Sentencing Women in the Transformed Probation Landscape

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Introduction

In 2013 the government promised that new reforms would 'deliver better outcomes for women offenders' (Ministry of Justice, 2013b, p.16). This was a bold statement and a laudable ambition. However, this strategy – called and aimed at Transforming Rehabilitation - will only be successful if sentencers are aware of (and support) the options that new providers put in place to achieve its goals. This chapter considers current levels of awareness of the new reforms among magistrates. Highlighting reservations about the suitability of community provision, and a lack of awareness about developments under Transforming Rehabilitation, it emphasises the lack of information that magistrates receive on this issue. Supplementing the findings of a recent research project conducted with 168 magistrates (see Birkett, 2016), this chapter provides a post-Transforming Rehabilitation 'update', drawing on 24 semi-structured interviews and a survey of 86 magistrates sitting across England and Wales. As such, it places particular focus on developments that followed the implementation of the Offender Rehabilitation Act 2014,[1] the legislative measures underpinning the government's flagship Transforming Rehabilitation policy agenda.

Gender and Sentencing

The decision-making process in court is understandably complex, but it is perhaps even more so when sentencing women. For some sentencers, treating women differently jars with the fundamental principles of the Judicial Oath.[2] This view is understandable, and highlights concerns that in treating some defendants in a 'special' way (based only on arbitrary

characteristics), others will be disadvantaged. Recent research by Marougka (2012) highlighted the contradictory nature of judicial attitudes on this topic; while many sentencers had an understanding of the distinctive needs of women and were willing to take these into consideration, they also insisted that they 'treated everyone the same'. Other research debates similar tensions (see Birkett, 2016; Gelsthorpe and Sharpe, 2015; Criminal Justice Joint Inspection, 2011).

It is important to highlight, however, the stream of legislative and (international) policy developments that advocate (or legally require) sentencers to engage with the specific needs of women offenders. In 2010 the United Nations General Assembly passed a resolution to create the Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders (known as the 'Bangkok Rules'). The rules were designed to provide guidance for governments and sentencing authorities to reduce the use of unnecessary imprisonment for women (particularly mothers) and ensure the suitable treatment of those incarcerated. The UK Equality Act of the same year introduced a 'gender equality duty' (section 149) which requires public authorities (including prisons, probation and court staff) to promote equality of opportunity between women and men (and combat discrimination in all areas of public services). In this legislation, the government publicly acknowledged that the principle of equal treatment should not necessarily lead to *identical* treatment (Cavadino, Dignan and Mair, 2013, p.302).

Judicial and sentencing bodies in England and Wales advocate a similar stance. In addition to guidance produced by the Sentencing Advisory Panel in 2009 (which recommended that judicial principles may need to be 'slightly adjusted to allow for the particular vulnerabilities of women offenders'), the Sentencing Council incorporated the mitigating factor of 'sole or primary carer for dependent relatives' into the Sentencing

Guidelines for England and Wales in 2011. The Judicial College Equal Treatment Bench Book further states that,

> …sentencers must be made aware of the differential impact sentencing decisions have on women and men including caring responsibilities for children or elders; the impact of imprisonment on mental and emotional well-being; and the disproportionate impact that incarceration has on offenders who have caring responsibilities if they are imprisoned a long distance from home (2013, p.11).

Such requirements sit alongside previous (New Labour's commitment to the Corston agenda) and current (the Coalition/Conservative Strategic Objectives for Female Offenders) government policies which continue to stress the need for sentencers to consider women's specific needs when passing sentence. This approach has widespread support among the wider criminal justice community, from penal reform charities (such as *Women in Prison*, the *Prison Reform Trust* and the *Howard League*) to those representing sentencers. The *Magistrates' Association*, for example, has publicly stated its intention 'to increase awareness among magistrates of the factors which may need to be considered when sentencing women, and the effects of custody on them and their families' (in Prison Reform Trust, 2015: 1). Recent developments under the Offender Rehabilitation Act 2014 (section 10) place further requirements on sentencers to take into consideration women's specific needs in relation to community punishments. Yet despite such legislative requirements and a general political consensus, research continues to highlight a level of unease among some sentencers in relation to the principle of differential treatment for women (see Hedderman and Barnes, 2015; Birkett, 2016).

