



Reset: Rethinking remand for women

Howard League for Penal Reform

Key points

- The presumption of innocence and the right to liberty are fundamental principles of a fair criminal justice system. Remanding a person to prison runs contrary to these key notions and should be an exceptional measure
- Too often women are inappropriately remanded into custody – almost two-thirds of women remanded to prison by magistrates are either found not guilty or are given a community outcome
- The vast majority of women remanded to prison to await trial or sentence could safely be released on bail, to the advantage of their families, their communities and the wider criminal justice system
- Being remanded to prison is a particularly devastating and punitive experience for women, and it is damaging to any children who depend on them
- Foreign national and Black, Asian and minority ethnic women are even more likely to be remanded without sufficient reason
- Under a law redolent of Victorian values, too many women are remanded to prison for their “own protection”
- The current approach to remand hearings penalises women – remand decision-making needs to be rethought and reformed to enable judges and magistrates to take a distinct approach to women
- Remand decisions for women are critically important and often complex and demanding. They need to be acknowledged as such
- In order to make fair and appropriate remand decisions, judges and magistrates need guidance and good information about those appearing before them, particularly women, and about the services they can access in the community
- The Howard League for Penal Reform is working for significant legislative and practice reform of remand processes to ensure that women are only remanded to prison in the most exceptional and serious cases.

About this briefing

As the courts return to nearer normal levels of activity following lockdown, the need for vigilance to reduce the numbers of people entering the prison system remains critical. Reducing remand to prison to await trial or sentence should be a key focus – particularly for women. Women on remand account for almost half of the women received into prison – accounting for 3,236 of the 7,050 first receptions into prison in 2019 (Ministry of Justice (MoJ) 2020a, table A2.1i).

With this imperative in mind, this briefing invites policymakers and practitioners to rethink the practice of remand into custody for women. The briefing draws on evidence presented to the All Party Parliamentary Group on Women in the Penal System and on a review of the available research, prison inspection reports and policy materials. The Howard League has also engaged with lawyers, legal advisers, magistrates and District Judges, as well as with policy officials and non-governmental organisations working with women in the criminal justice system.

With limited exceptions, people appearing in court have a general right to be released on bail, under the Bail Act 1976. But a woman, or a man, can be remanded into custody, that is sent to prison until their trial or sentence, if the court has a well-grounded concern that they will:

- Fail to attend court when required, or
- Commit further offences before trial or sentence, or
- Interfere with witnesses or obstruct the course of justice in some other way.

In this briefing we consider the evidence that remand into prison is being over-used for women, the particular problems which they experience as a result, and what might be causing this unnecessary imprisonment of women. The briefing highlights the need to reform the approach to custodial remands and identifies changes which will reduce this unnecessary imprisonment of women.

The overuse of remand for women

Disproportionate use of remand for women

Women commit fewer and less violent offences than men (MoJ 2018) and the overwhelming majority of women could be safely managed in the community whilst they await trial or sentence. Yet women on remand are over-represented in the prison system. As a snapshot, in 2019, a staggering 46 per cent of women entering prison did so on remand (MoJ 2020a, table A2.1i). Yet almost 9 in 10 women on remand are judged to present a low to medium risk of serious harm (MoJ 2018). The most common offence for which women are remanded to prison is theft – women were remanded into custody for theft 792 times in 2019 (MoJ 2020a, table A2.5i).

A growing problem

Prior to the Coronavirus pandemic the number of women held in prison on remand had been growing. On 31 December 2019, the number of adults in prison on remand stood at a four-year high but the rise was particularly marked for women – the number of remanded women had increased by 21 per cent on the previous year (MoJ 2020b). This increase in the number of women in prison on remand is mirrored in some other countries, including in Australia (NSW 2020).

Measures to reduce use of remand to prison are not working

In 2012, in response to concerns about the overuse of remand, particularly in less serious cases, Parliament restricted the circumstances in which bail could be refused (Legal Aid, Sentencing and Punishment of Offenders Act 2012). Where a person faces an offence for which they could be sent to prison, the court's powers to remand a person are very significantly reduced if there is no 'real prospect' that a prison sentence would be imposed on conviction.

However, this has not succeeded in preventing unnecessary remands of women. In 2019, 65 per cent of women remanded into prison and subsequently dealt with by the magistrates' courts did not go on to receive an immediate prison sentence (MoJ 2020c). The position is

better in the crown court, but even there 40 per cent of women remanded to prison in 2019 did not subsequently receive an immediate custodial sentence (MoJ 2020d).

