



City Research Online

City, University of London Institutional Repository

Citation: Birkett, G. (2016). 'We have no awareness of what they actually do': Magistrates' knowledge of and confidence in community sentences for women offenders in England and Wales. *Criminology and Criminal Justice*, 16(4), pp. 497-512. doi: 10.1177/1748895816632852

This is the accepted version of the paper.

This version of the publication may differ from the final published version.

Permanent repository link: <https://openaccess.city.ac.uk/id/eprint/13288/>

Link to published version: <https://doi.org/10.1177/1748895816632852>

Copyright: City Research Online aims to make research outputs of City, University of London available to a wider audience. Copyright and Moral Rights remain with the author(s) and/or copyright holders. URLs from City Research Online may be freely distributed and linked to.

Reuse: Copies of full items can be used for personal research or study, educational, or not-for-profit purposes without prior permission or charge. Provided that the authors, title and full bibliographic details are credited, a hyperlink and/or URL is given for the original metadata page and the content is not changed in any way.

City Research Online:

<http://openaccess.city.ac.uk/>

publications@city.ac.uk

‘We have no awareness of what they actually do’: Magistrates’ knowledge of and confidence in community sentences for women offenders in England and Wales

Abstract

In its *Strategic Objectives for Female Offenders* (2013) the Coalition government reiterated its support for robust and effective sentencing options that enable the majority of non-violent women offenders to be punished in the community. While a laudable ambition, this strategy will only be successful if sentencers are aware of (and support) the options available to achieve this goal. Considering government policy in relation to current levels of awareness among the magistracy, this article explores the factors that influence sentencing decisions for women. Highlighting reservations about the suitability of community provision, it also reveals the lack of information and training that magistrates receive on this issue. While there is certainly a willingness to learn and consider more creative options when sentencing women, it is clear that better knowledge of the offender and the options available are needed. Drawing on empirical research conducted with 168 magistrates in England and Wales, this article concludes with a number of practical avenues for improved communication, advocated by magistrates themselves. With many unaware of strategic direction on this issue, the implications for policy and practice are obvious.

Introduction

Following the sharp rise in the female prison population between 1990 and 2004 (with a levelling out in numbers since 2006), a number of official reports have advocated the widespread use of community punishments for non-violent women offenders. The *Women’s Offending Reduction Plan* (WORP) of 2004 stated the government’s intention to improve sentencing outcomes, and that sentencers should be influenced to consider credible alternatives to custody alongside increased levels of appropriate community provision (Home Office, 2004: 19). Three years later the high-profile *Corston Report* added weight to the argument, advocating that ‘holistic’ community punishments for non-violent offenders should be the norm (Nugent and Loucks, 2010: 10). In

one of the recommendations to government, Corston called for the establishment of a network of women's hubs to act as referral centres for those who had offended or were at risk of offending (Home Office, 2007). The provision of £15 million of ring-fenced funding for the establishment of the women's centres followed soon after, supplemented with a grant from the *Corston Independent Funders' Coalition*, a consortium of charities set up to 'sustain a shift from imprisonment to community sentencing for vulnerable women offenders' (in Corcoran, 2011: 27). While the status of women's penal policy on the political agenda was affected by the election of the Conservative-led Coalition in 2010, the current policy, *Strategic Objectives for Female Offenders*, continues to advocate the widespread use of community punishments for women, calling for sufficient robust and effective options to support this aim (2013: 6). It is difficult however, to identify the community provision that is currently on offer for women offenders, although the 2013 *NOMS Stocktake of Women's Services for Offenders in the Community* was until recently the most comprehensive resource. According to the *Stocktake* (which alongside the *Women's Breakout* website provides information for those wanting to assess the national picture) there are currently fifty three centres offering access to a wide range of services for women, six approved premises and eighty three beds for those requiring Bail Accommodation and Support Services (BASS). In addition, NOMS estimated that in 2013, over 2000 women would complete a gender-specific Specified Activity Requirement (SAR)¹ in their local community. This picture of patchy provision is likely to change further still as the newly-formed Community Rehabilitation Companies (CRCs) assess the services that they inherited under the *Transforming Rehabilitation* arrangements. Indeed some have already have chosen not to continue to use established community provision for women.

Responsible for sentencing the vast majority of women offenders, utilisation of the above services by magistrates is a growing area of empirical interest (see Hunter and Radcliffe, 2013), and as highlighted by Hedderman and Gunby, more research is needed to explore 'the

¹ Replaced by the Rehabilitation Activity Requirement (RAR) under the Offender Rehabilitation Act 2014.

alternative options available... and how sentencers perceive their effectiveness' (2013: 426; see also Hedderman and Barnes, 2015).

Sentencing Women Offenders

With a history dating back to the Justices of the Peace Act 1361, magistrates are unremunerated members of the lay judiciary that are drawn from their local communities². There are currently over 20,000 sitting magistrates in England and Wales, although recent years have seen a slowing in recruitment. Sitting in benches of two or three for a minimum of twenty six half days per year, magistrates do not take legal exams and are not legally qualified. Magistrates' sentencing powers (six months in custody is the maximum available for a single offence in an adult court) remain a point of continued debate, with some arguing that they should be curtailed in some instances (see Hedderman, 2012), while others (notably the Magistrates' Association) have argued that more cases could be dealt with in the lower courts if magistrates had the power to sentence up to twelve months in custody. Debate notwithstanding, the vast majority of sentences passed by magistrates are served in the community. As the majority of offences committed by women are non-violent and acquisitive, most receive their sentence in the magistrates' court³.