On the whole, previous research has demonstrated that magistrates recognize that the pathways into male and female offending can be different. Those offences traditionally regarded as 'female' (such as stealing food, welfare fraud and theft from employers) have been viewed as having a lesser degree of harm. Studies have revealed that magistrates

understand that such forms of offending are often linked to domestic or family responsibilities (including victimisation or experiences of abuse), which they have tended to regard as a mitigating factor (see Eaton, 1986; Farrington and Morris, 1983; Gelsthorpe and Loucks, 1997; Worrall, 1990). Research in this area has also exposed the clear distinctions made by magistrates in relation to those they regard as 'troubled' versus those they consider to be 'troublesome'; the former in need of supported interventions, the latter requiring punishment (see Eaton, 1986; Carlen, 1983; Heidensohn, 1985). Several studies have pointed to the existence of 'patriarchal chivalry' in the courtroom; that in believing 'troubled' women would benefit from a custodial sentence (for help with mental health problems, drug or alcohol addictions or for their own safety) magistrates may be engaging in 'up-tariffing' by sending too many non-violent women to prison unnecessarily (see Carlen, 1983; Gelsthorpe, 1992; Heidensohn, 1985; Horn and Evans, 2000; Hedderman, 2004). Indeed, some have even called for magistrates' sentencing powers to be curtailed (see Hedderman, 2011, 2012).

It is important to consider the important role played by court reports (in particular pre-sentence reports) in this regard. Research has demonstrated that magistrates strongly tend to agree with reports submitted to the court by probation (75% according to the CJJI report of 2011 and 73% according to Ministry of Justice data (2016)), and are unlikely to deviate from their recommendations (although they are permitted to do so). The delivery of court reports has changed substantially in recent years. Ministry of Justice data demonstrates that since 2012 the overall proportion of standard pre-sentence reports has declined for males and females by around fifteen percent, to be replaced by faster, often oral, reports (2016, p.78). While traditional pre-sentence reports are more comprehensive in nature and based on a full risk assessment, fast delivery (oral or written) reports are usually completed on the day of request.[3] Such reports are only deemed suitable where the case is of low or medium seriousness and the court has indicated that a community sentence is being considered.[4]

While adhering to the government's commitment to swift and sure justice, there are concerns that such developments may not afford probation officers the time to assess defendants fully (of particular importance for vulnerable defendants who may be deemed as 'low risk'), resulting in inadequate information for sentencers. Several commentators have called for pre-sentence (or certainly more detailed) reports to be the used as the 'norm' for women who often fall into the vulnerable defendant category (see Prison Reform Trust 2015; Minson, 2015; Howard League, 2014). It is concerning that a recent inspection of women's community services conducted by Her Majesty's Inspectorate of Probation (HMIP) found that 'insufficient effort was made by [court] probation [staff] to understand and explain the gender-specific needs of women in two in three cases' (HMIP, 2016, p.24). The report repeated recommendations made by others (see CJJI, 2011; Marougka, 2012; Minson, 2015) that the NPS should 'have structures in place to provide timely information to sentencers about the needs of women who offend and the interventions available locally' and to 'make sure that pre-sentence reports take account of the specific needs of women who offend' (HMIP, 2016, p.11).

Providing information to sentencers is key. Research studies continue to highlight the limited knowledge that magistrates possess on community provision for women (see Birkett, 2016; Gelsthorpe and Sharpe, 2015; HMIP, 2016a; Radcliffe and Hunter; 2013). This, despite the government's promise *a full decade ago*, that sentencers would be 'better informed about community provision for women, what is available in their areas and how it can address women's needs more effectively than custody' (Ministry of Justice, 2007, p.6). One of the most recent studies in this area revealed that magistrates' limited knowledge of specialist provision for women has a clear impact on levels of confidence in community sentences (Birkett, 2016). As very few magistrates in England and Wales have received training on the circumstances surrounding women's offending, such results are understandable. Previous

research has demonstrated the direct correlation between levels of training and preparedness to consider more creative sentencing options (see Lemon, 1974). If the government is serious about increasing the number of non-violent women punished in the community then increased training options (financial implications notwithstanding) are a sensible way forward (see also Gelsthorpe and Sharpe, 2015).