Ethnic disproportionality

This overuse of remand to prison is more pronounced for Black, Asian and minority ethnic women (Prison Reform Trust 2017). This is particularly the case in magistrates' courts where, in 2019, 59 per cent of white women remanded in custody did not go on to receive an immediate prison sentence, compared with 73 per cent of Black women, 79 per cent of Asian women, and 78 per cent of women in the 'Chinese and other' group (MoJ 2020c). The Lammy Review (2017) (recommendation 11) has invited more detailed examination of magistrates' decision-making in relation to remand decisions for Black, Asian and minority ethnic women.

The situation in the crown courts has recently worsened as well. Despite the overall drop in the number of cases coming before the courts, the number of women being remanded to prison in crown courts has risen over the last year. For all women appearing in the crown court there was a six per cent rise in the number of remands in 2019 in comparison with 2018. However, the situation is even more marked for ethnic minority women – in 2018, 199 Black, Asian and minority ethnic women were remanded into custody in the crown court. In 2019 that figure rose 38 per cent to 275 (MoJ 2020d).

Foreign national women remanded in large numbers

Foreign national women tend also to be over-represented in the group of women remanded into custody. Although they represent only eight per cent of the general population they account for almost 19 per cent of those remanded in custody (PRT/Hibiscus 2018). This is a long-standing problem. The most recent thematic review of remanded prisoners conducted by HM Inspectorate of Prisons (HMIP), in 2012, found that 25 per cent of remanded women said they were foreign nationals, in comparison with 16 per cent of sentenced women (HMIP 2012).

Why is remand into custody a problem for women in particular?

Particular challenges

Remand into prison can be particularly gruelling for women, as they cope with the uncertainty of awaiting trial, the sudden separation from family and other networks, and the challenge of adjusting to a new regime. Difficulties coping with remand in custody are reflected in the growing number of incidents of self-injury by women on remand – in 2019 there were 1917 such incidents, the highest number in a year since 2011 (MoJ 2020e table 2.6).

A person can only be held in police custody if he or she has been assessed as fit to be detained. But there is no such requirement for those being remanded to prison. Women entering prison often have pressing health needs. As an illustration, the most recent inspection report for Styal Prison notes: '95% of women said that they had problems on arrival. 53% said they had a problem with illicit drugs on arrival and 27% had an alcohol problem. 72% reported having a mental health problem' (HMIP 2018). Yet prisons routinely receive very little information about the women they receive on remand to enable them to support their particular needs (Pattinson 2012).

Remand for 'own protection'

In addition to the usual exceptions to the right to bail, under the Bail Act 1976 a court can also remand a person into custody for their 'own protection', even where their alleged offence cannot be punished with imprisonment. This power is not often used. However where it is, it is often used to remand to prison a woman in crisis who presents a risk of harm to herself, particularly where her mental health needs are complex and unmet in the community (Marougka 2012). Using penal measures to provide therapeutic support is inappropriate and ineffective (Bradley 2009). Prisons are not equipped to care for these women, and looking after them in custody can be very difficult and dangerous, for the women and for staff (Pattinson 2016). This provision allows judges and magistrates to use prison as a 'place of safety' even though prisons are not safe for

those in crisis and prison officers do not have specialist training to support women in those circumstances. The Howard League is doing further work on legislative reform in this area.

Remand prisoners are less likely to access services and engage rights

Despite the increased vulnerability of people remanded to prison, HMIP's 2012 review identified that many 'had a poorer regime, less support and less preparation for release' (HMIP 2012). Remand prisoners are not serving sentences and so are entitled to a wider range of rights than other prisoners (Prison Rules 1999). HMIP's review, however, noted that remand prisoners often had little awareness of the support available and were unlikely to engage their enhanced rights, including support to make bail applications. Recent inspection reports for female prisons holding women on remand show that some efforts are now being made to provide tailored support for remanded women. For example, Foston Hall provides specific courses tailored to remanded women (HMIP 2019). However the support of a dedicated supervising officer, and assistance to make bail applications and to secure housing on release, is not consistently provided to all women on remand.

The devastating impact on families

Most remands into custody happen immediately following arrest. In these circumstances women brought directly from the police cells to court routinely have no opportunity to make arrangements for any children or dependents they care for. Coming home to an empty house can be extremely traumatic and confusing for a child (Beresford 2018).