Highlighted by Gelsthorpe and Sharpe (2015), past research on the sentencing approaches of magistrates has been somewhat contradictory, although it is possible to identify several themes. Outlined in more detail elsewhere (see Gelsthorpe and Loucks, 1997; Hedderman, 2004; Hedge, 2007; Marougka, 2012), it is fair to say that there is a great deal of complexity in the decision-making process in court (Gelsthorpe and Sharpe, 2015), perhaps even more so when sentencing women (see Minson (2015) for an analysis of the Crown Court). While Hedderman (2004) previously highlighted a limited understanding of women's offending patterns (and specific vulnerabilities) among sentencers, the majority of literature does point to a

² Although since the government introduced its programme of court closures and bench mergers, some magistrates now sit in areas that are less familiar to them.

³ Some sentences will be passed by District Judges sitting in magistrates' courts (DJMC)

certain level of awareness among the magistracy (see Gelsthorpe and Loucks, 1997; Calderbank, Fuller and Hardwick, 2011; Marougka, 2012). On the whole, research has demonstrated that magistrates recognise that the pathways into male and female offending can be different. Traditionally 'female' offences such as welfare fraud and stealing food and clothes have, on the whole, been viewed as offences with a lesser degree of culpability. Such offending patterns are often linked with domestic and family responsibilities, which have long been seen as a mitigating factor for women's offending (see Farrington and Morris, 1983; Eaton, 1986; Worrall, 1990; Gelsthorpe and Loucks, 1997; Calderbank, Fuller and Hardwick, 2011). As well as being viewed as less serious offenders than men, past research has also highlighted the tendency for sentencers to see women offenders as in need of mental health interventions (Carlen, 1983; Heidensohn, 1985; Gelsthorpe, 1992; Horn and Evans, 2000), often leading to the overuse of custody for either treatment or protection.

However for some magistrates, treating women differently sits uncomfortably with the Judicial Oath. The Oath requires magistrates to 'do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will'. Such reasoning is understandable, and highlights concerns that in giving greater consideration to some defendants (based purely on arbitrary characteristics) others will be unfairly disadvantaged. That being said, previous and current government policy, section 149 of the Equality Act 2010 and the Bangkok Rules of the same year all advocate (or require) a situation in which sentencers engage more effectively with the specific needs of female offenders. This stance has the support of the Magistrates' Association (reflected in a 2011 policy paper) and was also included in guidance produced by The Sentencing Advisory Panel in 2009⁴. In addition, the Sentencing Council in 2011 incorporated the mitigating factor of 'sole or primary carer for dependent relatives' into the Sentencing Guidelines. Despite such guidance, research has highlighted a level of unease among

⁴ In its 2009 *Overarching Principles of Sentencing*, the Panel recommended that 'a number of principles relating to the way in which the approach to sentencing, whilst remaining faithful to generic values, may need to be slightly adjusted to allow for the particular vulnerabilities of women offenders' (2009: 68). The Sentencing Advisory Panel and the Sentencing Guidelines Council were amalgamated into the Sentencing Council which began work in 2010.

some sentencers in relation to the principle of differential treatment (see Hedderman and Barnes, 2015).

The Extra-Legal Context

Labelled by Rumgay (1995) as ‘immediate situational factors’, extra-legal factors are able to provide additional context to the sentencing process and include the local court culture and the influence of probation reports, as well as the more fundamental issues of funding for services and training for magistrates.

Lack of funding has had a major influence on the successful realisation of criminal justice policy outcomes for women. Changes in probation alongside limited funding for the array of voluntary sector organisations providing offender services has restricted the menu of options available to sentencers (see Easton and Piper, 2012: 307). The patchy provision of women’s services has led to accusations of ‘postcode justice’ (particularly in relation to the urban/rural context), and the funding of gender-specific provision (in particular the women’s centres) remains an area of ongoing concern (see NAO, 2013). Ministry of Justice figures obtained by the *Howard League for Penal Reform* in 2013, for example, suggested that some magistrates’ courts are four times more likely to send women to prison than other magistrates’ courts⁵. While literature suggests that many magistrates are extremely reluctant to use custody for women, such figures highlight a divergence in sentencing practice across England and Wales. It is important to note, however, that divergences are likely to be influenced by the availability of gender-specific provision in the locality and the advice of court staff.

The advice of court staff is an important consideration in itself. Non-legally qualified magistrates are required to take advice from legal advisors on points of law and sentencing options. Furthermore, they are also heavily reliant on the specific recommendations provided by

⁵ It is important to note that not all of these sentences will have been passed by magistrates, but also District Judges sitting in magistrates’ courts (DJMC).

court probation staff. Such information was traditionally included in the pre-sentence report, although these have now been largely replaced by less-detailed oral or fast delivery reports, both of which have the benefit of speed. The consequence of such developments is that there has been a reduction in the level of background information that magistrates receive on individual cases, and this may have implications for women and other vulnerable court users. While magistrates are not legally bound to follow the recommendations provided by probation, research suggests that on the whole they do (see Gelsthorpe and Raynor, 1995; Horn and Evans, 2000).