Policy and Legislative Developments

This chapter does not have capacity to provide a comprehensive synopsis of developments in women's penal policy (see Birkett, 2017; Seal and Phoenix, 2013; Hedderman, 2011), however it is worth noting that the very first strategy for women – aimed at reducing their numbers in custody – was published nearly twenty years ago. In promising 'a cross-government, comprehensive, targeted and measurable Women's Offending Reduction Programme' (Home Office, 2001, p.1), the Home Office stated its intention to support projects that would divert women from custody, aid resettlement after release from prison and provide community-based non-custodial supervision (Corcoran, 2011). In 2006-2007, the Home Office launched Together Women, a programme of holistic provision for women who had offended (or were at risk of offending) across five demonstrator sites in northern England (Seal and Phoenix, 2013, p.170; see Gelsthorpe, Sharpe and Roberts, 2007; Hedderman, Palmer and Hollin, 2008). Together Women incorporated a variety of women's centres that provided 'one-stop-shop' services to help prevent women from entering the criminal justice system or to help with their post-custodial resettlement (Seal and Phoenix, 2013, p.170).

The publishing of the Corston Report in 2007 represented a watershed moment in revealing the specific needs of women offenders to a wider audience, however. Consistent with the wealth of research in this area, Corston categorised the main vulnerabilities faced by women offenders as domestic (including parenting and childcare), personal (including mental health, low self-esteem and substance misuse) and socioeconomic (including poverty and

unemployment). In highlighting the difficult experiences faced by many women in prison (who presented no real risk to the public), Corston called for an extension of the network of holistic women's centres to enable more women to be punished in the community where appropriate. The newly formed Ministry of Justice accepted the majority of Corston's proposals and provided time-specific funding (£15.6 million in 2009-10[5]) for the establishment of additional centres along with a Ministerial 'Champion' to drive forward the reforms. While the status of women's penal policy was affected by the election of the Conservative-led Coalition in 2010 (there being no strategy until 2013), the current plan (outlined in a document entitled *Strategic Objectives for Female Offenders*) adopts flavours of Corston to advocate the widespread use of community punishments for women.

Given the refreshed focus (including regular meetings of an expert Advisory Board), it is regrettable that women were only mentioned in one paragraph of the original Transforming Rehabilitation document which stated that future provision should meet their 'specific needs and priorities' (2013a; see Annison et al., 2015). Despite an official recognition of this omission – where the Department promised that the reforms would deliver 'better outcomes for women offenders' (2013b, p.16) - the initial format of the Offender Rehabilitation Bill, the legislation enshrining Transforming Rehabilitation, contained no specific mention of women. A later amendment (to become section 10 of the Act), stated that the supervision and rehabilitation of women must comply with section 149 of the Equality Act 2010 and identify anything that is intended to meet their 'particular needs'. The resulting contracts with the twenty-one new providers of probation services, the Community Rehabilitation Companies (CRCs), were kept deliberately broad so that each organisation could interpret 'particular needs' as it saw fit. A fundamental 'rub' occurs, however, when considering that the majority of the new probation providers are private for-profit companies who are focused on achieving

maximum efficiency;[6] a concept that runs counter to the holistic, needs-based approach advocated by Corston and the network of women's community service providers.

The Offender Rehabilitation Act 2014 also made amendments to the range of community sentencing options available to the courts. The Rehabilitation Activity Requirement (RAR) replaced the Specified Activity Requirement (SAR) to give greater flexibility to probation to determine the rehabilitative interventions delivered to offenders. A recent report on the introduction of the RAR by HMIP explained that a key government objective was to 'encourage innovative work' (2017) by the new CRCs. While court orders used to specify the nature of the activity and the number of days required to complete it, now only the maximum number of days can be specified. Activity days can range from a short session of one hour to a whole working day, depending on the nature of the programme. The types of activities that constitute a RAR have been kept deliberately broad (and differ according to the provision available in each CRC area), but can include workshops for alcohol or drug misuse, victim awareness courses, help with employment, training and education (ETE) and help with finances. RARs have become an extremely popular sentencing option, taking 'centre stage in community sentencing for rehabilitation' (HMIP, 2017, p.7). Ministry of Justice data (2016) reveals that 29% of community and suspended sentence orders made in 2015/16 contained a RAR, compared to 8% for an Accredited Programme and 8% for an Alcohol/Drug/Mental Health Treatment intervention.[7]

While it is too early to provide an assessment of the effectiveness of RARs (nor is it the focus of this chapter), the HMIP report (2017) highlighted a range of teething troubles from concerns about sentencer information and confidence, to a lack of guidance for practitioners. Proper systems of evaluation for RAR activities have also not yet been established (of particular importance considering that much of this work is outsourced), exacerbating concerns about the wide divergence in provision across England and Wales (a situation of

