with a legal advisor. She advised me on how to phrase the

questions and use the appropriate terminology. In addition, I reviewed the Bail form used at the Court where I work.

Regarding the interviews with probation officers, I had the input of a probation officer on the questions asked and then I revised the interview guide as appropriate. I kept the most relevant questions, in order to keep the interviews as short as possible and taking into consideration the busy schedules of the participants.

Ethics

The London School of Economics Research Ethics Committee, the National Offender Management Service (NOMS) and the Judicial Office approved the study.

Analysis of findings

Bogdan and Biklen (1982) referred to how analysis can be done during field work, where researchers engage in analysis while collecting the data. That process involves reviewing the notes to decide whether any other questions need to be included in the guide and also how to use any emergent ideas. I followed the same process for this project. That led to re-phrasing of some questions, and some further questions being added.

I considered content analysis to be the most appropriate way to analyse the data. I developed and reviewed an initial coding frame, with main codes, categories and subcategories, with the assistance of my academic supervisor. I used the existing findings from previous research and compared them to mine, as the reader can discover in the analysis and discussion sections.

Although the sample was small, (compared to the total number of judges and magistrates in London) I felt that saturation of data was reached. According to Strauss and Corbin (1998) saturation of data is achieved when '(a) no new or relevant data seem to be emerging regarding a category, (b) the category is well developed in terms of its properties and dimensions, demonstrating variation, and (c) the relationships among categories are well established and validated' (p. 212).

Analysis

In this section, I aim to give the reader an understanding of the themes that emerged through the discussions with sentencers and probation officers, and these themes provide the sub-headings used throughout this chapter. I have tried to provide the most representative quotes for each theme. Due to the richness of the findings and size limitations, I decided to place some of the themes and quotes in Appendix VIII. I only describe in detail here those I have also included in the discussion.

In the interviews, participants described mainly their own practice and gave examples when necessary. In this analysis, I make comparisons with findings from previous research in the field, highlighting any different or new findings.

Views expressed in the interviews were those of individuals and do not necessarily represent the views of the Judiciary or the policy of London Probation concerning the sentencing of women.

Sample characteristics

The sample consisted of six district judges (DJs), ten magistrates and nine probation officers. The majority of sentencers were White British/Irish, with only one person being of a different ethnic background. This was a good size sample, taking into consideration the time limits for the study and the time it took to obtain approval from the relevant Ethical Committees.

Three of the judges were women and three men, with six magistrates being women and four being men. All magistrates were sitting in more than one court in their local justice area. Judges were mainly residents in their court, apart from one. I decided not to collect information on the local justice areas where participants sit, being mindful to protect their anonymity.

Judges had between ten and twenty years of sentencing experience, and magistrates had between six and twenty five years, which amounts to many years' experience in sentencing. Judges were sitting at court a minimum of three times a week and were dealing with women defendants at every sitting (one person said they saw women at 70 per cent of their sittings). Six out the ten magistrates were doing one or two sittings every fortnight and were hearing cases involving women defendants at most of them.

Probation officers' backgrounds were more diverse regarding ethnicity and most people had an experience of working for probation for at least four years. All probation officers interviewed were female.

I decided to present the results from interviews with sentencers and with probation officers together, to demonstrate differences and similarities and avoid repetition as much as possible. I have used the code DJ_XX for judges, Ma_XX for magistrates and Pr_XX for probation officers.

Interviews

Most interviews were face to face with the participants (five judges, four magistrates, eight probation officers) and some were over the telephone (one judge, five magistrates, one probation officer). Telephone interviews have limitations as the expressions and body language of the interviewee cannot be recorded in any way. However, that did not seem of particular importance for this project. The length of telephone interviews was not significantly different from the face-to-face interviews, despite that being an initial concern.

Findings - Factors considered in decision-making

Everyone is equal under the law

The general view that sentencers expressed was that women in the criminal justice system are not treated differently from men, or rather that they (sentencers) do not treat them differently. This echoes findings in a probation inspection report (Calderbank et al., 2011). Probation officers, however, had a different view. Most participants (14 out of 16 sentencers, 5 out of 9 probation officers) referred to not treating women differently to men, with the main influence on their decision-making being the person's individual circumstances and the circumstances of the offence committed. However, two sentencers did not mention equal sentencing at all. This is not to say that they treat people differently, however; the format of the questions invited them to answer specifically about women rather than comment on both genders.

I compare the views of sentencers with those of probation officers below:

If you are going to do justice you want to seem to be doing justice equally then you have to treat two sexes the same, exactly the same (Ma_01, male)

But unfortunately, there is still this mind-set 'oh under the law, in terms of the law we are all equal and therefore we must all be treated the same', but by treating men, women, different people the same you have disproportionately unfair outcomes, especially women (Pr_01).

The impact of gender stereotypes was evidenced by the comment three sentencers made on the further criminalisation of women who offend and their discrimination within the criminal justice system where they are a minority group.

I think sometimes they [women] are punished harsher for crimes like they shouldn't be... they are punished because I think they ... are sort of example, 'we can't have you behaving like this cause you are a lady'. I think its entrenched prejudices that we've grown up with, there is an expectation of, again, not to do certain things. So if you do do it, you're more naughty than the man (Ma_10, female).

Unfair treatment of women in the criminal justice system was an issue mainly brought up by probation officers. Eight officers spoke about the inequalities women are facing, with their behaviour being further criminalized because of gender.

...in the judiciary women are viewed differently, the media, society, community, if a male and female commit an offence it's 100 times worse if it's a female...they sort of penalised for being a woman and penalised for committing the offence I feel...maybe reports need to be written better to argue why females shouldn't receive custody (Pr_07).

Gender differences and women-specific needs

Because existing research has covered this issue very thoroughly, I provide relevant quotes from my interviews and the numbers of participants that referred to the issue in Appendix VIII.

To summarise, when people were prompted to identify differences between men and women in the criminal justice system, they mainly spoke about childcare responsibilities or caring for others as being the issues most commonly faced by women. This supports previous research findings (Gelsthorpe and Loucks, 1997; Mair et al., 2008). Everyone referred to childcare as a potential difference among genders, but they also recognised that men can be primary carers of children too. Sentencers were mainly mindful not to make generalisations regarding women. Although they provided examples from their own practice and experience, they seemed to be taking care not to categorise offenders according to their gender.

