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Sentencers and sentenced: exploring knowledge, agency and sentencing women to prison

- The All Party Parliamentary Group (APPG) on Women in the Penal System has conducted an inquiry into the sentencing of women
- Women who become tangled up in the criminal justice system are among the most disadvantaged and vulnerable people in society, and prison makes things worse not better for them
- Evidence published by the Ministry of Justice shows that short sentences are less effective than community sentences at supporting people to desist from crime (Hillier et al, 2015)
- Despite this evidence, women continue to be sent to prison, overwhelmingly for short periods, while the number of community sentences has decreased
- The inquiry found that the failures of the Transforming Rehabilitation (TR) reforms have undermined magistrates' confidence in community sentences
- Magistrates often lack knowledge about the circumstances of women's lives and the likely impact of prison, as well as about what specialist provision for women is available in their local area
- Magistrates can diverge from sentencing guidelines if it is in the interests of justice to do so. However, custody is often viewed as the only option for those who offend repeatedly, despite evidence that prison is least effective for this group
- Custodial sentences of less than 12 months should be abolished for women
- Any future probation model should include ring-fenced funding for the provision of specialist services for women.

The APPG

The APPG on Women in the Penal System was set up in July 2009 with Baroness Corston as Chair and administrative support provided by the Howard League for Penal Reform. The group comprises MPs and Peers from all parties and works to increase knowledge and awareness of issues around women in the penal system as well as push for the full implementation of the recommendations of The Corston Report. This inquiry asked why, despite the overwhelming evidence in favour of community support, high numbers of women are still being sent to prison – and what can be done about this. As the majority of women serve short sentences, the scope was limited to magistrates' courts.

The inquiry received 12 pieces of written evidence from charities, academics, women's centres, a trade union and a Police and Crime Commissioner (PCC). The inquiry heard oral evidence from John Bache, the Chair of the Magistrates Association (MA), and Dame Glenys Stacey, the Chief Inspector of Probation, and visited a problem-solving court. This evidence, alongside reports from the Justice Select Committee, Her Majesty's Inspectorate of Probation and the Ministry of Justice, forms the basis of this report.

What is already known about sentencing women to prison

The demographics of female imprisonment are well known and researched. Practitioners, policy-makers, academics and politicians recognise that women who become tangled up in the criminal justice system are among the most disadvantaged and vulnerable people in society. These women have experienced poverty, mental ill health, addiction, abuse and trauma. Almost half of women in prison report having suffered domestic violence and more than half report having experienced emotional, physical or sexual abuse during childhood (Women in Prison).

It is now appreciated that prison makes things worse, not better, for women. Women do not receive adequate support for their mental health needs while in prison and the consequences of this can be catastrophic. In 2017 there were 8,317 incidents of self-injury by women in prison (MoJ, 2018d). 93 women died in prison between March 2007 and March 2018, of whom 37 lost their lives through suicide (INQUEST, 2018).

The damage done by imprisonment persists long after release. After even a few weeks in prison women are particularly vulnerable to losing their jobs, homes and children. Even fewer women than men leaving prison find employment (MoJ, 2013). Between April and June 2017 a fifth of women leaving prison under Community Rehabilitation Company (CRC) supervision were recorded as homeless at the point of release (Parliamentary Question, 2017). There is an increasing recognition of the ways in which prison re-traumatises women (e.g. Public Health England, 2018), which undermines any perception of prison as a proportionate or appropriate response or punishment.

Recent statements from ministers have emphasised that short sentences are known to be less effective at preventing reoffending than community sentences (Hillier et al, 2015). This is of particular relevance to women, who tend to serve shorter sentences than men. In 2017, just over two thirds of women sentenced to immediate custody were given sentences of less than six months and 246 women were sentenced to prison for less than two weeks (Parliamentary Question, 2018).

In contrast, Ministry of Justice analysis (2015) and numerous evaluations of women's centres have shown that women's centres are effective at reducing offending and supporting women to change their lives. Women's centres are better value for money than prison: modelling suggests that investing £18million per year in women's centres could save almost £1billion over five years (Revolving Doors Agency, 2011). Women are more likely than men to comply with a community order (Gerry and Harris, 2016).

Imprisoning women is almost never justifiable from the perspective of public protection. In the year to June 2017, more women were sent to prison to serve a sentence for theft than for violence against the person, robbery, sexual offences, fraud, drugs, and motoring offences combined (Prison Reform Trust, 2017). Only three per cent of the female prison population is assessed as representing a high or very high risk of harm to other people (Justice Committee, 2013).

Despite this body of evidence, the number of community orders given to women was down by nine per cent in the first quarter of 2018 compared with the same period in 2017 (MoJ, 2018b). There were 4,836 sentenced first receptions of women into prison in 2017, reflecting almost no change from the previous two years and at the end of June 2018 there were 3,803 women in prison (MoJ, 2018c and 2018a).

Three factors driving the continued sentencing of women to prison

The evidence received by the inquiry suggested three key factors contributing to this state of affairs.

1. The problems facing probation

The TR reforms split the probation service at the point of service delivery and created CRCs. CRCs have been criticised for supervision arrangements which sometimes rely on people being told to give their probation officer a phone call every few weeks (HM Inspectorate of Probation, 2017). The Justice Committee (2018) has said that they were unconvinced that the TR model could ever deliver an effective or viable probation service and it was announced in 2018 that CRC contracts would be terminated early.

The failure of TR has undermined the confidence of magistrates in community sentences and reduced the range of options open to them when sentencing women. Women's centres are well-placed to deliver effective sentences, but several received no funding from CRCs. Several women's centres were offered contracts which threatened to degrade the quality of their service so badly that they turned them down (APPG for Women in the Penal System, 2016).