'postcode lottery justice'). Given the issues around sentencer confidence in relation to *existing* community options (see Birkett, 2016), such findings are particularly concerning. The HMIP report outlined the pressure on CRCs to plan suitable activities for those sentenced to a RAR and deliver them within the specified timeframe. It revealed, however, 'significant shortcomings and a noticeable lack of impetus or direction in a good proportion of cases' and concluded that there were 'early signs of a reduction in sentencer confidence' (HMIP, 2017, p.4). The report went on to highlight the 'uncomfortable tension… between the making of the order and what is delivered, with the system leaving sentencers to assume services they are not fully confident about' (HMIP, 2017, p.4). Although going beyond statutory requirements – as sentencers are not required to know the exact nature of activities that offenders may undertake – it is acknowledged that the more information they receive on a service, the more likely they are to have confidence in its appropriateness to deliver the necessary outcome(s).

While many experts welcomed the greater involvement of probation in women's sentence plans, there is a concern that the changes could impact negatively on existing arrangements. Some areas had previously offered a gender-specific option (the Female-Only Specified Activity Requirement or FOSAR) which enabled women to be automatically placed in female-only environments to complete parts of their order (often within the environs of a women's centre). While the RAR provides probation officers with greater autonomy to work with women according to their needs, the broad definition of 'rehabilitation activity' means that some officers may choose to work with women on an individual basis and not refer them to existing services. A recent thematic inspection of women's community services conducted by HMIP revealed that:

> Many responsible officers and sentencers remained unclear as to what provision for women existed in their communities. In some areas, RAR was delivered by the women's centre, and this was seen as a positive approach by sentencers. Sentencers, however, generally felt they had insufficient

> information on the availability of RAR provision in the community, and that there were very few activities specifically for women (2016, p.24).

The HMIP report also highlighted sentencers concerns about information relating to women's compliance with their orders. Such concerns are exacerbated by the growing disconnect between the NPS and the CRCs; particularly striking in the courts where the CRCs have no presence. The new process requires the NPS to prepare all court reports, with the provision of specific activities (such as RARs) to be determined by the CRC. If the offender breaches their order, the CRC must refer their case back to the NPS who will then decide whether to pursue it further. If they do, it is the NPS that will prepare the breach report and recommend the necessary penalty to the court. There is growing concern (and indeed frustration) among sentencers and practitioners about the lack of three-way communication in this regard. Given the high rates of sentencer compliance with court reports, it is crucial that the CRCs communicate their (developing) provision to the NPS, their own officers and any partner agencies so that the court reports can reflect this (HMIP, 2016, p.8). While it is acknowledged that new working practices will take time to embed, the situation must improve to avoid continued confusion around sentence planning and delays in the commencement (or amendment) of orders.

Methods and Data

This chapter forms part of a much larger project on the sentencing and punishment of women under the new Transforming Rehabilitation arrangements. The data referred to in this chapter relates to 24 semi-structured interviews and a survey of 86 magistrates sitting across three areas in England and Wales during the period 2015-16. While the areas have been anonymised, it is important to note that Area 1 covers a large metropolitan area, Area 2 covers urban and rural areas and Area 3 covers some urban areas but is mostly rural.

Magistrates were recruited through the Magistrates' Association and as such the results cannot be generalised to the magistracy at large (not all magistrates are members of the Association, although many are). A call for interview participants was sent in a Magistrates' Association email newsletter and individuals were asked to make contact. The survey questionnaire was sent to all Magistrates Association members sitting in the three areas under review. It is important to note that while including the same questions, survey data is likely to generate different responses from in-depth interview data. Several 'free text' boxes were included in the survey to allow respondents the space to articulate their views as much as possible, and all participants were encouraged to make contact if they wished to add further comments. All names have been changed to ensure participant anonymity.

Findings

Both interviewees and survey respondents were asked a number of questions relating to their consideration of women offenders (and whether this was different from men); their views on the flexibility of the sentencing framework and developments with the RAR; their knowledge of community provision for women and the suitability of certain requirements (in particular unpaid work).

Sentencing Women Differently?

Consistent with previous literature (see Gelsthorpe and Sharpe, 2015; Gelsthorpe and Loucks, 1997; Hedderman, 2004; Birkett, 2016), participants were divided about the flexibility of the sentencing framework for the purposes of punishing women. Most survey respondents (57 out of 86) felt that they had sufficient flexibility, with several highlighting their judicial power to move beyond the guidelines if they felt it necessary. As outlined in similar research by Hedderman and Barnes (2015), such respondents made no distinction between *equal* treatment and the *same* treatment:

> If both genders are truly equal, both should receive parity of treatment (Survey Respondent 83, Female, Area 3).