Sentencers spoke about relationship difficulties - for example, women being the victims of abuse or being coerced into criminal activity by their partners. This supports Gelsthorpe and Loucks' (1997) findings regarding women's emotional needs and vulnerability. It also resonated with the needs mainly identified as different for women in the criminal justice system (Home Office, 2007).

Individualised justice

Sentencers mentioned the importance of appreciating the reasons behind someone's offending. They mainly relied on probation officers to provide such information. In addition, they considered it important to have a detailed account of the defendant's personal circumstances before passing sentence. Generally, sentencers were satisfied with probation reports and commented on a general improvement in their quality, similarly highlighted elsewhere (Calderbank et al., 2011). It was the general view of sentencers that probation had made much progress in providing advice and information to sentencers in recent years. They also referred to how they appreciate independent probation reports.

Some participants (five judges and eight magistrates) felt that their sentencing decisions needed to reflect the individual woman's needs, either in the sense of the impact sentencing may have on her life or in order to support these needs and prevent re-offending. This is similar to Calderbank's findings (Calderbank et al., 2011). Women-specific alternatives were favoured when on offer. All of the probation officers supported the view that it was important to find resources that would meet the individual needs of women.

a) Sentencers

...if there is an alternative that is designed, you know, to the particular problems that some women are showing then I think you're more likely to impose that kind of penalty (DJ_05, male).

b) Probation officers

... there is so much out there and I think it's finding something that suits that individual as opposed to finding something for all women. And I think that's where the programmes go wrong, because I don't think they are suited to everybody (Pr_08).

Community sentencing: use of community resources

Sentencers felt that there has been a relative expansion in the provision of gender-specific alternatives to custody and the majority (eleven) were satisfied with the resources available. However, participants commented that these women-focused resources were often limited: some had insufficient funding and others were not available everywhere. There was a lack of knowledge about available options among sentencers, which has been brought up as an issue in previous studies (Hough et al., 2003; Hedge, 2007) but the findings of a more recent thematic inspection differed, suggesting that sentencers were aware of the options available to them and were making use of them (Calderbank et al., 2011).

Some participants mentioned that the knowledge of resources in the community usually depended on the individual sentencer and on the information provided by probation officers. This has been suggested in a previous inspection report, too (Calderbank et al., 2011). However, it did seem that when the information on alternative disposals was not effectively identified at the point of sentencing, some options that would be otherwise available to judges and magistrates were ignored. Sentencers spoke about limited gender-specific provision and lack of knowledge of the resources available to them, and of trying to be flexible when sentencing. All these quotes around community resources can be found at Appendix VIII.

Some sentencers knew of women-centred provision, such as women's centres, and valued it especially in relation to women who had mental health needs. The following quote from a judge clearly illustrates the significance of having information on women's mental health needs:

they [reports on women defendants' mental wellbeing] give the court a better insight where people have these complex mental health needs as to the sort underlying reasons why people offend, if people are...you know, if people have disengaged from medication the link between illness and offending ...And I think the input of mental specialists working together with probation has given probation a lot more confidence and it's given the court a lot more confidence to deal with people who have more complex issues. So I think that to me has been incredibly helpful and it also in terms of dealing with people generally means we don't need unnecessary psychiatric reports (DJ_06).

A previous inspection suggested that probation officers did not value the interventions provided at the women centres (Calderbank et al., 2011); however participants in this project did not seem to share that view. They spoke about these centres offering more "tailored-made" and holistic support, especially on issues around confidence and self-esteem, away from a stigmatising probation setting.

Community sentencing: use of unpaid work

A striking finding was about the unequal treatment of women performing unpaid work. Unpaid work (or Community Payback) has been a requirement usually imposed for punishment purposes and can be an alternative to someone going to prison. It was the view of some sentencers (three judges and four magistrates) and probation officers (three out of nine) that unpaid work cannot be used as a penalty for women because of their childcare responsibilities. In such cases women may be punished more harshly than men for similar

offences, due to lack of other punitive community alternatives. This observation has been made by other researchers as well (Barker, 1993; Gelsthorpe and Loucks, 1997).

a) Sentencers

I mean unpaid work is a problem for women....not because they can't do it, because of course many of them can, but many of them would be excluded from unpaid work because of childcare difficulties at one stage....they (probation) ought to consider the specific projects for women on unpaid work ...and also, what arrangements....can be given with childcare problems in circumstances, because that's obviously a sentencing alternative to custody particularly in cases....say for a violent offence(DJ_01, female)

b) Probation officers

Our unpaid work usually starts at 9, 9.30. And then to do a full day's work... she'd be expected to work until 4, 4.30, but school, she would need to pick the kids up by 3... so already that reduces how much she can do each day. I know then, potentially on a weekend she could do, but then who's gonna have the kids? (Pr_01).

An argument used was that at times when a sentence required an element of punishment, the options were limited. This occurred, for example, when a woman was considered as not suitable for unpaid work or curfew and electronic tagging by either her solicitor or probation. In these cases sentencers would be restricted to considering custody.

So there comes a point where you are forced to say 'I'm also here to punish you and it can't be entirely to your convenience, you have to work with what the system can offer'...You aren't tagging someone for their convenience ... you are tagging them as a puni... sentencing for a punishment... it...isn't always a "pick and mix" package (Ma_06, female).

One of the probation officers took a different view:

...so if I could say to the court 'ok there is no criminogenic needs but miss X could benefit from....dadada....in the community', but then would it be enforceable? See that's the thing with the courts...like this punishment element, so it's a catch 22 really, they need to change as well (Pr_03).

Use of remands in custody

When questioned about the use of remands in custody, there was a consensus that custody is only used as a last resort and after everything else had been tried. Only one sentencer felt that women's sentencing may be harsher when compared to men.