2. Knowledge gaps

The inquiry unearthed three 'knowledge gaps'. First, the inquiry heard that magistrates sometimes lack knowledge about the circumstances of women's lives and the likely impact of prison on an individual. Most court reports are now delivered on the day and lack crucial details. It is not always possible to tell an individual's gender from reading their pre-sentence report (HMI Probation, 2016). When detailed reports are prepared, pressures on the women's sector often mean that voluntary sector organisations supporting women do not have the time to contribute to them. Organisations like women's centres are skilled at building trusting relationships with women; without their involvement it is less likely that women will disclose their experiences (Clinks, 2018).

Misconceptions and implicit bias can fill this knowledge gap. The inquiry heard that some magistrates inaccurately regard prisons as 'places of safety' (Agenda, 2018). The lack of ethnic and socio-economic diversity in the magistracy leaves open the potential for damaging bias where gender intersects with other factors such as ethnicity, class and religion. Training could address this, but budgets have been cut and magistrates are not always aware of relevant resources developed by the charity sector or current evidence and research.

Second, the inquiry heard that sentencers lack knowledge about women-specific services such as women's centres in their local area, which lowers their confidence in community sentences. This again stems from cuts to training budgets. It also appears to reflect a culture among the magistracy of regarding information about local services as something that should be supplied to sentencers, rather than proactively sought.

Third, there are knowledge gaps among probation staff. The inquiry heard that some CRC staff do not seem to understand why the services of organisations commissioned by the CRC are necessary to meet the unique needs of women, so can be reluctant to refer women to these organisations (Clinks, 2018). The Chief Inspector of Probation found that most CRC probation officers lack training or guidance on working with women (HMI Probation, 2016). The National Probation Service (NPS) staff writing reports sometimes lack knowledge about, or confidence in, exactly what is offered by the relevant CRC.

3. Failure to regard children's rights frameworks

Women who offend are often the primary or sole carers for children and custodial sentences can have a very negative impact on these children. The inquiry heard about the range of duties on the court to consider dependent children. The United Nations Bangkok Rules specify that the impact of a sentence on a woman's children should be taken into account in sentencing if a woman is a primary or sole carer. Every sentencing guideline now includes being a primary/sole carer as a potential mitigating factor. Case law has established that the impact on a child may be what 'tips the scales' such that a proportionate sentence becomes disproportionate.

However, research has shown that the weight given to dependents as a mitigating factor, and the understanding of the relevant guidelines and case law, is extremely varied among crown court judges (Minson, 2018). Given the pressures on magistrates' courts it seems highly likely that at least the same variability pervades decisions in magistrates' courts too.

Sentencers are empowered to diverge from guidelines where it is in the interests of justice to do so (Magistrates Association, 2018). The exercising of this discretion is of particular relevance in the cases of women who offend repeatedly. The inquiry heard that magistrates sometimes

feel they have no choice but custody when faced with a woman with a history of repeat offending. Yet, research has shown that short sentences are particularly ineffective at reducing reoffending for exactly these 'prolific offenders' (Hillier and Mews, 2018). It is precisely when magistrates feel they have no choice but to sentence to prison, that prison is a particularly ineffective means of achieving desistance.

What next?

Scotland introduced a presumption against custodial sentences of up to three months which came into force in 2011. The number of people receiving a custodial sentence of less than three months fell by 41 per cent between 2009-10 and 2016-7. Sentences of three to six months are now at lower levels than in 2009-10 (Scottish Government, 2018). The direction of travel in Scotland is positive and there are plans to extend the presumption to terms of less than a year (Scottish Government, 2016).

The evidence heard by the inquiry demonstrates that the case against short prison sentences is overwhelming for women. The APPG recommends that custodial sentences of less than 12 months are abolished for women. This would follow naturally from the statements made by ministers in recent months about the ineffectiveness of short sentences (e.g. The Telegraph, 2018) and would reflect the wealth of research that exists about women's imprisonment. Abolishing short sentences for women would not have serious resource implications and would save lives. Ministers could leave as their legacy the brave and pioneering decision to eliminate short sentences for women.

The response to the lack of confidence in community sentences should not be to give magistrates increased oversight of, or a role in monitoring, community sentences. This risks giving women more onerous reporting obligations without addressing the root issues. Confidence in probation will only return in time if proper investment is made. The early termination of CRC contracts offers an opportunity for the Ministry of Justice to address the issue of specialist provision for women. Under any future probation model, there needs to be protected, ring-fenced funding specifically for women's services; TR has shown that these services will not arise from the market.

To address the knowledge gaps identified, there should be women's champions in the NPS to write women's court reports. Report-writers should ask women what support they need and the court should take these answers seriously, respecting women's understanding of their situation. Reports should set out relevant details of women's experiences of abusive relationships, mental health issues and caring responsibilities, as well as specifying in very practical terms what the impact of a particular sentence would be on a woman's housing, job and children. This would help to reduce the risk of sentence inflation happening with community sentences.

While there is value in the courts having this extra information, it needs to be handled carefully. Women should not be criminalised in order to access services and knowledge about women's vulnerabilities must not be used to justify subtle 'up-tariffing'. Women in the criminal justice system have often had power exercised on them by others. Those involved in sentencing should always be wary of attempts, even if well-meaning, to exercise power or control over women, restrict their liberty or disregard their agency.

About the Howard League for Penal Reform

The Howard League is a national charity working for less crime, safer communities and fewer people in prison.

We campaign, research and take legal action on a wide range of issues. We work with parliament, the media, criminal justice professionals, students and members of the public, influencing debate and forcing through meaningful change.

References for this report are available on our website:

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