One final extra-legal issue to consider is that of training. While the Judicial College is responsible for overseeing and guiding initial competency-based training, magistrates have no additional training requirements other than ‘refresher’ information and keeping up to speed with legal updates (see Epstein, 2011). The Magistrates’ Association, the national organisation that represents the magistracy, was originally established to provide training to magistrates when this was not delivered by the courts⁶. The Association’s current remit includes local branch training, developing learning materials and promoting quality and best practice through its Training Committee. While under-researched, studies on magistrates’ training have provided some interesting results. Empirical research conducted by Bond and Lemon (1981) linked magistrates’ training to greater levels of sympathy for defendants and a reluctance to use custody (see also Lemon, 1974). More recent studies have confirmed that some sentencers are ill informed about community sentences and consequently may impose custodial sentences unnecessarily (Hough, Jacobson and Millie, 2003; Hedge, 2007). Gelsthorpe, focusing specifically on women, has debated whether magistrates fully understand the function of certain services in the community and the benefit that can be gained from women-only activities (2012: ev. 1.8; see also Hunter and Radcliffe, 2013; Gibbs, 2014). Despite policy emanating from the same government department,

⁶ The National Bench Chairmen’s Forum (NBCF) also provides a network of support to the 160 Chairmen of magistrates’ benches in England and Wales.

Gelsthorpe has highlighted the distinct lack of joined-up thinking in regard to the overall objectives for women offenders. Gelsthorpe has consequently called for the government to discuss its strategy for women offenders with sentencers via the Judicial College, the Magistrates' Association and the Sentencing Council (2012: ev. 1.10).

Methods and Data

With a broad empirical focus, the research sought to investigate levels of awareness about women offenders (including knowledge of and confidence in gender-specific community punishment) among members of the magistracy⁷ in England and Wales. Using a series of focus groups to explore differences in perspective, the initial sampling frame was designed to reflect areas that had documented provision for women in the community (such as a women's centre) versus those that did not. It was not possible, however, to conduct research in the four areas originally identified (due in most part to a reluctance or fear of engaging with research among magistrates) and the final focus group (held approximately six months after the first) took three separate attempts to organise. The difficulties encountered in attempts to engage magistrates in social research cannot be overstated and it is important to stress the challenges that those operating in this area face. As such, the majority of research on the magistracy has relied on case studies conducted with small groups in designated areas (see Hunter and Radcliffe, 2013; Hedderman and Barnes, 2015) or informal networks (Hunter and Radcliffe, 2013). Reluctance to engage in social research is, for the most part, due to magistrates believing that they are not permitted to engage in such activities while holding judicial office. While it is true that most research in this area must be sanctioned by the Judicial Office, the Magistrates' Association operates under Royal Charter and is permitted to conduct independent research for the purposes of education without the need for higher approval. Despite repeatedly explaining this to potential participants, many magistrates remained uneasy about engaging.

⁷ While the majority of magistrates are members of the Magistrates' Association, not all are. This research was conducted with members of the Magistrates' Association only.

The focus groups were conducted between May and December 2014. As there exists no publicly available list of sitting magistrates, the Magistrates' Association membership database provides one of the few resources of this kind. The personal details of individual magistrates are not shared by the Magistrates' Association for obvious reasons, so initial contact was made with selected Association branch chairmen (branches operate independently from the national magistrate *bench* structure) to ascertain whether they would be willing for their members to participate in the research. If agreeable, they were then asked to send out a call for participants. As the recruitment process was largely carried out by branch chairmen, control over the resulting participants and eventual numbers was extremely limited. This is regrettable, although such circumstances are routinely experienced by those researching in this area.

While the initial contact stressed that no specific interest in or knowledge of women offenders was necessary for participation, those interested in this niche area of policy were inevitably the ones most attracted to the project. Although this situation cannot be avoided with a self-selecting sample, it is important to note that 'interest' in this context did not necessarily equate to 'sympathy', and participants expressed a wide range of views on the sentencing of women. Due to the difficulties in recruitment outlined above, the geographical spread of research was not as representative as planned, and resulted in one session being held in London (n=10), one in Northamptonshire (n=8), one in Nottinghamshire (n=8) and one in West Yorkshire (n=10). In addition to the focus groups, a short survey (n=132) was advertised via the Magistrates' Association email newsletter for one month and members were invited to respond. Like those participating in the focus groups, it is possible that a number of (self-selecting) survey respondents were involved with those providing women's services in the community, and their comments cannot be taken as indicative of a general level of knowledge at bench level, Local Justice Area or national scale. The above limitations notwithstanding, with a total of one hundred and sixty eight magistrates taking part (one hundred and thirty two survey respondents and thirty six focus group participants), this research forms one of the largest investigations into

magistrates' viewpoints on this issue to date. All data has been anonymised, and participants are distinguished by either 'FG 1, 2, 3 or 4' or 'survey' followed by their response number⁸.

The research questions for the focus groups and the survey were of a similar nature and considered:

- Decisions made by magistrates when sentencing women, and whether these were different from men.
- Knowledge of and confidence in gender-specific provision in the community.
- Levels of awareness on the issue of women's offending and provision of training.
- Knowledge of the current government strategy and the role of the magistracy.
- The main provider(s) of information on the above issues.