I agree with her [Corston] findings, because I know for a fact that women, especially women involved in the drug trafficking arena and I know from personal experience they seem to get quite harsh sentences, compared to what the man would get for doing a similar thing...I think women's sentences are harsh and I think it's to do with who...who is doing the sentencing... So because they [fellow sentencers] don't know of anybody or anything like that it is difficult for them to understand why somebody would do it [be a drugs mule] (Ma_10, female).

This view was shared by a probation officer:

I have seen that [disproportionate remand] happen...I've seen it much more happening at magistrates' courts to be honest than I have at the Crown Court...where often offences of dishonesty, often sort of frauds or something to do with banking or those types of things where women have been given sentences of custody, sometimes even...with no previous convictions (Pr_09).

When asked about the reasons to refuse bail when sentencing women, sentencers would remand them when there was substantial evidence that the person was likely to fail to surrender or comply with the bail conditions (12 out of 16) or offend while on bail (7 out of 16). Furthermore, only a few participants mentioned the severity of offending (3 out of 16) and the risk posed to others (3 out of 16) as a reason to refuse bail to women. However, 14 out of 16 sentencers did refer to the likelihood of using remand if a woman failed to engage with a court order.

Most sentencers spoke about how failure to comply with court orders influences their decision making about bail and remands in custody:

The general principle of course is that we would always grant bail if at all possible. But having said that, if it were a female offender who had committed a large number of offences of a similar kind, had shown a disregard to court orders by committing offences whilst on bail, failing to surrender, then I...I don't think I would have any problem in remanding a female to custody anymore than I would remand a male to custody (Ma_04, male).

A probation officer had a different view:

There are definitely instances for women who don't need to be remanded because they are not at risk, but they are being remanded because their record looks bad, it's a record of failing to comply, it's a record of committing offences on bail, but it's all linked to the fact that the assistance and the help that they've needed hasn't been provided in the right way (Pr_01).

Six sentencers said that lack of appropriate accommodation could lead to them remanding a woman in custody.

...if there is just nowhere that that person can go, no bail address available, so we can't grant bail if there is no address we can send them to (Ma_10, female).

Perhaps reflecting a lack of understanding of the resources available to ensure the safety of women in a community setting, five sentencers referred to having remanded women for their own safety. This, and the lack of a bail address, are major issues that I will explore further in the discussion below. In their research, Gelsthorpe and Loucks (1997) found that only very few magistrates mentioned using remand for the person's safety. A participant in my study said:

It's (use of remand) usually when there is nowhere for them to go... it's either because they are not safe to be let out because of their huge drug addiction and their mental illness (DJ_02, female)

This resonated with a view from a probation officer:

...prison can be a safe place, a boundaried place for them [women] but considering what they've come through a lot of the time they really need some sort of therapeutic intervention and they tend to come out of prison and their behaviour just repeats itself and starts where it left off really (Pr_08).

Having now described the findings, in the next section I will discuss these with particular reference to the literature and to existing research.

Discussion

In this section, I discuss the findings with reference to the existing research literature and explore some of the implications for current policy and attitudes towards women who are caught up in the criminal justice system. I then go on to make some recommendations in the summary and conclusion, based on these findings, that I hope will help to improve the criminal justice system's engagement with female offenders and lead to fairer, more consistent sentencing. Inarguably, both men and women are vulnerable when they have mental health issues, diagnosed or not, and require specific responses. However, there also needs to be a gender-appropriate response.

This research project was a small-scale study and time limitations did not allow for a larger sample to be recruited. However, taking into consideration the busy schedules of professionals in the court service and probation, the amount and richness of data collected was beyond expectations. Participants were based in London criminal justice settings; therefore, the results cannot be generalised with respect to other areas of the country that have different populations, smaller courts and so on. Further research could expand the knowledge gathered in this project. For example, there is limited research on decision-making around the use of custodial remands with women (Steward, 2006), though I have attempted to shed some light on it in this current project.

Through the interviews, I realised that participants' knowledge on gender issues was sporadic and unsystematic, for example it appeared to vary depending on the interest of the individual sentencer, the extent to which they dealt with women at their court, and on the information received by probation, solicitors and other agencies.²

The main themes that emerged through the analysis of findings provide the sub headings used below.

Everyone is equal under the law

As Corston expressed it, 'Equal treatment of men and women does not result in equal outcomes' (Home Office, 2007; p. 16). The CEDAW (Convention on the Elimination of Discrimination Against Women) Committee's (2008) concern was that 'the varying levels of public understanding of the concept of substantive equality have resulted only in the

² The reader may want to consider that at the time I wrote these recommendations, the government had yet to start its consultation on 'Transforming Rehabilitation: a revolution in the way we manage offenders' (MoJ, 2013b). This sets out the government's plans to bring down reoffending rates and includes the contracting out of the majority of offender management services to the private and voluntary sectors.

promotion of equality of opportunity and of same treatment' without that necessarily translating into equal outcomes (paragraph 27).

The new guide produced by the NOMS Women and Equalities group highlighted that the Equality Duty '...requires public bodies to think about people's different needs and how these can be met' and not treat everyone the same (NOMS, 2012b; p. 9). At the same time, one sentencer expressed the view that women's sentencing can be harsh and this is an issue of real concern.

According to my findings, sentencers are generally aware of the distinctive needs of women but at the same time they insisted that they treat everyone the same. Therefore, if my results could be generalised to the majority of the judiciary, then one would expect sentencers to be treating women differently, since they recognise they have different needs. Equally, probation officers would be advocating more widely for different treatment in the cases of women.

Community sentencing

It is clear from what the participants said that they were not aware of the full range of options in terms of the community sentencing for women. In most cases participants would use the options they were most familiar with and it would appear that sentencers' lack of knowledge could be explained by the fact that women are a minority in the criminal justice system, and so their experience of sentencing women is limited. These findings are supported by the need for better liaison between the judiciary and probation regarding the community options on offer (RCP, 2008); that courts should be presented with all the necessary information on community alternatives for women and their effectiveness (Tombs, 2004) and that sentencers also need to be encouraged to visit women's centres, to understand the extent of sentencing options these can offer (Home Office, 2007; RCP, 2008).

The voluntary sector services are also accountable, in my view, as they have equal responsibility to ensure that criminal justice professionals, including sentencers and probation officers, are up-to-date with any developments in the work they do. Furthermore, they need to share with courts and probation all the positive results their clients achieve.