One respondent explained that they had not come across occasions where they had needed 'extra measures' for women (Survey Respondent 37, Female, Area 3). Although in the minority, several survey respondents stated the opposite, however, and believed that their inability to differentiate in sentencing could have a disproportionately negative impact on women. For those that felt the sentencing framework was too constrained, concerns mainly focused on motherhood and childcare responsibilities:

> [The guidelines make] no allowance for the impact on children if the woman is a single parent (Survey Respondent 3, Female, Area 3).

> [The guidelines need] to recognise the different impact sentences have on them and their effect on their pivotal roles in family life (Survey Respondent 30, Female, Area 3).

Interviews raised similar themes, with mixed views expressed in all three research areas, although there was a much stronger feeling among magistrates in Area 2 that women and men should be considered in exactly the same way. 'Rob' (Area 2, Interview) felt that it was important not to get 'sentimental' about women offenders and that 'in these days of equality, we can't differentiate between a woman offender and a man offender'. 'Yvonne' (Area 2, Interview) similarly stressed that 'equal is equal' and that 'sometimes we can make too many excuses for mothers'. 'Sam' (Area 2, Interview), however, expressed frustration with the sentencing framework, and explained that the current set-up didn't allow her to take into account that 'often women's circumstances are different from men's'. As far as she was concerned, 'it needs to be far more flexible' as the guidelines were 'written for a man'. 'Sam'

acknowledged that only a few of her colleagues were aware of a distinct strategy for women, and that there needed to be:

> Much more work, much more attention, given that what little I know having read the Corston Report and all the rest of it, the training, that women's circumstances are very different.

'Sandra' (Area 1, Interview) agreed that the guidelines did not have the 'flexibility' to work around 'the challenges of motherhood'.

Several magistrates recognised that many of the women that came before them lived in vulnerable or chaotic situations. 'Mary' (Area 1, Interview) explained that 'when you have a woman before you in court and you're sentencing her, you've got a feeling at the back of your mind that you're dealing with somebody who might be a victim of crime as well as a perpetrator of crime'. 'Chris' (Area 3, Interview) stressed the need to consider whether 'they may have… abusive partners, so there can be certain aspects to it which you need to bear in mind'. 'George' (Area 1, Interview) similarly felt that as women offenders were often victims, 'the sentence should, I would hope, give access to try to sort out the other problems as well'. Such views were reflected in the survey, with one respondent acknowledging that 'women sometimes or often commit crimes due to the fear of domestic abuse or other coercion' (Respondent 85, Male, Area 1).

The general consensus among all participants was that women did not respond well to overly punitive sentences, and were more likely to benefit from targeted rehabilitative interventions. 'Susan' (Area 1, Interview) felt that 'particularly [with] women, maybe the focus should be on the carrot than the stick', while Survey Respondent 76 (Female, Area 1) similarly stated that 'women need more help rather than punishment'. As highlighted in previous studies, most magistrates could not recall the last time they had sentenced a woman

to custody, and several were keen to stress their extreme reluctance to do so (see Hedderman and Barnes, 2015).

Developments under the Offender Rehabilitation Act

Interviewees were asked about sentencing developments under the Offender Rehabilitation Act 2014 (and in particular the introduction of the RAR) and whether they viewed these as an improvement from the existing arrangements (notably the SAR). Many expressed unease when discussing the new legislation as they were unaware of the specific changes it introduced, and only a few had read official documents relating to the Transforming Rehabilitation agenda. While some participants were comfortable with the increased autonomy that the ORA afforded to probation, others expressed concern that the new legislation had taken away the small amount of influence they had previously been able to exert. One survey respondent viewed the changes as a positive development:

> RAR activities are more likely to be the most effective element of a community sentence in the case of women because they seem to respond more to them than punitive elements (Survey Respondent 74, Male, Area 3).

'Mike' (Area 1, Interview) was also supportive of the changes, and stressed that 'probation are there to devise the most appropriate means of fulfilling all the aspects of sentencing… I think that magistrates who want to interfere in that are just wrong'.

'Susan' (Area 1, Interview) was concerned about developments, however, and expressed a 'feeling that we're handing [power] over to somebody else'. 'Mary' (Area 1, Interview) went further to outline her dislike of the new system on the basis that 'it takes away a level of decision-making from the sentencers, which is inappropriate, because sentencing is public, and open, and transparent'. 'Jeremy' (Area 2, Interview) simply felt that:

> We've lost, if you like, the power to say 'this is what we want'.