Main Findings

Several major themes emerged from the data. These will be discussed under the sub-headings of sentencing decisions, knowledge of gender-specific provision in the community, confidence in community sentences for women and levels of information and training.

Sentencing Decisions

Consistent with previous research, many focus group participants were clear that they did not consider men or women differently and were gender-blind during the sentencing process (two out of the four groups (FG_1 and FG_3) were, on the whole, more gender-responsive in such discussions). For those magistrates that did admit to considering women differently, major issues related to family and caring responsibilities.

Several focus group participants were clear about the need to follow the (gender-neutral) sentencing guidelines. One participant (female, FG1_9) believed that when "a crime has been

⁸ The sex of the focus group participants has also been noted. This data was not collected for the survey.

committed, it doesn't matter if it's a man or a woman, we're punishing for that crime", while another (female, FG4_7) agreed that "we don't differentiate between men and women". One survey respondent went even further to state that "gender-specific sentencing is inherently wrong and should be discouraged" (survey_100).

The 'she should know better' perspective highlighted by past research (see Carlen, 1983; Heidensohn and Gelsthorpe, 2007) manifested in some responses. One focus group participant (female, FG3_8) questioned "how many times can you say well she's got six kids it's OK? I wouldn't be swayed by the fact that this lady's got children, because she knew she's got those children before she embarked on this life of crime". Questioning the number of mitigating factors routinely debated in relation to women's offending, one survey respondent believed that magistrates "could get caught up in too many 'what about' considerations (family, suicide, dependents, etc.) that the actual sentencing decision becomes watered down into a bit of a let off, which public opinion perceives as a mockery of the system" (survey_44). Public attitudes towards punishment (and in particular community punishment) were considered important by many, especially in relation to issues of confidence with current sentencing options (discussed below).

Despite such viewpoints, most magistrates confirmed that in line with the sentencing guidelines they routinely took childcare and other caring responsibilities into consideration when passing sentence⁹; an issue that is often more relevant to women. Such views are consistent with previous research (see Worrall, 1990; Gelsthorpe and Loucks, 1997) and Magistrates' Association policy (although see Epstein (2014) for contradictory findings). One focus group participant (female, FG3_9) believed that she "looked at the impact on the offender themselves and their family. So if they are a breadwinner, if they're likely to lose their home, job. If they have custody of the children. It tends to be that women have childcare responsibilities proportionately more than men". One survey respondent was similarly clear that "you must take into account the

⁹ Sixty six per cent of survey respondents stated that they might consider different factors when sentencing women.

potential impact on the wider family. If the woman is a single parent (or even if she is not), what is going to happen to any children while she is in prison?” (survey_35). Those focus group participants who did admit to considering women differently had, on the whole, more knowledge about women’s offending, emanating from personal experience or greater exposure to the issue (see also Minson, 2015). There was an understanding, articulated more widely in the survey and to a lesser extent in the focus groups, that the drivers to women’s offending are often different to those of men.

In summary, the general prevailing attitude in both the survey and the focus groups was that gender should not be a driver for sentencing decisions in itself, but that individual mitigating factors such as family responsibilities and mental health concerns both *could* and *should* influence outcomes (with such factors acknowledged as particularly relevant to women).

Knowledge of Gender-Specific Provision in the Community

Past literature has pointed to a lack of knowledge about the available options for women among sentencers (see Hough, Jacobson and Millie, 2003; Hedge, 2007). More recent research by Marougka also found that magistrates were not aware of the full range of gender-specific options, and that this was due in part to the small numbers of women coming before the courts (2012: 26). Consistent with such findings, very few participants felt that they had adequate information about the options available for women offenders in the community and had no visibility of whether probation appointments were held separately or at different times, or whether separate community payback placements were available. Over three quarters of survey respondents (seventy seven per cent) felt that they did not have enough information about suitable local provision for women. Participants in the focus groups expressed similar concerns.

One focus group (FG2) was purposely chosen as an area that had no gender-specific provision for women offenders in the community. All but one of the participants in this group required additional background information about the key drivers to women’s offending, an

outline of the Corston agenda, and why gender-specific provision might be valuable. Several participants were youth court magistrates and admitted that while they were aware of local provision for girls, there was a “big gulf” (female, FG2_1) when it came to information about services for adult women. While it is perhaps understandable that magistrates sitting in areas with no gender-specific provision have less knowledge about women offenders, it is regrettable that those magistrates that sat in areas with established provision (FG1, FG3 and FG4) did not necessarily have higher levels of knowledge. Disappointingly, participants in these focus groups revealed weaker relations with the women’s centres than expected. Participants in FG4, for example, were all aware of the existence of a local women’s centre, yet they had limited knowledge of the services on offer. A similar theme dominated discussions in FG1. One focus group participant (female, FG1_5) felt that “we have no awareness of what might be out there, where the probation send them, what they actually do”. Participants in FG3 benefitted from a high level of gender-specific provision for women compared to other areas. While links with a women-centred organisation were clear, most had little dealings with the service, with two participants admitting that probation had never recommended it to them. Without a recommendation in the court report (or a level of knowledge to probe report writers) magistrates are unable to make use of specific services (for men and women), even if they are aware of their existence. Given the patchy provision of gender-specific services for women in the community, it is concerning that where well-established provision does exist, it is not always being used by magistrates who, unless in possession of specific information or acting on the recommendations of probation staff have little opportunity to use them.

