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‘Transforming Rehabilitation’ for Women? A View from the Courts

In conversation with Val Castell JP, Magistrates Associationⁱ lead on Women Offenders

Coming into force next year, the Coalition government’s *Transforming Rehabilitation* agenda will (amongst other things) extend supervision to offenders released from short-term sentences and open up probation services to new private providers. As seventy per cent of women sentenced to custody receive sentences of less than twelve months (Seal and Phoenix 2013: 168; see also Cabinet Office 2009; Gelsthorpe and Sharpe 2009), four out of every five of short sentences for women are passed by magistrates (Hedderman 2012: 5). Why women offenders are more likely than men to receive immediate custody from magistrates stimulates widespread debate in both academia and practice (see for example Corston 2007; Hedderman 2012; Hunter and Radcliffe 2013; Howard League 2013a). There is also increasing concern that the introduction of a “criminal justice market” (Gelsthorpe and Hedderman 2012: 375) will bring more risks than benefits to existing provision (ibid; see also Prison Reform Trust 2013; Women in Prison 2013; Howard League 2013b). As part of this on-going conversation, it is important to seek the viewpoints of those who are best placed to answer. In this extremely timely and policy-relevant issue of the *British Journal of Community Justice*, it is crucial, therefore, to have a view from the courts.

GB: As the Magistrates Association lead on Women Offenders, you gave oral evidence to the Justice Select Committee’s recent inquiry. The Committee’s final report concluded that the new commissioning landscape presents both “risks and opportunities for the Corston agenda” (2013: 50). How do you view these from a sentencing perspective?

VC: *The potential improvements come from having specific requirements for women offenders in the new contractsⁱⁱ. It will be mandatory to allow women offenders the opportunity to be seen by women in women-only environments. In many cases, this may simply mean having days allocated for dealing with women offenders at main probation offices and this may not help some more vulnerable women to feel secure there. However, any measures to promote thinking about the effects of environment on likely compliance with orders have to be a step in the right direction. Having some provision for women everywhere will encourage sentencers to think about how we need to approach women with complex needs and problems. Hitherto it has only been possible to approach the subject in a very piecemeal fashion as provision has varied so much. It will now be more appropriate to think about disseminating information and advice nationally. The main risk is that having provision somewhere in the LJA [Local Justice Area] will be seen as sufficient, even if that is not available to every woman offender. The push to extend the urban model is very welcome, but I do not believe it will be sufficient.*

GB: You sit on the Ministry of Justice Women’s Advisory Board. Do you think that the government is doing enough to provide sentencers with a clear understanding of the sentencing options available to them under the new arrangements?

VC: *As yet, we don’t know what will be available to us. There has been limited consultation on what we would like to be available, but timescales have been too short to allow this to be widespread. When the contract requirements are finalised, we will have to wait and see how companies envisage fulfilling them. The community sentences may (I hope will) offer us more scope for alternatives for those who have passed the custody threshold.*

GB: Could you envisage a situation where magistrates will draw on their experience of previous outsourcing contracts (such as ALS/Capita for interpreters, GEOAmev or Serco for prison escorts) as the basis for deciding how rigorously community orders will be enforced by private providers? I.e. could reduced sentencer confidence in CRC-run community orders equate to an increase in the female prison population?

VC: *Confidence in orders comes with feedback on those orders working well, so if we keep seeing offenders back in court for breaches, or for further offending while on orders, we will tend to think that a different sentence needs to be tried – which may well be custody. Rises in the prison population could only come from the [new] orders failing to achieve their aims so that they were breached or failed to prevent reoffending.*

GB: Lack of education is regularly cited as a reason why magistrates continue to sentence women to custody when there is alternative provision available. Do you think that your 23,000 colleagues have sufficient knowledge of the women's centres in operation? Is there an issue with trust or lack of provision? Or is there an issue at all?

VC: *Some are very knowledgeable, and have been involved with centres local to their courts. Where there has been a strong and active women's centre, most benches are aware of what is being offered and have confidence in the sentence provision. I have been told by Women's Breakout that magistrates are not making good enough use of options available to them but I have seen no evidence of this. I think we all need to know and understand more about the complexities of the lives of many of the women who appear before us, and how women's centres may be able to actively address some of the issues that lead to offending. The piecemeal approach we have seen so far as not led to any consistency, and has not allowed any education on a national basis.*

Given the limited space available it is not possible to publish the conversation in full, but several issues require highlighting in the context of *Transforming Rehabilitation*. Notwithstanding the on-going work of dedicated and mobilised magistrates such as Val Castell, education and training amongst the magistracy remains an issue. As highlighted by Hunter and Radcliffe (2013: 35), whilst provision may exist in some areas there is currently no requirement for training on the specific needs of women offenders, although this is something that the Magistrates' Association is working to address.

Patchy provision in the community has also proved a significant barrier to the implementation of Corston's vision and *Transforming Rehabilitation* could present a fresh opportunity to (re)establish community options for women. Hard-fought changes to the Offender Rehabilitation Bill (representing the legislative parts of the strategy) must be welcomed; although, as highlighted by Val, the interpretation of future LJA 'provision' for women remains to be seen. Given the limited opportunities for consultation, it is clear that sentencers (and their legal advisors) along with the rest of the criminal justice community will have little time to negotiate the newly 'transformed' landscape for women.

Val Castell JP sits on the Bristol and North Avon bench and is the Magistrates' Association lead on Women Offenders.

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ⁱ The Magistrates' Association represents over 80% of magistrates and is the only independent organisation in England and Wales advocating on behalf of the magistracy. It is fully governed and funded by its members.

ⁱⁱ Via a Government amendment to the Offender Rehabilitation Bill made during Lords Third Reading. Under section 149 of the Equality Act 2010 and applying to both private and public sector providers.