In addition to the perceived inability to influence proceedings, and echoing the concerns around sentencer confidence highlighted by a recent HMIP report (2017), some participants were apprehensive that they had no control over the number of RAR days (or hours) that offenders would subsequently undertake. 'Mary' (Area 1, Interview) explained that 'when you specify that you're sentencing somebody to a RAR, all you're saying is the maximum number of days that they have to do. If the CRC decides not to do anything with them, there's nothing we can do about it'. 'Elizabeth' (Area 1, Interview) expressed similar frustration that there was 'not enough information about what they're doing, the 60 days, if you say, or it's 20 days, whatever, it's a maximum, not a minimum, there's no guarantee that… [they'll do it]'. While resigned to the new sentencing process, some were clear that colleagues should not refrain from 'expressing a view' about their expectations for the order. 'Mary' explained that she tried to persuade colleagues to make comments in court 'so that it's in our sentencing remarks, and that it may be filtered through in the form of some kind of guidance'.

Knowledge of Gender-Specific Provision

Consistent with the findings of previous research, thirty-one of the survey respondents had no idea whether there existed any gender-specific services for women in their area (see Radcliffe and Hunter, 2013; Jolliffe et al., 2011; Birkett, 2016). While twenty-nine said that they were aware of provision, they were unable to name specific organisations when questioned, and provided general answers such as:

> Probation offer women specific courses (Respondent 32, Male, Area 1).

> A women's hub (Respondent 4, Female, Area 1).

Interviews produced similar results; the majority of magistrates could not name specific provision and were keen to learn about what was available. Such findings are particularly disappointing considering that many sat in courts serviced by several women's centres. 'Mary' (Area 1, Interview) admitted that she had limited knowledge of local provision but felt that:

> From the point of view of what probation, and now the CRCs are offering women, I think it's pretty limited. If you said to me, 'name me a woman-specific programme' I couldn't.

Several of the interviewees had heard about gender-specific provision 'through the grapevine'. 'Rob' (Area 2, Interview) thought that he had heard of the local women's centre (when prompted), while 'Jeremy' (Area 2, Interview) said he had visited the service, yet was unable to provide any specific information about what it offered. 'Chris' who sat in Area 3 was also unable to name any of the services that worked with women, although when prompted, he recalled that he had heard about the women's service which was 'apparently very successful'. Several participants expressed frustration with this situation. 'Steven' (Area 1, Interview) admitted that he had **'**no real idea about what happens', with 'David' (Area 1, Interview) expressing a similar concern that probation was not responsive to questions from magistrates who 'don't know enough about what goes on behind the scenes'.

Only a few participants had knowledge of the gender-specific strategies that were being developed by the CRCs in their areas. CRC1, for example, had recently introduced a new policy that female offenders could only be supervised by female probation officers. While some magistrates in Area 1 were supportive of this development, most viewed it as a retrograde step. The most common concerns related to gender equality and the belief that women needed to mix with men (particularly male probation officers with whom they could build positive relationships). 'Steven' (Area 1, Interview) felt the new policy 'doesn't do a

great deal for equality', while 'Alice' (Area 1, Interview) believed the arrangements simply provided a 'cocoon' for women who needed to 'live in the real world'. 'Jeremy', a magistrate in Area 2, also expressed unease with the gender-specific approach. He believed that it amounted to 'segregation' and a return to 'Victorian thinking that only women can be dealt with by women'. He believed gender-specific policies were problematic because 'that's not the way the world is'. The general consensus among all participants was that 'one size doesn't fit all' ('David', Area 1, Interview) and that women should be able to decide whether they wanted to take part in female-only strategies. Several survey respondents believed that there was a general tendency to over-use custody for women, and blamed this on the lack of appropriate community-based sentencing options (see Hedderman and Barnes, 2015).

Consistent with previous findings (see Birkett, 2016), most participants (including 55 of 86 survey respondents) said that they would welcome more gender-specific provision for women in their local area. Survey respondents overwhelmingly focused on greater levels of support for female victims of domestic violence, services that provided support for mothers, and additional services for drug and alcohol addictions. Suggestions ranged from a bail hostel (Survey Respondent 5, Female, Area 2), a residential service for mothers and children (Survey Respondent 14, Female, Area 2), a women's refuge (Survey Respondent 82, Female, Area 2), more interventions to help with issues such as: low self-confidence (Survey Respondent 2, Female, Area 3), housing, parenting, relationships and domestic abuse (Survey Respondent 10, Female, Area 3), and self-harm and PTSD (Survey Respondent 79, Female, Area 3). Many recognised that women responded to structured forms of support, with less focus on punitive elements.