The survey responses highlighted similar themes. While one respondent was clear that “we have very good probation officers and are kept up to date with probation programmes” (survey_71), this viewpoint was only articulated twice. Like the focus groups, a persistent issue was that “we don’t know what is available locally” (survey_111), and many respondents highlighted the changes in probation (such as the abolishment of probation liaison meetings, a

reduction in local newsletters and a lack of probation-led training workshops) as one possibility for this. As the community options had “chopped and changed so many times” (survey_113), some respondents felt that updated information was urgently required.

Confidence in Community Sentences for Women

Participants were generally supportive of a reduction in the use of short custodial sentences for women¹⁰, with strong provisos. Some felt that such sentences were not sufficiently robust while others highlighted issues relating to compliance. For those that did support an increase in community punishment, the lack of suitable provision was a persistent barrier.

A reoccurring theme was that punishments served in the community would need to be (and be seen to be) suitably robust. Fifty eight per cent of survey respondents believed that community sentences for women were currently robust enough to provide a credible alternative to custody, although forty two per cent did not. Focus group participants were equally split, with some questioning the credibility of such sentences. One focus group participant (female, FG3_8) was clear that “if I thought that the [community] sentence that they were going to get was equal to what they’d get in prison then I might be swayed not to send them to prison. But you don’t always have the confidence”. The lack of a clear ‘punishment’ element in women’s community sentences provided another central theme. One focus group participant recalled that she “went to see unpaid work and the women were just doing embroidery with high vis[ibility] jackets on. A lot of people do embroidery as a hobby, it’s not a punishment” (female, FG1_6). Such views echoed those of a survey respondent who felt that “an electronic curfew in these circumstances is no punishment because the woman would be at home anyway!” (survey_58).

Others provided different reasons for their lack of confidence in community sentences for women. Consistent with previous research (see Gelsthorpe and Loucks, 1997; Dominelli,

¹⁰ Seventy per cent of survey respondents said that they would like to see more gender-specific community provision in their Local Justice Area.

1984; Asquith and Samuel, 1994), one survey respondent believed that “many community sentences don’t work for women – it is often impractical to curfew someone with caring responsibilities and suitable unpaid work placements are limited” (survey_64). As a consequence, some participants felt that custody was often the only option. One survey respondent was clear that “the non-availability of women-only disposals... could affect sentencing decisions” (survey_85), while another went further and admitted that “there is just not enough [community provision] so one reverts to custody” (survey_8). The gender-welfarist trend highlighted in past research (see Gelsthorpe and Loucks, 1997; Marougka, 2012) also manifested, with one focus group participant (female, FG1_1) believing that “you might think they’d have a better chance in prison”. Others expressed less compassion and highlighted that many women offenders pleaded to be sent to custody. One focus group participant simply felt that some women were “unwilling to consider a different way of life” (female, FG2_5).

Those that did support the increased use of gender-specific options in the community expressed frustration about the lack of available and appropriate provision. Discussion here focused on childcare, gender differences, parenting and life skills. One survey respondent was clear that while “the alternatives may be robust enough; [they] frequently don’t provide the support these women need to change” (survey_64). In terms of childcare, issues such as the timings of appointments for unpaid work, where to leave younger children and the length of the working day were all identified as persistent inflexibilities. Barriers based on sex were also highlighted by one survey respondent (survey_58) who recalled that “when I visited a group doing unpaid work in a park, I was struck by how threatening an all-male work group could be”. This viewpoint was shared by one focus group participant who felt that it was crucial to have “community programmes just for women alone because you put them with men, you’re almost putting them back into the trouble that led them there in the first place” (male, FG3_3). Improving life skills was another area in need of improvement; this included the areas of money management, debt counselling and work skills. A final issue related to parenting and the need to

provide a good role model for children; in short, working to break the inter-generational cycle of crime.

Levels of Information and Training

The findings of this study are consistent with training concerns articulated in previous research (see Lemon, 1974; Bond and Lemon, 1981; Hedderman, 2004; Hough, Jacobson and Millie, 2003; Hedge, 2007; Gibbs, 2014). Participants were asked about the level of specific training they had received on the issue of women's offending, including national, bench or Magistrates' Association branch training. The vast majority of participants (including seventy six per cent of the survey respondents) confirmed that they had never received any training on the circumstances surrounding women's offending. One focus group participant (female, FG1_5) was clear that "the only awareness we have is when someone comes and talks to us, and what's put in the probation service's report". While lacking relevant information was frustrating for participants, there was widespread recognition that funding for increased training opportunities was unlikely to be forthcoming. One focus group participant (female, FG1_10) felt that "it would be great if we had general information and general training sessions... but that's unrealistic at the minute with funding limitations". In light of this situation, participants in all focus groups highlighted the fundamental role of the probation service in providing up-to-date information.

Almost all of the participants were unaware of the existence of an overarching strategy for women offenders and their role within it. One focus group participant (male, FG1_3) described the "big disconnect" between government policy and individual knowledge. This viewpoint was consistent with another respondent who believed that "the government's 'Strategic Objectives' are lofty words not backed up by actions or the money to carry them out" (survey_64). The large gulf between magistrates' knowledge and government thinking has serious implications for the successful realisation of the current *Strategy for Female Offenders*, a policy

document publicly stating the ‘crucial importance’ of magistrates’ knowledge for the greater use of community disposals. The vast majority of magistrates had no knowledge of any political direction on this issue. If they form part of a national policy, they were certainly not aware of it.