There are three points to be made here:

- 1) Those community voluntary organisations that support women in the criminal justice system need to work closely with probation to develop robust community alternatives and establish service-level agreements. Sentencers need to feel confident when looking for a punitive element that what community centres offer is not a "soft option".

2) It was widely acknowledged, especially from probation officers, that women's needs may be best met at women's centres. Their engagement can be on a voluntary basis, which has proven to be more effective than enforceable appointments and interventions (McDermott, 2013). The Magistrates' Association (2012) commented on the increase in the number of women finishing their community order by suggesting that this may be a result of the positive work of women's centres.

3) It has been previously suggested that 'judges and magistrates should make greater use of support-focused community sentences, particularly once increased availability of services makes this a viable option for more women offenders' (NEF, 2007; p. 9). The future funding for all the established women-specific projects remains uncertain in the current climate (MoJ, 2013a). In the meantime, it is very important to make appropriate use of the existing resources, not least because lack of awareness means they are not being used as fully as they could be. Under-use can result in loss of funding, which then denies women in the local area the option to attend a centre instead of going to prison. The sustainability of the projects has been acknowledged as a major issue. One of the objectives of the Ministry of Justice for 2013-2016 under the Equality Act 2010 is to encourage the 'provision of gender-specific community services to improve the support for vulnerable women in the criminal justice system' (MoJ, 2012a; p.15).

Individualised justice

Every woman in the criminal justice system should be presumed as vulnerable and receive a gender-specific response (RR3, 2012). Sentencers need to be aware of the numbers and characteristics of women in the criminal justice system (MoJ, 2012a) and, more importantly their low-level offending and low reconviction rates (Hedderman, 2004). Women's general wellbeing should be taken into consideration at every stage of their progress through the courts, with an understanding that the earlier the intervention, the better the outcomes (PRT, 2011a). One of the sentencers spoke about the importance of having this information when each woman appears at court.

In this study sentencers commented on the importance of being provided with information about the women's circumstances on the day of appearance. Similarly, inspection reports have established that sentencers would rather have standard delivery reports, which would include a full risk assessment (Calderbank et al., 2011). Sentencers in this study referred to the court appreciating any independent reports on the defendant, a finding consistent with previous research on sentencing (Gelsthorpe and Loucks, 1997).

Not all women would have their cases adjourned for probation reports and some of them might be sentenced on the day they first appear at the court. It is, however, important for judges and magistrates to be able to make informed bail or sentencing decisions, independent of any requests for probation reports before sentencing, as recommended by NOMS (2012b). The data I collected reinstates the above point of the importance of information on the day.

Community sentencing – use of unpaid work

Sentencing women to unpaid work can prevent them from being unnecessarily imprisoned (Dickie, 1995). Unpaid work is used more with men than with women (Patel and Stanley, 2008). The current placements have mainly been designed for men (Gelsthorpe et al., 2007), but in order to be accessible for women, new placements need to be designed that are responsive to women's particular circumstances and needs (Home Office, 2007).

Participants in this study felt that women may be discriminated against when excluded from unpaid work because of childcare commitments. Again, this strongly supports the need to apply the Equality Act 2010 to eliminate the unfair treatment of women through unequal access to services.

Probation officers have been encouraged to use Community Payback at local women's community centres when available (NOMS, 2012b). It is therefore important that contractors that supply and administer unpaid work need to provide childcare, base some of their projects in women's centres, and initiate placements that are designed specifically for women to ensure that their delivery of Unpaid Work does not exclude or disadvantage female offenders.

Use of remands in custody

According to the Bail Act 1976, an exception to giving bail is when justifying the prevention of suicide (Gelsthorpe and Loucks, 1997); however such practice can further penalise women who could otherwise receive appropriate treatment in the community (NOMS, 2012b).

Only one sentencer agreed with the statement suggesting that women are remanded to custody disproportionately to their offending behaviour. However, the majority of the participants I interviewed mentioned that they had refused bail to women in cases of non-compliance with the court order; for their own safety; or due to lack of an appropriate address. Any of these scenarios can result in prison remand for low level offending behaviour (Home Office, 2007), therefore we can conclude that the use of remand may be inappropriate in *all* of the above instances. Future research could possibly explore whether

sentencers feel that the standard bail conditions should apply to women or whether there may be some differences between males and females.

There are alternative community disposals available for women when their offence does not meet the threshold for statutory supervision such as conditional discharge (NOMS, 2012b). Sentencers mentioned that they use custody as a last resort. But the question is why do they still believe this is the case when there are often other alternatives open to them that they do not use? The Prison Reform Trust has sought to reduce women's imprisonment through targeting disproportionate remands, imprisonment due to breaches and reducing re-offending (PRT, 2012). That suggests progress can be made by focusing resources on the specific circumstances of women.

Below, I set out how each example cited may be an inappropriate use of prison remand. Only a few sentencers mentioned that they remand women for the severity of their offending. My interpretation is that these reasons were not mentioned as much since women's offending hardly poses a risk to the public.

Regarding the mental health needs of women, the court does not always receive information about mental health on time, especially in the absence of a court liaison and diversion scheme. This suggests poor identification and communication among agencies, including mental health services, police, solicitors and probation. Following from that, Corston (Home Office 2007) found that women are often remanded to prison for their own safety, which is an inappropriate practice: prisons should not become places where people are sheltered because there is seen to be no alternative. It has been previously raised that women's behaviour has been over-pathologised and the court may result in inappropriate requests for psychiatric reports in the first place.

The majority of women in the criminal justice system may not suffer from severe and enduring mental illness and therefore would not require hospitalization. However, they are likely to have other emotional and wellbeing needs and it is important that these are identified by court schemes that offer a holistic assessment and intervention. This way, unnecessary remands can be prevented.

Corston (Home Office, 2007) recommended that every court, police station and probation office should have access to liaison and diversion schemes in order to prevent women from being remanded for psychiatric assessments. There have been subsequent reports identifying the need for these schemes have a women-specific response (RR3, 2012). Lord Bradley (2009) also recommended early identification and diversion (ideally happening in police custody) for everyone with mental health needs and Lord Adebowale (2013) recently reiterated it in his review.