When a mother is sentenced to prison this can have a devastating effect on her dependants. Children experience a deep and debilitating sense of loss –described as 'confounding grief' (Minson 2019). Women often lose their employment and their home and there is a real risk that their children will be taken into care. Indeed, research suggests that less than 5% of children of imprisoned mothers stay in their own homes (Caddle and Crisp 1997) and their own life chances can be seriously reduced as a result of their mother's imprisonment (Beresford 2018).

Remand to prison can last for several weeks, even months, and so the same issues arise. In fact outcomes are likely to be worse where a woman is remanded in custody. Not only is the scope for making arrangements to lessen the impact of a mother's removal from the home reduced, but uncertainty around when she is likely to be released makes forward planning difficult, particularly in relation to securing accommodation. Women acquitted or sentenced to a community order following a period remanded into prison receive no compensation, discharge grant or travel warrant to support them to return home safely and rebuild their lives on release. In addition, only seven prisons hold women on remand in England (with no provision at all in Wales) meaning that women who are remanded may be imprisoned even further from home than sentenced prisoners, and so maintaining contact with family is likely to be even more challenging.

Impact on women's prisons

The large numbers of women being remanded into custody, particularly those who are in crisis, is a real problem for prisons. Reception, induction and release processes require significant resources. Remanded women contribute substantially to what is called 'churn' – that is the high-turnover of prisoners. In Bronzefield Prison, which has the highest number of remanded women in the country, this is a real problem and restricts the capacity for prison staff to work constructively with the sentenced women in their care (Robinson 2019).

What is going wrong and what can be done about it?

Concerns about judges and magistrates remanding women to prison inappropriately have been raised before, including by Baroness Corston in her 2007 report. So why do we continue to see large numbers of women being remanded into custody when it appears to be unnecessary or disproportionate? How can this critical process be reformed so that it receives the attention and resource required to produce fair and appropriate decisions for women?

Gendered assumptions need to be challenged

Research reveals that there is a range of gendered assumptions in play when a woman appears before the court which can drive punitive responses and skew risk assessments by the judiciary. In particular, researchers have long identified a “double deviance” penalty experienced by women, punished for breaking the law and for breaching gendered assumptions about how a mother, wife or daughter should behave (Heidensohn 2010). There is also clear evidence that the judiciary may be more inclined to consider women to be in need of mental health intervention, driving the overuse of custody for treatment or protection, including at the remand stage (Pattinson 2016; Marougka 2012).

Better oversight is required

This situation is exacerbated by the fact that no data is collected on the basis for remand decisions, and there is no effective oversight of remand decision-making. When a person who has been remanded into custody applies for bail, the judge or bench does not look at whether the original decision to remand was correct, but at whether the person can now safely be granted bail. So, there is no route by which previous decision-making can be scrutinised and poor practice identified. There is therefore no scope for sanction to be imposed or advice for future improvement to be given.

Guidance and training is needed for judges and lawyers

The law which is applied at remand hearings is complex and recent research has identified that it may not be fully understood by all the lawyers and judges who have to apply it. Findings suggest that magistrates may confuse grounds for refusing bail (such as failure to surrender) with the factors that they can take into account (such as lack of community ties) (Cape and Smith 2016).

When a judge passes sentence, there is statutory guidance, produced by the Sentencing Council, which is intended to promote consistent and fair application of the law. There is no statutory guidance for remand hearings. Nor does the Adult Court Bench Book, which provides general guidance for magistrates, provide any explanation

of key remand concepts, such as how to assess whether there is a ‘real prospect of custody’ or what might amount to ‘substantial grounds for believing’ that a woman might, for example, fail to answer her bail (Judicial College 2017).

In particular, when sentencing a primary carer to prison a judge is required by the statutory guidance to take into account the best interests of any dependent children and the impact of the sentence on the child (Article 3 of the UN Convention on the Rights of the Child, Article 8 European Convention on Human Rights). The same duty to consider the interests of the child applies when a mother is being remanded in custody, but there is no comparable guidance to require judges to take this into consideration.

This lack of guidance is compounded by the fact that magistrates and judges report receiving limited training to support better remand decision-making (Smith and Cape 2016).

More time for remand decisions

Remand hearings are typically extremely brief, despite the serious impact that remand to prison can have on a woman and her family. Remand cases are generally heard in very busy court lists and in the most recent research 86 per cent of remand hearings observed were completed in 5 minutes or less. Hearings at which remand decisions were reviewed tended to be similarly short (Cape and Smith 2016).