Improving Channels of Information

In light of the above responses, many participants provided practical areas of improvement for information dissemination. Wide-ranging in their remit, suggestions can be broadly separated into increased opportunities for training, better information on local provision for women offenders and better information in court (including more information from probation officers, and in particular court report writers).

Increased Training Opportunities

This research has highlighted the fundamental lack of awareness training that magistrates receive on women offenders (see also Gibbs, 2014). Many participants were supportive of increased training opportunities, although realistic about the likelihood of this occurring through official channels due to cuts in the training budget. After their initial induction, magistrates receive limited training throughout their judicial career, and this can provide obstacles for the dissemination of information relating to sentencing reform.

Participants provided a variety of cost-effective training ideas. Suggestions included “specific ‘female’ titled documents [to be added] to [the Sentencing] Guidelines” (survey_37) and “a short segment [on women offenders to] be added to refresher training” (survey_104). Online accredited or CPD training modules were a popular idea, allowing magistrates the flexibility to complete in their own time and space. Workshops at national or local meetings were also a common suggestion (the Magistrates’ Association AGM provides such a forum, as well as local branch meetings). Building on the successful launch of the Magistrates’ Association ‘Mental Health Champions’ scheme, established to improve links between courts, service providers and

charities at the local level, a similar ‘Women’s Branch Champions Scheme’ to improve links between sentencers and women’s centres was advocated. Those magistrates that had visited women’s prisons in particular felt that it was an extremely important training tool for new recruits, yet the opportunity to take part in such visits was increasingly rare.

Information on Local and National Provision

Participants were clear that more information about local provision was extremely important. Unaware of the specific activities that women offenders on community sentences may undertake, several underlined the fact that they also had no specific reporting procedure for sentence effectiveness. Without basic information on compliance and success rates in relation to local projects and services, it is clear that magistrates are unable to make more informed sentencing decisions. Highlighting local variation, one survey respondent requested a “special bulletin developed locally” (survey_44), while another felt that information on “patterns of offending by women; what works in rehabilitating women offenders; what, in practical terms, the sentencing options are in our area” would improve the current situation (survey_60). Thinking nationally, one focus group participant (female, FG1_6) questioned “why there isn’t a website of what’s available, what’s ticking, what works?” While the organisation *Women’s Breakout* does provide such a directory, it does not list all available services (and also lists services to which courts have no access). A revised version (from *Women’s Breakout* or another organisation) would benefit from greater publicity among the magistracy.

Information in Court

Participants were also keen to receive more information in court. Past research has pointed to the importance of written court reports in the decision-making process (see Rumgay, 1995; Minson, 2015), and magistrates are heavily reliant on such information. Information provided by probation officers was deemed as especially important, yet participants in the focus groups as

well as survey respondents provided mixed reviews about the level of information emanating from such channels. While some believed probation staff to be excellent, others were more critical and felt that probation officers did not always provide the full list of sentencing options. One survey respondent felt that “it might be useful on the PSR [pre-sentence report] request form to have an additional tick box for gender specific options to be considered” (survey_22), while another felt that “a simple A4 sheet highlighting the options to consider at the sentencing stage” (survey_110) would help benches consider the needs of women offenders more effectively¹¹. Several other participants advocated updates on retiring room noticeboards or “lunchtime session at court houses” (survey_69). Finally, it is important to note that magistrates rely heavily on legal advisors for up to date information on sentencing options in the community. As provision changes so frequently, it is vital that legal advisors are aware of local services and how they work. Given the level of influence that legal advisors have on the sentencing process, more research is required to understand their training in this area.

Implications for Policy and Practice

This research sought to investigate whether views regarding community sentences for women among magistrates relate to (1) failings in knowledge of provision or (2) knowledge of provision, but limited confidence in its utility. The findings revealed a regrettable mixture of both, and the improvements must be multifaceted.

It is clear that very few magistrates in England and Wales have received any sort of training on the circumstances surrounding women’s offending. Most participants felt that awareness of the issues around women offenders would be valuable (on a national scale), and information on available local sentencing options was also essential. If magistrates are to play

¹¹ It is of course important to note the research that has indicated that many probation officers feel their role has become unduly bureaucratic (see for example Farrow (2004)), with the *Transforming Rehabilitation* arrangements complicating some aspects further. Under the new regime, court probation staff (report writers) now work for the National Probation Service (NPS) and rely on information about the offender that is passed to them by the relevant Community Rehabilitation Company (CRC). While the above suggestions might be a positive step forward, circumstances which allow for more individualised sentencing would improve the situation further.