Interviewees provided similar responses. Many outlined the importance of adopting a holistic approach for women (although they did not frame their responses in such language). 'George' (Area 1, Interview) wanted to see greater levels of non-statutory provision made

available (such as help with benefits, housing, self-esteem and empowerment), and felt that women benefitted from an 'environment where those things were available'. 'Claire' (Area 1, Interview) also placed great importance on such factors, and felt that:

> Building up their knowledge, building their skill sets, building up the confidence is key to everything… these are key things that will help keep them out of courts.

'Rob' (Area 2, Interview) agreed that a female-only environment was 'bound to be beneficial, because it takes away a problem, perhaps, because if they are victims of violent partners, then they need to be taken into a safe, secure environment for them to be able to relax'.

'Natasha', a magistrate who sat in Area 3, felt that there needed to be 'much more sharing of other services that are available'. She requested more feedback from the local women's service, to include 'the number of women who have been referred… a very, very brief precis of some of the issues, totally anonymised obviously, and how they're working towards rehabilitating, and the results they've had'. 'Natasha' was aware that many women before the courts had suffered a history of abuse and felt strongly that women offenders should be supervised by female practitioners. The emphasis, as far as she was concerned, should be on 'the caring bit'. Such concerns were highlighted in the survey, with one respondent remarking that 'the only feedback we get is if someone is returned to court in breach of their community order. We rarely get to know of the success stories' (Survey Respondent 43, Female, Area 3).

The Suitability of Unpaid Work Requirements

In addition to the newly introduced RAR (which provides the 'rehabilitative' element), unpaid work is available to satisfy the 'punitive' element of community orders (if appropriate). The research revealed a perception among probation officers that there has been a rise in this requirement for women. Some participants expressed an awareness that, due to

their often-vulnerable circumstances, unpaid work could be difficult for many women to complete. The requirement to impose a punitive element (and the need to impose high level community orders in order to avoid a short term in custody) made this a particular dilemma. 'Rob' (Area 2, Interview) explained that more obstacles arose with 'single women, single parents, who are unable, perhaps because of their commitments, to get the release of the hours to be able to serve them'.

None of the participants had any real idea of the types of activities that women undertook as part of their unpaid work requirement, and no information about the suite of options offered (see Birkett, 2016). While the majority had not considered this in any detail, there was a consensus that any unpaid work should be suitable (i.e. nothing too physical) and that mixed groups might not always be appropriate for particularly vulnerable women. 'Susan' (Area 1, Interview) was concerned that mixed groups 'would be an issue… from the point of view of the task that they're asked to do, firstly, and secondly because of the kind of interaction between the different people'. 'Mary' (Area 1, Interview) was happy for women to be involved in gentler groups such as arts and crafts, as it was far better than 'sending women into a situation where they may feel threatened'. While 'Sam' (Area 2, Interview) said that she 'would insist [unpaid work] was female-only', she went on to admit that she wasn't sure if this option even existed.

Overall, however, participants did not view mixed groups as a bad thing unless the women were particularly vulnerable (and therefore unsuitable for this requirement in the first place). 'Pete' (Area 2, Interview), felt that groups should continue to be mixed to allow women to undertake work in a positive male environment. 'Yvonne' (Area 2, Interview) similarly agreed that women needed to 'learn the hard way' and stand up for themselves in male-dominated environments. The issue of mixed groups for unpaid work purposes seemed less of an issue for participants in Area 3. 'Chris' (Area 3, Interview) recalled that he had

‘never heard any adverse comments regarding unpaid work… At least not for many, many years’. ‘Natasha’ (Area 3, Interview) admitted that due to the rurality of the region it was ‘difficult to get women together, because of the sparsity of women offenders around’.