Another striking finding from this research was that women were remanded due to lack of appropriate accommodation. There have been some obstacles preventing women from accessing beds from the Bail Accommodation and Support Services (BASS), with the service not being readily accessible to women or as visible to the court as one might have expected (Calderbank et al., 2011).

Some women may also not be suitable for BASS accommodation, which is a national scheme. In these cases, probation or court staff require assistance from the Bail Information Officers, based at courts. NOMS (2012b) also recommends that probation needs to advise the judiciary on the bail provisions for women.

The need for more appropriate bail placements has already been highlighted (Home Office, 2007) and it is still relevant. Liaison and diversion schemes also have an important role to play in identifying accommodation needs, providing appropriate advice to the court and the women themselves and identifying referral pathways to suitable housing.

Another theme is that women can find themselves in prison for breaching court orders. Women in the criminal justice system often live chaotic lives and have a variety of complex needs (Home Office, 2007) therefore lack of appropriate interventions can lead to further offending and isolation from the community.

There is a high number of women who fail to complete their orders due to breaching them and that may reflect on lack of flexibility by sentencers in those cases (Home Office, 2007; Patel and Stanley, 2008). Women on licence, who often have complex needs, are more likely to comply and avoid breaching their licence conditions when their offender manager has managed to build a good relationship, being flexible with them and supporting women in understanding and complying with their conditions (Deedes, 2009).

Sentences need to be tailored to the individual needs of the women and 'extension of gender-specific sentences would tend to reduce the numbers breaching orders, reducing the prison population as a result of successful completion of community sentences' (Magistrates' Association, 2012; p.12). An understanding of the reasons behind these breaches would then warrant appropriate interventions to support women to comply with the conditions imposed, either for bail or a community order (RR3, 2012). That support can often be as simple as providing outreach support to the woman and going with her to key appointments.

Sentencers need to apply some caution when using the Suspended Sentence Order for minor offences as women are likely to find themselves in prison if they breach (Player, 2005; NOMS, 2012b).

Finally, it is essential that sentencers and criminal justice agencies generally receive training on the specific needs that women have and how those needs can be met to reduce offending (Home Office, 2007; PRT, 2011a; NOMS, 2012a; 2012b). The Women's Justice

Taskforce ‘welcomes proposals from the Association of Chief Police Officers (ACPO) and the Magistrates Association that staff training needs assessments should cover women’s offending and local referral services’ (PRT, 2011a).



Conclusions and recommendations

What has been evident in this research is that there are still a lot of things to happen in order to achieve better outcomes for women in the criminal justice system and in effect reduce even further the numbers of women remanded to custody for non-imprisonable offences.

It is apparent that in order to achieve equal outcomes for people, sentencing must take into account their individual needs as equal treatment does not necessarily mean equal outcomes (Home Office, 2007). Further research could explore more the term “equal sentencing” and whether sentencers feel restricted by the current legislation to sentence women differently to men (or be able to justify their decisions when they do so).

Generally, participants seemed to have an understanding of the distinctive needs of women in the criminal justice system and they were willing to take these into consideration and be flexible when making decisions. However, the limited knowledge of resources available could potentially result in not exploring every option available. Informed decisions can be made when all relevant information about each woman’s circumstances is known and sentencers rely mainly on probation for impartial information (especially in the absence of liaison and diversion schemes). Probation officers are responsible then to ensure this is available on time and failure to do so needs to be further investigated.

Again, participants were aware of some of the issues women are facing and discussed how relationships and coercion by others may be catalysts into driving women to criminal behaviour. They also recognised the need for women-specific centres in the community and they were in favour of these options when offered, as there women can be fully supported to address these needs. Further to that, they rightly said that women can be further criminalised due to lack of gender-specific (and gender-sensitive) community sentencing options, especially in relation to community payback options.

Some progress has been made in working towards reducing the imprisonment of women, such as the investment in the Women’s Diversionary Fund. Nevertheless, there needs to be more improvements. There is a need for further investment into diverting women from custody at an early stage of their contact with the criminal justice system, at police stations and at courts. Also, addressing the reason behind breaches and giving proportionate sentences that do not set women up to fail can be a move towards effective diversion.

Women-focused interventions need to be more widely available after being re-designed where appropriate. By that I mean that since the majority of provision has

been created to be delivered to men, they cannot be applicable and relevant to women. Women's needs are widely known and interventions need to be designed taking them into consideration.

The message from participants in this study was that they would welcome an increase in provision and they would be willing to try women-specific options. And now this is a matter for more funding to be invested in that.

Recommendations

1. Probation trusts should improve their briefing arrangements for sentencers about provisions for women. They should put in place a programme of regular liaison with their local courts to inform sentencers about provisions for women offenders and use local voluntary sector resources where available
2. Commissioning of community order programmes and contracts should require contractors to provide for the specific needs and circumstances of female offenders, including child care for women sentenced to community payback and a wider range of non-custodial bail provision for women
3. The government should commission research into the use of and suitability of bail conditions with women
4. The training of probation officers should be more focused on improving probation officer's competence in engaging with female offenders and achieving a better understanding of the particular factors that constitute women's criminogenic needs.
5. NOMS should ensure women-specific liaison and diversion projects are developed by moving resources from women's prisons to programmes based around the Together: for mental wellbeing Forensic Mental Health Practitioner (FMHP) Service model. The FMHP model has been identified as a good practice example by Lord Bradley (2009) and NOMS (2012a).³
6. Further research should be undertaken with sentencers to explore their perceptions of women's offending and their approach to the enforcement of bail conditions, suspended sentences and community orders with women.

³ The National Diversion Programme is a government-led programme of work that aims to roll out liaison and diversion services nationally in court and police settings for defendants with mental health problems and other needs such as learning disabilities. Based on the findings from this research (to be published), it is the utmost importance that these future services include explicit provision to address the needs of women.