their part in an official strategy for women offenders then the current disconnect between policy and practice must be addressed. Previous research has indicated the direct correlation between levels of training and preparedness to consider more community options (see Lemon, 1974). If the government is serious about reducing the unnecessary imprisonment of many non-violent women then increased training opportunities for magistrates would seem a judicious way forward. The suggestions outlined in the previous section, while helpful, raise the obvious issue of finance. Despite cuts to the judicial training budget, a level of responsibility must remain with the official channels of the Ministry of Justice, the Judicial Office and Her Majesty's Courts and Tribunals Service (HMCTS), and, on a local level, the newly-formed Community Rehabilitation Companies (CRCs) who have assumed responsibility for monitoring the vast majority of offenders in the community. As the only membership organisation representing magistrates' interests, there is also a clear role for the Magistrates' Association. The research highlighted that information emanating from government often comes through the channels of the Magistrates' Association rather than the probation service or HMCTS, and this channel of communication can be strengthened further. Specific training tools could be developed by the Association with greater (and more creative) dissemination of information, together with a programme of accredited CPD courses (an area that the Association is already focused on). Yet while online modules would ensure that magistrates are able to train at home and in their own time (undoubtedly a positive step forward), training premised on those willing to undertake it is unlikely to provide a comprehensive solution to the issue.

When it comes to community sentences, it is clear that magistrates are mostly affected by recommendations by probation in the court reports (see also Minson, 2015). Even where there *is* local provision, if a specific community option is not recommended by probation then it cannot be used. Previously highlighted by Marougka (2012: 33), this research adds weight to the need for probation staff to improve their briefing arrangements for sentencers regarding provision for women. This could include information about the availability and purpose of different services

and their success rates (in relation to rates of compliance and recidivism, for example). This important feedback loop would result in higher levels of empowerment among the magistracy and more informed sentencing decisions geared to particular cases (and individual offenders' circumstances). This in turn would carry better opportunities for reducing reoffending.

Finally, this research has highlighted the continued lack of confidence in community options for women among many magistrates. If a community option is recommended by probation, then it is important for the reasons behind this to be fully explained so that magistrates are aware of any factors which contra-indicate a custodial disposal. While participants did indicate a willingness to think more creatively about the sentencing of women, they were clear that community sentences needed to be (and be seen to be) as rigorous as custody, in part to help satisfy public perceptions. As well as the possible establishment of local 'champions' (advocated also by the *Prison Reform Trust* (2015)), the network of women's centres could play a key role here. While strong relations undoubtedly exist in many areas, collaborative working is not universal. Future research should be conducted in this area to include an investigation into channels of feedback on the success (or otherwise) of specific programmes for women offenders as well as information on compliance (the women's centres have a key role in demonstrating their impact on reoffending rates). It was not the purpose of this research to debate whether magistrates concerns in relation to probation are justified. That being said, further work could explore the extent to which community punishments for women are systematically recommended by court probation staff.

Conclusion

It is clear that 'the sentencing of women takes place amid shifting and contradictory policy messages, legislation and media representations' (Hedderman and Barnes, 2015: 112). This small-scale study adds further weight to the statement above and the concerns identified in past research. While official documents, policy statements and legislative developments continue to argue for the need to consider women offenders differently, this philosophy sits uncomfortably

for many magistrates who believe that judicial office holders must remain gender-neutral. Although a challenging task for policymakers, there is a requirement for greater clarity on this issue if magistrates are to consider more creative options (such as the greater use of community sentences) when sentencing women. It is clear that magistrates require better knowledge of the particular needs of women offenders (nationally) and the gender-specific options available (locally) if they are to play a full role in achieving the government's current policy strategy. Magistrates also require more information in court from probation staff and greater levels of feedback on the success rates (or otherwise) of gender-specific provision in the community. Such information will allow them to make more informed sentencing decisions and may help to raise levels of confidence in community options. Outlining a number of practical improvements to improve current information streams, the suggestions from the participants in this research are a step in the right direction.

References

- Asquith, S. and Samuel, E. (1994) *Criminal Justice and Related Services for Young Adult Offenders* Edinburgh: HMSO.
- Bond, R.A. and Lemon, N.F. (1981) 'Training, experience and magistrates' sentencing philosophies: a longitudinal study' *Law and Human Behaviour* 5 123-139.
- Calderbank, L., Fuller, M. and Hardwick, N. (2011) *Thematic Inspection Report: Equal but Different? An Inspection of the Use of Alternatives to Custody for Women Offenders* London: HM Inspectorate of Probation.
- Carlen, P. (1983) *Women's Imprisonment* London: Routledge and Kegan Paul.
- Corcoran, M. (2011) 'Dilemmas of institutionalization in the penal voluntary sector' *Critical Social Policy* 31:1 30-52.

Dominelli, L. (1984) 'Differential justice: domestic labour, community service and female offenders' *Probation Journal* 31 100-103.

Eaton, M. (1986) *Justice for Women* Milton Keynes: Open University Press.

Easton, S. and Piper, C. (2012) *Sentencing and Punishment: The Quest for Justice* Oxford: Oxford University Press.

Epstein, R. (2011) 'Mothers in prison: the rights of the child' *Criminal Justice Matters* 86:1 12-13.

Epstein, R. (2014) 'Mothers in prison: The sentencing of women and the rights of the child' *Howard League What is Justice? Working Paper* 3/2014. Available at: https://d19ylpo4aovc7m.cloudfront.net/fileadmin/howard_league/user/pdf/Research/What_is_Justice/HLWP_3_2014.pdf

Farrington, D. and Morris, A. (1983) 'Sex, Sentencing and Reconviction' *British Journal of Criminology* 23:3 229-248.