Reflection Points

This ‘update’ has re-visited and addressed many of the points highlighted in past research (in relation to magistrates’ attitudes to the sentencing of women and knowledge of gender-specific provision in the community), but also raised some new concerns following the introduction of the Offender Rehabilitation Act in 2014. Consistent with previous studies, most magistrates were clear that they did not treat women differently and considered *equal* treatment to mean the *same* treatment. This situation persists despite official guidance to the contrary, and it is clear that official bodies (including the Ministry of Justice, NOMS, the Judicial Office and the Magistrates’ Association) should work to ensure that sentencers are aware of policy developments (see also Hedderman and Barnes, 2015; Gelsthorpe and Sharpe, 2015; Birkett, 2016). It is important to stress, however, that while perhaps not considering women differently, most magistrates were clear that they took the relevant mitigating factors (particularly parenting responsibilities and childcare) into account when sentencing women (see Marougka, 2011; Gelsthorpe and Loucks, 1997; Birkett, 2016). As such, sixty-six per cent of survey respondents and the majority of interviewees felt that the sentencing framework was sufficiently flexible in this regard. Thirty-four percent of survey respondents did not, however, and continued to express frustration that the current framework did not allow them to take into consideration the specific needs of women.

As reflected in other studies, most magistrates expressed frustration with the lack of information they received about suitable community options for women. The vast majority (including sixty-two percent of survey respondents) had no idea about what happened on community sentences, or the precise activities that women undertook. Particular concerns

related to the introduction of the RAR. Magistrates' concerns in this regard, also highlighted in a number of reports published by Her Majesty's Inspectorate of Probation, must be prioritised if it is to develop into the 'flagship' rehabilitative element of community orders. While acknowledging that information about the *exact* activities that offenders undertake is beyond the sentencing requirements, studies have demonstrated that sentencer knowledge of provision, and confidence in it, are entwined. This point is an important one, given the current government objectives for magistrates to make full use of community sentencing options for women. This research therefore emphasises a message already delivered by past studies - the importance of sentencer information on community sentencing options; something that magistrates themselves have expressed a desire for. Information should be provided on a national scale but must also be communicated by the CRCs via local channels so that magistrates have a greater awareness of provision in their area.

Sufficient information also needs to filter through court reports. Magistrates are clearly influenced by their content (see Minson, 2015), now completed by NPS court staff. It is concerning that a recent report by Her Majesty's Inspectorate of Probation revealed that the lack of information included in court reports 'did not always enable the court to make a judgement about the most suitable community sentence' (2017, p.18). While it is not possible to prove whether the information included in court reports has deteriorated following the implementation of the Offender Rehabilitation Act, it is clear that magistrates need to have sufficient confidence that the two agencies of offender management (the NPS and the CRCs) are working closely together and in the best interests of their shared clients. The ability for CRCs to demonstrate the suitability and enforceability of rehabilitation activities (through the development of clear lines of communication with external providers, such as women's centres) to sentencers (via the NPS) must also be addressed.

A final area of reflection relates to unpaid work. Given their financial incentive to ensure that women comply with the terms of their order, it makes logical sense for CRCs to develop unpaid work placements that are more suited to the needs of women (making greater use of single placements, allowing women to undertake work in female-only groups or providing more flexible forms of part-time work to take place). If magistrates are to support the government's intentions to punish more non-violent, low-risk women in the community, then the sentencing options available to do this must work for women as well as men. Such a strategy is not radical, but simply reflects the government's expectations for women under the Transforming Rehabilitation reforms.[8]

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[1] Following the implementation of the Offender Rehabilitation Act 2014 the existing Probation Trusts were split into two. The National Probation Service (NPS) remains under government control and is responsible for managing the most 'high' risk offenders in the community (and providing services in the courts). The 21 new Community Rehabilitation Companies (CRCs) are responsible for managing those deemed to be 'low' or 'medium' risk in the community. Most are run by private companies and in addition to a block sum, receive some of their funding via a system of payment by results.

[2] Which requires sentencers to 'do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will'.

[3] These reports may also include a full risk assessment of the offender.

[4] Oral reports are used for less complex cases where the sentencing court requires only a limited amount of information.

[5] Specific funding for women's community services under the Coalition government totalled £5.2 million (jointly funded by the independent Corston Independent Funders Coalition) in 2010-12, £3.78 million by NOMS in 2012-13 and £3.78 million in 2013-14 through Probation Clusters (National Audit Office, 2013: 5).

[6] The CRCs receive funding in two parts. They receive a fee for their 'through the gate' services and delivering the sentences of the courts. They receive additional funding according to their ability to reduce reoffending rates (Payment by Results).

[7] It is important to note that the requirements are not mutually exclusive and some orders many contain a RAR as well as an accredited programme, drug and/or alcohol treatment requirement.

[8] The Ministry of Justice (2014) has stated its expectation that the CRCs should make provision for women to be supervised by female officers, attend probation in women-only settings and no longer complete unpaid work in mixed groups *where practicable*.