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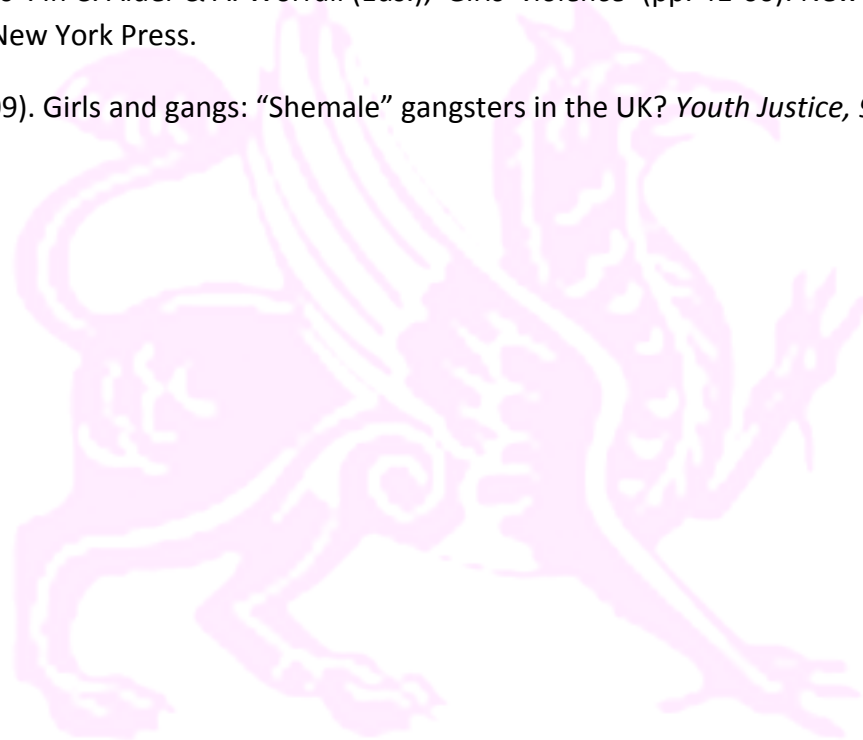
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Appendix I – Women’s Court Liaison and Outreach Project

I currently work for Together: for mental wellbeing as a Women’s Forensic Mental Health practitioner (FMHP). Together is a national mental health charity. Its FMHP project provides court liaison and diversion schemes in magistrates’ courts in London. Defendants with mental health needs are proactively identified, assessed and the practitioners offer high quality reports to sentencers on the day, commenting on the person’s mental health and social care needs and advising them on alternatives to custody where appropriate.

My project at Thames Magistrates’ court is women-specific and is an addition to the generic FMHP project operating at the court. I am at court 5 days a week. I offer an assessment to all of the women appearing at court custody on the day and also accept referrals for bail cases from all court agencies (bench, solicitors, legal advisers and others). I assess women’s needs following Corston’s nine pathways and identify the appropriate intervention to address these needs. I am then able to report to the court the individual woman’s needs and recommend alternative sentencing options to address them. The aim is to divert as many women as possible (and appropriately to their offending) away from custody by providing holistic support around their needs and increase sentencers’ confidence in community resources. It is also a way to find creative ways of engaging women and try things that have not been previously tried.

Further, to that, I have the capacity to offer outreach support to some of these women and take them to key appointments with community agencies (including probation). I also work in partnership with Hackney and Tower Hamlets probation and offer one-to-one interventions to women under a community order.

The particular court is an evaluation site for the Government’s pilots around liaison and diversion, so data is collected on all the clients (male and female) I and my colleagues assess. Linked to that is the development of a housing project (accommodation and advice) funded through the Department of Health. This is attached to the women’s project and allows access to bail accommodation for women from the local boroughs who are at risk of being remanded due to lack of appropriate accommodation.

The women’s project was initially funded in 2009 for a year through the IMPACT Programme of London Probation. It received a further two years’ funding (September 2010-September 2012) from the Women’s Diversionary Fund and one year from the Pilgrim Trust (September 2012- September 2013). At present, it has secured funding till end of March 2014 from the Department of Health.

The model at Thames Magistrates’ Court has been replicated at Camberwell Green and Westminster Magistrates’ courts, the projects have been in operation since middle 2012.

Furthermore, Together, has recently published a guide (*A common sense approach to working with women in the criminal justice system who have health and wellbeing needs*) that criminal justice agencies working with women would be able to use. The guide highlights some of the gender-specific needs that women have and recommends different approaches for supporting women with these needs.



Appendix II – Information Sheet

Information to participate in a research project:

What influences the sentencing of women offenders?

Sentencers' and probation's views

We are inviting you to take part in a research study. The study has received funding from the Griffins Society, as part of the fellowship programmes awarded every year. The Griffins Society researches and promotes effective practice in working with women who are in prison or subject to criminal justice interventions in the community. The information which follows explains the aim and provides an outline of what your participation would involve.

Background information

It has been over 4 years now since Baroness Corston published her review on the vulnerabilities of women in the criminal justice system (2007). As a result of the recommendations, there has been investment by the Government on one-stop shops for women at risk of offending and these are expected to act as alternatives to custody. The number of women in prison has however increased, despite a Government target of a reduction of 400 women in custody by March 2012. Resources to support women in the community are now much more widely available through the national network of women's centres. However, in order for them to be effective, the courts need to hand down sentences that reflect the complex needs and vulnerabilities of women and enable referrals to these centres.

We are aiming at interviewing sentencers and pre-sentence report writers and you have been identified as one of them.

- **What would participation in the research involve for you?**
If you decide to participate, you will be interviewed for up to an hour. The questions asked would be around decision making when sentencing or making proposals for sentencing women.
- **What will happen to the information you provide?**
During the interview, the discussion will be tape-recorded and then transcribed to allow for the analysis of the data. However, if you choose for it not to be recorded then the researcher will keep notes of the discussion. You will be given the opportunity to view

the transcript/ notes before the analysis of the data. All information gathered will be strictly confidential and anonymous. Only the researcher will have access to this information, which will be secured in a locked document. The tape will be destroyed after the interview is transcribed. You would be able to access the final report through Griffins Society's website <http://www.thegriffinsociety.org/index.html>.

You don't have to join the study. You are free to decide not to be in this study or to drop out at any time.