Farrow, K. (2004) 'Still Committed After All These Years? Morale in the Modern-Day Probation Service' *Probation Journal* 51:3 206-220

Gelsthorpe, L. (1992) 'Social Inquiry Reports: Race and Gender Considerations' *Research Bulletin* 32 17-22.

Gelsthorpe, L. (2012) Written evidence to the House of Commons Justice Select Committee inquiry on *Women Offenders: After the Corston Report*. Available at: <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmjust/92/92vw42.htm>

Gelsthorpe, L. and Loucks, N. (1997) 'Magistrates' Explanations of Sentencing Decisions' in C. Hedderman and L. Gelsthorpe (Eds.) *Understanding the Sentencing of Women* Home Office Research Study 170 London: Home Office.

Gelsthorpe, L. and Raynor, P. (1995) 'Quality and Effectiveness in Probation Officers' Reports to Sentencers' *British Journal of Criminology* 35:2 188-2000.

Gelsthorpe, L. and Sharpe, G. (2015) 'Women and Sentencing: Challenges and Choices' in J. Roberts (Ed.) *Exploring Sentencing Practice in England and Wales* Basingstoke: Palgrave Macmillan.

Gibbs, P. (2014) *Fit for purpose: do magistrates get the training and development they need?* London: Transform Justice.

Hedderman, C. (2004) 'Why are more women being sentenced to custody?' In G. McIvor (Ed.) *Women Who Offend. Research Highlights in Social Work 44* London: Jessica Kingsley Publishers.

Hedderman, C. (2012) 'Empty Cells or Empty Words? Government Policy on Reducing the Number of Women Going to Prison' London: Criminal Justice Alliance.

Hedderman, C. and Gunby, C. (2013) 'Diverting women from custody: The importance of understanding sentencers' perspectives' *Probation Journal* 60:4 425-438.

Hedderman, C. and Barnes, R. (2015) 'Sentencing Women: An Analysis of Recent Trends' in J. Roberts (Ed.) *Exploring Sentencing Practice in England and Wales* Basingstoke: Palgrave Macmillan.

Hedge, J. (2007) 'Increasing the Confidence of Sentencers in Community Penalties: A Programme of Work with Magistrates in the Thames Valley 2006/7. Available at:

<http://rethinking.org.uk/publications/index.shtml>

Heidensohn, F. (1985) *Women and Crime* Basingstoke: Macmillan Press.

Heidensohn, F. and Gelsthorpe, L. (2007) 'Gender and Crime' in M. Maguire, R. Morgan and R. Reiner (Eds.) *The Oxford Handbook of Criminology* 4th Edition Oxford: Oxford University Press.

Home Office (2004) *Women's Offending Reduction Programme* London: The Stationery Office.

Home Office (2007) *The Corston Report: A Review by Baroness Jean Corston of Women with Particular Vulnerabilities in the Criminal Justice System* London: The Stationery Office.

- Horn, R. and Evans, M. (2000) 'The Effect of Gender on Pre-Sentence Reports' *Howard Journal of Criminal Justice* 39:2 184-197.
- Hough, M., Jacobson, J. and Millie, A. (2003) *The Decision to Imprison: Sentencing and the Prison Population* London: Prison Reform Trust.
- Howard League (2013) 'The magistrates' courts most likely to send women to prison' Press Statement 9 July. Available at: <http://howardleague.org/magistrates-courts-women/>
- Hunter, G. and Radcliffe, P. (2013) 'Are Magistrates Doing Justice to Women?' *Criminal Justice Matters* 92:1 34-35.
- Lemon, N. (1974) 'Training, Personality and Attitude as Determinants of Magistrates' Sentencing' *British Journal of Criminology* 14: 1 34-48.
- Magistrates' Association (2011) *Women in the Justice System* London: Magistrates' Association.
- Marougka, M. (2012) *Sentencing Women: Considering the Factors that Influence Decision-Making* The Griffins Society Research Paper 2012/03.
- Ministry of Justice (2013) *Strategic Objectives for Female Offenders* London: Ministry of Justice.
- Minson, S. (2015) 'Sentencing and Dependents: Motherhood as Mitigation' in J. Roberts (Ed.) *Exploring Sentencing Practice in England and Wales* Basingstoke: Palgrave Macmillan.
- National Audit Office (2013) *Funding of Women's Centres in the Community: Briefing for the Justice Select Committee* London: NAO.
- Nugent, B. and Loucks, N. (2010) 'Female Offenders in the Community: The Context of Crime' in R. Sheehan, R. McIvor and C. Trotter (Eds.) *Working with Women Offenders in the Community* Devon: Willan Publishing.
- Player, E. (2005) 'The reduction of women's imprisonment in England and Wales' *Punishment and Society* 7:4 419-439.

Prison Reform Trust (2015) *Sentencing of Mothers: Improving the Sentencing Process and Outcomes for Women with Dependent Children* London: Prison Reform Trust.

Rumgay, J. (1995) 'Custodial Decision Making in a Magistrates' Court: Court Culture and Immediate Situational Factors' *British Journal of Criminology* 35:2 201-217.

Sentencing Advisory Panel (2009) *Advice to the Sentencing Guidelines Council: Overarching Principles of Sentencing* London: Sentencing Advisory Panel.

Worrall, A. (1990) *Offending Women: Female Law Breakers and the Criminal Justice System* London: Routledge.