

**BRF07-18**

TB/KF

## **APPG Women in the Penal System: Inquiry into Sentencing Women**

A submission from Napo the Trade Union and Professional Association for Probation and Family Court Staff – 14<sup>th</sup> May 2018

### **Introduction**

In compiling this written evidence Napo has consulted with its members who work across all grades within the probation service, both public and private sector. This has enabled Napo to get first-hand experience from front line practitioners working in the Courts, writing pre-sentence reports, supervising female clients and working with women in the prison estate.

This paper has also relied on HMIP reports over the 2 years and MOJ figures on sentencing. Some evidence has also been gained from talking to Community Rehabilitation Companies (CRCs) directly, but these will not be identified in this paper due to commercial confidentiality. What is most disappointing is that Napo's evidence identifies that little has changed since the Corston report was published. In fact, those recommendations that had been implemented have now been lost as a result of Transforming Rehabilitation. Whilst some of the CRCs have been identified by HMI Probation to be doing positive work with women, this is still limited and restricted to just a few areas.

Women clients are resource intensive due to their multiple needs and low numbers (relative to the total male prison population, yet still unacceptably disproportionate) and as such, many CRCs are not in a position to, or are not willing to, invest. Napo supports a full review of women in the criminal justice system, development of bespoke support and services designed to affect their specific needs and calls on the government to invest properly in this area of justice.

### **The impact of short custodial sentences on women**

One of the biggest impacts of female imprisonment is that on children as women are more likely to be the carers of their children than men who go to prison. Very little short and long term research has been done on the severity of this impact, but it is likely that the separation and lack of contact could be significant. Whilst child care commitments should not exclude the use of a prison sentence, it should be a mitigating factor in terms of the state's duty of care to the child, the cost of separation both emotionally and financially and the likelihood of the reduction of ongoing contact between mother and child given the location of women's prisons around the country.

It is not just during the sentence that this issue is important. Many women lose accommodation and employment as well as family and social support links following a prison sentence, resulting in children being in care for longer and suffering long-term separation from their mothers. If women can be managed in the community (the majority of whom can, as generally they pose little or no risk of harm) then society as a whole will benefit in the short and long term.

Since TR and the Offender Rehabilitation Act 2014, prisoners released from a short-term sentence are now supervised by the probation service for the remainder of their custodial sentence (when they are liable to recall) and then for a further period of post sentence supervision, (PSS), bringing their total sentence up to 12 months. This has had a disastrous impact on women who are much more likely to receive short sentences than their male counterparts. Rates of recall have significantly increased with 1,000 women recalled in the last 12 months. The majority of these are for minor misdemeanours such as failure to attend probation meetings. This has had an impact on the female prison population (that has already seen a disproportionate increase over recent years), further disruption for their families and housing as well as a deleterious financial impact because benefits or earnings will be lost. Napo opposed this blanket approach to post sentence supervision saying that whilst supervision of those on short-term sentences was welcomed, the need for such supervision should be ascertained at the point of sentence rather than being obligatory for all. The nature of the PSS is also very limited, with many CRCs doing little or nothing during this period of time as there is little financial reward for doing so. As such, the individual's needs are not being met. Much better then, if it is felt that PSS is needed, that this is bespoke to the individual and not simply a tick box exercise.

Furthermore, prison does little or nothing to address female offenders' needs and there is clear evidence to show that many women have multiple needs which directly impact on their offending; for example being the victims of abuse, substance misuse and mental health issues. During a short-term sentence it is nigh on impossible to access services and support to address these issues and women are simply serving their time and walking out into society with very little. With the majority of women being in prison for non-violent offences and mainly theft linked to poverty and substance misuse, it begs the question as to why prison is being used at all.

Despite making up just 5% of the prison population, women prisoners have a considerably higher rate of deaths, suicide and self-harm. This also questions whether or not many women should be in prison when in fact it is a mental health issue that needs addressing. Examples over the years include women who have been sent to prison for arson because they have set themselves on fire in an attempt to commit suicide, later taking their own lives whilst in prison. This has a devastating impact not just on the women themselves and their families, but society as a whole. Custody should be the last resort but other options for mental health issues must be made available to the courts.

## **Community sentences/initiatives that are particularly tailored towards support and rehabilitation of women as alternatives to short term custodial sentences**

Due to changes in government funding many women's centres around the country have been closing; including the flagship Asha Centre in Worcester whose holistic model was replicated all over the UK. This has significantly reduced the interventions that are specifically tailored to women's needs and must be addressed if we are to see a future reduction in the female prison population and a reduction in offending. As stated before, women have complex, often multiple needs, and centres that provide a holistic approach are able to address a wide range of issues, not just with women in the justice system but across the board.

As a result of Transforming Rehabilitation CRCs are most likely to supervise women due to their low risk of harm. As previously stated they are being failed by the increased chance of recall and the largely ineffective post-sentence supervision. This is further compounded by a lack of desire by the CRCs to invest in this group of offenders. Women are resource intensive due to their particular needs and therefore there is little or no financial incentive for private providers of rehabilitation services. The TR model effectively excluded them and any rehabilitation process. Any review of the justice system and indeed probation must include a women specific model and this must be backed by action against those providers who fail to comply.