Lawyers representing women at remand hearings frequently have to prepare their submissions at extremely short notice, with very limited time to speak to their client. Previous failures to attend court when required can be a key factor in remand decisions (Transform Justice 2018). Yet explanations of previous non-compliance may touch on sensitive issues, such as coercive relationships in the home (a prevalent feature in the lives of women coming before the courts (MoJ 2018), which can be difficult for a woman to raise in a brief meeting with a lawyer she may have only just met. Providing clear instructions under pressure about the likely impact of a remand into prison on employment or a tenancy may be difficult after a night in the cells, and evidence to support representations can be hard to obtain at short notice.

The Criminal Procedure Rules (Part 14) (and accompanying Criminal Practice Directions) impose various duties on the prosecutor and the court to ensure that the defendant is supplied with the material relied on by the prosecution and able to make full representations to the court. However, court users suggest that the directions are often overlooked at present and defendants and their representatives are not always supported as they should be.

Fuller information about women at risk of remand

In a sentencing hearing, if a judge or magistrate is considering imprisonment, they must obtain a pre-sentence report setting out the defendant's circumstances unless it is considered 'unnecessary' (Sentencing Council 2017). In remand hearings there is no similar requirement (and generally no facility) to obtain a comparable report – the judge generally relies on brief summaries of evidence prepared by the prosecution. This is particularly problematic for women whose often substantial community ties and caring responsibilities may not be raised in full with the court as a result.

Service reductions under austerity measures have exacerbated this situation, particularly when it is necessary to confirm information provided by a defendant to support a bail application. Court users told the Howard League that now there is rarely a police officer at court who can check a residence address, or other information relied on by a defendant, and hard-pressed prosecutors have little time to make phone calls to the police for their input.

There are also potential sources of information which are rarely tapped at remand hearings. National Probation Service (NPS) officers at court may often be able to access information about a woman at risk of remand who is previously known to probation, or engaging with them on a court order, but there are not always enough NPS staff to enable them to be in court for remand decisions. Liaison and Diversion services, funded by NHS England to provide mental health and related assessments and referrals, are now operating in most magistrates' courts. They are well-placed to provide useful information about specific health

and social needs of a woman at risk of remand, but court users have reported that their input is infrequently called for, and not always available.

Better bail information

Bail Information Schemes (BIS), operated by the NPS, should be available in courts to put forward packages of bail conditions (and accommodation if needed) to meet the prosecution's objections to bail, where that is appropriate (MoJ 2012). Women are unsurprisingly a priority group for these services. But prior to the Coronavirus pandemic BIS services had fallen away, and coverage was patchy (Cape and Smith 2016). In 2017 only eight per cent of courts rated themselves as having a BIS service which complied with the service specification (NPS 2017).

Bail information services are also a mandatory requirement for prisons (Prison Service Order 6101), but a review of women's remand prison inspection reports reveals that provision is similarly patchy. Bronzefield prison, for example, ran a good service and at last inspection was supporting 25 women per month to make successful bail application (HMIP 2018). By contrast, in Eastwood Park prison there was 'no information about, or help with, bail' (HMIP 2019).

The Ministry of Justice (MoJ) ran a small-scale pilot of BIS services in Preston Magistrates' Court and Preston prison in 2019. The results were positive. In April 2020, as an emergency measure during the Coronavirus restrictions, the MoJ rolled out a nationwide BIS service, with 126 BIS officers operating across the 120 courts. These are encouraging developments, but at present there are no firm plans to continue the service once normal court activity resumes. This scheme must be established on a permanent footing, with expansion into prisons, if remand numbers are to be reduced for women in the mid to longer term.

Learning from other jurisdictions

There is a range of excellent organisations which work with women in the community, including in particular many women's centres. Women's services can, and do, support women on bail. However, there is currently almost no scope for involving such services in supporting the assessment of women at risk of remand and

magistrates and judges are very rarely able to take into consideration the support that they could provide when making remand decisions. At present, women's services can generally only have an input into remand hearings if they are contacted overnight from the police station by a woman with whom they have a prior relationship.

In other jurisdictions, such as in France (see for e.g. APCARS 2020) and a number of US states (see for e.g. Crime and Justice Institute 2014), voluntary sector providers conduct assessments and/or put together packages to support individuals on bail which can then be considered at the remand hearing. Not only would such support be likely to reassure judges that remand to prison is not required, but engagement with community services, such as a women's centre, whilst on bail could enable a woman to establish progress in addressing drivers of offending such as debt issues, substance misuse or problematic relationships. Should she be convicted in due course, the progress made on bail might enable the court to draw back from imposing a prison sentence.

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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 professions, stakeholders and members of the public, influencing debate and forcing through meaningful change.

A list of weblinks for the references (where available) can be accessed at:

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