- **What happens if you would like more information about the study?**

You will always be able to contact Matina Marougka on 07702619350 or matina.marougka@london.probation.gsi.gov.uk



Appendix III – Consent Form

Consent Form

Study title:

What influences the sentencing of women offenders? Sentencers' and probation's views

Name of Participant

Name of Researcher

- ◆ The researcher has invited me to take part in this research.
- ◆ I have read and understand what is in the information sheet for the above study. I have a copy of the information to keep.
- ◆ I have had the chance to talk and ask questions about the study and have had these answered satisfactorily.
- ◆ I know what my part will be in the study and I know how long it will take.
- ◆ I understand that personal information is strictly confidential.
- ◆ I freely consent to take part in the study.
- ◆ I can stop taking part at any time without giving any reason
- ◆ If there are any problems or I want to find out more information about the research I know I can contact Matina Marougka on 07702619350

Participant's signature: _____ Date: _____

As the researcher responsible for this research, I confirm that I have explained to the participant named above, the nature and purpose of the research to be undertaken.

Researcher Name: _____

Signature _____

Date: _____

Appendix IV – Interview questions for sentencers

General

How often do you sit at adult Court? How often do you see women defendants?

What type of cases do you usually see at your Court?

Have there been any changes in your local area regarding the numbers that appear in front of you?

Have you noticed any recent changes in women's offending? (*i.e. different offences than before, frequency etc.*)

Factors that may influence decision-making

When sentencing women, have you come across any particular/ common aggravating features?

Have you noticed any differences between male and female defendants (*e.g. in their circumstances, do they have any different needs*)?

How do pre-sentence reports influence your decision? What would you like to see in a PSR to assist with your decision?

In cases that you refuse bail for women, and I am aware of the Bail Act, which are the reasons you give for your decision?

Have you ever imposed on a woman a sentence of a different kind/ outside the range indicated in the sentencing guidelines? Could you give an example?

Alternatives to custody

It has been suggested that women may be remanded in custody disproportionately to their offending, do you have any views on that? (*go on and talk to them about Corston's report*)

Are you aware of any community alternatives to custody that you could use when sentencing a woman? If so, could you tell me which these are?

How do you feel about the community alternatives you could use when sentencing a woman for non-violent offences? Are you satisfied with the options offered?

Would you like anything to be different?

Do you have any suggestions on what needs to be done to keep women out of prison when appropriate?

Appendix V – Interview questions for probation officers

General

What types of cases for women defendants do you usually prepare reports for?

Have there been any changes in your local area regarding the numbers of women you see?

Have you noticed any recent changes in women's offending? (*i.e. different offences than before, frequency etc.*)

Factors that may influence decision-making

When preparing reports for women, have you come across any particular/ common aggravating features?

Have you noticed any differences between male and female defendants (*e.g. in their circumstances, do they have any different needs*)?

How do you think pre-sentence reports influence Court's decision? What information do you include to assist with sentencing?

Have you ever recommended a sentence of a different kind/ outside the range indicated in the sentencing guidelines? Could you give an example? *and explain why you decided to do so. What was your thinking? Did you explain to the sentencer why you did so?*

Alternatives to custody

It has been suggested that women may be remanded in custody disproportionately to their offending, do you have any views on that? (*go on and talk to them about Corston's report*)

Are you aware of any community alternatives (*meaning mainly community centres working with women*) to custody that you could use when recommending a sentence for a woman? If so, could you tell me which these are?

How do you feel about the community alternatives you could use in your report for a woman who committed a non-violent offence? Do you feel that these are sufficient?

Do you have any suggestions on what needs to be done to keep women out of prison when appropriate?

Appendix VI – Poster to advertise project on Magistrates’ Association website

Are you a Judge or Magistrate in the London Justice Area?

Do you have experience of sentencing women?

What influences the sentencing of women offenders?

Sentencers’ and probation’s views

We would really value your participation in a research project!

We are aiming to interview judges and magistrates to get their views on what influences decision making in the sentencing of women. This research project is funded by the Griffins Society fellowship.

This is a qualitative study which will involve interviewing participants (in person, email or phone). All information gathered will be strictly confidential and all participants will remain anonymous.

If you would like more information about the study....

Contact Matina Marougka to discuss the details on 07702619350 or

matina.marougka@london.probation.gsi.gov.uk

Appendix VII – Ethical approval from Judicial Office



JUDICIAL OFFICE

17 July 2012

Matina Marougka
Forensic Mental Health Practitioner
Hackney and Tower Hamlets Probation
(via email)

Dear Ms Marougka,

RE: Request for Judicial Participation in a research project

Thank you for contacting the Judicial Office regarding your research project, on **“What influences the sentencing of women offenders? Sentencers’ and probation’s views.”**

Further to my recent email I am pleased to confirm that the Senior Presiding Judge has considered your application and that your application has been approved, subject to conforming to the usual protocols set out for such research projects, and in particular subject to the following conditions:

- That you undertake to provide the member of the senior judiciary already mentioned with a final draft copy of any report in order to give him an opportunity to comment upon it – before a report is published
- That the anonymity of the members of the judiciary be guaranteed
- That the members of the judiciary interviewed be offered a copy of the transcript in order to give them an opportunity to comment on it

I look forward to receiving written confirmation of your consent to the conditions above.

Please do not hesitate to contact me if you require further assistance.