Willowdene, a 3<sup>rd</sup> sector organisation working in Shropshire had previously worked with West Mercia Probation Trust to develop a direct alternative to prison for women. It was based on the principle of commissioning prison beds from local prison and using that money to invest directly into community alternatives. In this case it was a women's residential centre where women could spend their sentence but still remain in the community and have access to their children. They also learned life skills such as cooking as well as developing employment skills and undertaking offence prevention focused work. Clearly this is a resource intensive model but one that should be explored if we are serious about reducing women in custody and the justice system as a whole.

There has been very little research in recent years about what works for women offenders. This is key if we are to build an effective approach that meets the needs of women and addresses criminogenic needs. This lack of research is further compounded when looking at BAME women in the justice system. BAME women make up 8% of the UK population but 31% of the prison population. BAME women have a very different experience with the justice system. They are likely to suffer double stigma and isolation as a result of their families and communities.

A further aspect of any bespoke interventions must also look at LGBT+ offenders. There is currently no official line with regards to whether a trans person goes to a male or female establishment and little work has been done to develop training for practitioners working with trans people. Issues such as domestic violence programmes for example focus very much on the male perpetrator but do not specifically cover same sex couples. Greater use of 3<sup>rd</sup> sector organisations that are able to do specialised work needs to be developed but again this is being stifled by TR and has been evidenced in a recent report.

As highlighted by the Criminal Justice Alliance in a publication in May 2018, 3 in 5 women offenders have experienced domestic violence. This staggering statistic must form part of any bespoke female intervention strategy with programmes work including recovery of domestic violence and recognising this as a major criminogenic need. The trauma experienced by survivors of abuse can be further compounded by any experience of custody. Provision of support for survivors is very 'hit or miss', due to closures of centres, etc.

A large proportion of women in custody are there for offences committed under duress from abusive partners but this is a difficult defence to use in court. There needs to be a review of how women are dealt with in the courts, how we train sentencers, as well as introducing a statutory defence for women who offend as a result of coercion.

### **The impact of probation reforms on the use of community sentences**

Much of the impact of TR has been covered already in this submission. However, it cannot be stressed enough that women offenders were effectively ignored during the reform programme instigated against all advice by the then Secretary of State, Chris Grayling, and much of what had been achieved from the first Corston report has now been lost.

CLINKS recently published a report looking at the involvement of the 3<sup>rd</sup> sector and voluntary organisations in probation. The results were disappointing but not surprising. Yet again the deeply flawed model of TR is at root of the problem. The model itself actually did the opposite of the stated policy intention which was to increase 3<sup>rd</sup> sector involvement in probation and create a wider market of providers.

The model has in fact excluded organisations with the exception of a few very large organisations that managed to get into the tier one contracts. The result of this is that 3<sup>rd</sup> sector organisations are not being funded at the required levels by probation providers and are in fact propping the services up using charitable funds. This is clearly not sustainable and leads to postcode lotteries of what is available and inconsistent service provision. The NPS now has to commission services via the CRCs and the Rate Card. This means that the NPS are paying over the odds for 3<sup>rd</sup> sector services that would be cheaper if they went to the organisation directly. As such the NPS is not utilising this option and services are not being provided to some of the most dangerous high risk offenders. Access to these services are also vital for those who work with women, whether it be a women's centre, Rape Crisis or Women's Aid, etc.

There has been a significant drop in the number of community sentences being imposed by both Magistrates and Crown Courts. This is being attributed to TR for a number of reasons. Following TR the MOJ imposed new rules on the type of pre-sentence reports that can be used with an arbitrary target of 90% of reports to be delivered on the day or within 5 working days, and banned magistrates from ordering full 15-day pre-sentence reports. These reports are now only to be used in exceptional circumstances and for high risk of harm offenders. This means that sentencers receive far less information than previously as a direct result of cost

cutting. Little or no safeguarding checks are carried out in advance of sentencing including domestic violence checks.

Probation is no longer able to fully assess and analyse a woman's full situation including any risks to her wellbeing. This reduces the author's ability to propose the correct sentence and outline their rationale to the Court.

The MOJ have now issued guidelines about Suspended Sentence Orders (SSO) stating that NPS staff are no longer allowed to propose an SSO in a pre-sentence report. The reason they give is that there has been a 50% increase in the use of SSOs and there is a concern they are being used inappropriately which could lead to an increase in the prison population. Napo is not convinced by this argument. Napo believes that a lack of training on how and when an SSO should be used will lead to sentencers resorting to prison instead. This may have a disproportionate impact on women when there are more likely to be mitigating circumstances that would warrant an SSO and this needs to be fully explained to the Court.

Finally, it is strongly believed by Napo and other stakeholders that TR has resulted in a lack of confidence on the CRCs ability to deliver probation and the use of Community Orders has dropped. NPS staff who write the pre-sentence reports are not always aware of what the CRC may be offering, particularly if this is an out of area report. The two key sentences that attract the most payment for CRCs are Unpaid Work and Accredited Programmes. Both of these sentences can be problematic for women in terms of provision or ability to carry them out. They are more likely to get an order with a Rehabilitation Requirement as a result. These attract little in terms of financial reward, and as highlighted by HMIP last year, have little in terms of structure or substance. Yet again women will find themselves being left behind in terms of interventions.

Napo has made major oral and written contributions to the Justice Select Committee on the impact of the Transforming Rehabilitation programme and these can be made available on request.