Yours sincerely

Ruth Thompson

Head of Governance

Ruth Thompson | Head of Governance | Judicial Office 11th Floor | Royal Courts of Justice | Strand | London WC2A 2LL | Tel: 0207 947 6552 www.judiciary.gov.uk



Appendix VIII

Gender differences

well their circumstances are different, because you would have to take into account young children....they are more likely to be looking after elderly relatives as well, so it's more the caring, they are more natural carers otherwise there's not really much difference (DJ_02, female)

And primarily women are going to be the primary carers. Obviously even if there are children and they have been removed, that's another important factor to still take into account...you are looking at the individual but you have to realise that for women some factors are more personal than for males (Pr_07)

Further to that, sentencers would take into consideration any minors the person was caring for and the impact the sentencing could potentially have on others. This has been suggested as an issue in previous research on sentencing (Mair et al., 2008).

a) Sentencers (three judges and seven magistrates)

...knowing about the children and knowing about what alternative childcare arrangements there are...for when people are subject to community orders, the effect of a curfew, I think it's as simple as knowing what time the children have to get up and get out to school and things such as that (DJ_05, male)

b) Probation officers (six out of nine)

...well I am not saying to the court 'they have children therefore they mustn't...have any punishment'...So I do try where custody is not inevitable for a suspended sentence order, cause you'd still be punished if you don't comply you can go to prison and they normally are the sole carers, I do stress that...the children will be affected(Pr_03)

Women-specific needs

Coercion by others

a) Sentencers (six out of 16)

...the power relationships between men and women can leave women in a particularly...different set of circumstances ...one sometimes get the

feeling that their sense of independence and their independent decision-making ability has been compromised and that they are unable effectively to be selfish about what they do, which cuts down their choices, so they may offend in ways which they don't respond as it were purely for themselves (DJ_03, male)

...if I resort to clichés and say that typically we see "the sad, the mad and the bad" in front of us ... what I tend not to see...or at least what I do believe I see is women who are being exploited at forced into criminal act by other people (Ma_08, male)

b) Probation officers (five out of nine)

I suppose they are more influenced by their male partners, ehm...which is seen in their offending, so they might be more likely to offend to please their partner or if their partner is telling them to offend (Pr_05)

Difficult relationships

a) Sentencers (five out of 16)

...the common factor is that many of them will say that they've been abused in one way or another...that's been a factor throughout their lives either from parents or from previous relationships (DJ_01, female)

b) Probation officers (all participants)

I think relationships that are quite....turbulent...they don't seem to have good relationships with...whether it's a partner or their mum or sisters, their relationships are quite complex....even the relationships with friends tend to be quite complex as well... (Pr_04)

...and I guess in a way sometimes I find things like that, abusive background, childhoods and things, it's a common theme in women's offending (Pr_06)

Emotional difficulties/ self-esteem

a) Sentencers (seven out of 16)

We get a lot of women who are more generally mildly depressed, well that could be as a result of being in a controlling relationship or being stuck at home and isolated...it could just be that generally women have a low feeling of self worth in society, I don't know but I would have said that there is a difference in the men....I think there is a link to the sort of

crimes, you know, they commit because drugs and alcohol are a way of dealing with changes in mood (Ma_05, female)

b) Probation officers (all)

...that [mental health] does tend to be a factor although more prominent with some than others...but they've got a history of depression or self harm or something like that, ehm...and some times the self harm, you know the alcohol itself is that sort of means of coping with undetected mental health issues I think (Pr_02)

Social circumstances

a) Sentencers (four out of 16, magistrates only)

There are...it's very rare to find offences of dishonesty among women that have anything to do with just pure acquisitiveness, usually there's an element [of] family hardship and deprivation, which is a motivator for that kind of behaviour. With men, you don't always see that (Ma_09, female)

b) Probation officers (three out of nine)

...because it's always such a small amount of women...it's quite difficult to generalise with them. But I mean they [offences] are generally kind of either related to their children or related to financial difficulties generally (Pr_05)

Community resources

Limited gender-specific provision

a) Sentencers (three judges and four magistrates)

I am aware that there are in certain areas more or less probation facilities for dealing with female offenders and that there is clearly, I assume because of the proportions of male defendants, more resources focused on dealing with them just because of the greater numbers(DJ_03, male)

b) Probation officers (seven out of nine)

...you know I was really interested in the Corston report that came out the year I've started training and it was all really big news and it wasn't really feel like much has kind of changed actually in terms of the way

that women are dealt with...but we've got these few...a couple more women specific....female specific kind of specified activities or whatever (Pr_02)

It was felt that the lack of provision could potentially put a number of women at disadvantage and lead to unequal treatment of genders.

a) Sentencers (two judges and two magistrates)

I think one of the...biggest things somehow is the intervention to give women access to the same provision as men who have been sentenced...But at the same time being mindful that you need to support them in serving the same punishment with somebody who hasn't got those circumstances... so people can see that there is sentencing parity but they (women) aren't being disadvantaged because of the circumstances(Ma_06, female)

b) Probation officers (seven out of nine)

I think they have made quite a few alternatives and there's like the women's ART programme, Aggression Replacement Training programme...but then sometimes that might mean they have to travel all the way to Camden to do it instead of sort of be here, so that's probably not fair so I guess it would be better if there was morethey were more localised, but I guess it's cause there's not as many women in these areas...it's been such a small group (Pr_05)

Lack of knowledge

a) Sentencers (two judges and five magistrates)

there are many voluntary organisations that could offer help to women offenders but they don't often get brought to attention of the magistrates in a court setting at the time of sentencing(Ma_09, female)

b) Probation officers (four out of nine)

...the problem is there is probably a lot more out there that I don't know about but there is not sort of joined up working with probation and community and third sector organisations and that's... there are lots of stuff that we could refer people to but we just don't have that knowledge (Pr_07)

Creative/ flexible use of resources

Eight sentencers commented on the creativity/ flexibility required when sentencing. That could mean that they would try different things and sometimes combine statutory with voluntary service provision. In addition, probation officers revealed that they preferred referring women to voluntary agencies where they can have their needs met, rather than proposing orders with many enforceable requirements. According to participants' experiences, women's engagement was best when they were not compelled to comply with orders and therefore attended appointments with community services voluntarily. Thus, the risk of breaching orders was significantly reduced.

a) Sentencers (four judges and five magistrates)

...you can try and break up the pattern of what they are doing by deferring sentence and try to give them space to make effective change rather than just hitting them with custodial sentences. But also...trying to get an idea as to why their offending has started(DJ_03, male)

b) Probation officers (all)

So if I ... feel that she would benefit from doing a particular activity and I can't legally put it down as a specified activity in the report, I may comment on my report that the supervision plan will include objectives to undertake this activity. So you can be quite inventive and sort of...cause all proposals should be bespoke, you know, it shouldn't just be a one size fits all... (Pr_07)

ENDS