

## Written evidence from Dr Carly Lightowlers, University of Liverpool

### *Brief Biography*

I am submitting evidence to this call as an academic (Criminologist) at the University of Liverpool. In this response, I draw on reflections from my own published research concerning sentencing (predominantly regarding violent offences) and my recent review of the evidence-base for the use of problem-solving courts with women (conducted alongside independent researcher Nicole Benefer)<sup>1</sup>. Having worked in local and central government settings as well as in academia, I have gained considerable expertise in the analysis of secondary and administrative data with which to study contentious issues of alcohol, crime and justice. To date, my work has mainly focused on alcohol-related violence and sentencing (and has included the consideration of women sentenced for their intoxicated offending<sup>2</sup>).

### *Consultation response*

This submission speaks mainly to the first theme in this call to evidence namely **‘Reducing the number of women in custody’**. Specifically reflecting on the questions **‘What has been done to reduce the number of women serving short prison sentences?’** and **‘What more could be done?’**

Female-specific courts aim to facilitate desistance and avoid female imprisonment by supporting women on suspended or community sentences, mainly by enhancing compliance with community (treatment) order requirements. In response to the long-standing call for gender-informed approaches to female offending, and sparse government guidance on what form this should take or

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<sup>1</sup> Lightowlers C. and Benefer N. (forthcoming). Improving court outcomes and probation services for women. In (Ed.s) I. Masson and N. Booth. Handbook on women's experiences of criminal justice. Taylor and Francis.

<sup>2</sup> Lightowlers C. (2019). Drunk and doubly deviant? Gender, intoxication and assault. British Journal of Criminology 59(3): 693-717.

funding available to implement (e.g. the recent Concordat<sup>3</sup>), female-specific courts have emerged in several areas in the UK off the back of the perceived success of specialist problem-solving courts (PSCs) more generally (e.g. Specialist Domestic Violence and Family, Drug and Alcohol Courts). Whilst recognising the potential of problem-solving justice to divert women away from short-term custodial sentences, evidence of how female-specific courts operate and their effectiveness is limited, and there remain several challenges concerning this approach which are yet to be reconciled, including lack of intersectional considerations and ensuring consistency in access to services/support. Consequently, wider sentencing reform more promise for ensuring consistent approaches and support for all women.

Female-specific courts are practitioner-led local partnership responses to implementing gender-specific and trauma-informed intervention/solutions to divert women away from custody. These involve adapting the court environment and processes to limit the risk of re-traumatising women and to allow a supportive space for women to access support and discuss their needs. However, such provision is only ever a partial solution benefiting those women whose local court have such arrangements. Moreover, the way in which they operate, and the quality of service they deliver, varies. Combined, this results in somewhat of a post-code lottery for court outcomes for women.

Moreover, whilst their success is thought to be a result of the ‘buy-in’ from defendants - namely, their expressed willingness to comply with the requirement (consent), which is one of the eligibility requirements for a CSTR, others have rightly cautioned against overloading women with additional requirements that may serve to ‘up-tariff’ women or where breached serve to further embroil them in the criminal justice net (net-widening)<sup>4</sup>.

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<sup>3</sup> Ministry of Justice (MOJ) (2020). The Concordat on Women in or at risk of contact with the Criminal Justice System. London: Ministry of Justice.

<sup>4</sup> Birkett, G. (2021). Solving Her Problems? Beyond the Seductive Appeal of Specialist Problem-Solving Courts for Women Offenders in England and Wales. *Journal of Social Policy*, 50(1), 104-121.

Gelsthorpe, L. (2017), The Potential and Pitfalls of ‘Problem-Solving-Courts for Women’, Howard League ECAN Bulletin.

Women's needs are shaped by other overlapping social and political identities (intersectionality) – for example, class and ethnicity - which can exacerbate disadvantage and shape experiences of the criminal justice system and health services (which deliver treatment requirements attached to community sentences). Yet there is a lack of intersectional consideration of how these courts support those from more impoverished communities and Black, Asian and Minority Ethnic (BAME) backgrounds, who are more likely to have had previous adverse experiences of criminal justice contact and thus may be less likely to consent to compliance with treatment orders. In addition to previous calls for evidence and evaluation of female-specific courts, there is thus also a need to consider the intersectional experiences of women in specialist courts and to clarify eligibility requirements concerning gender identity.

Whilst it has long-been asserted that equal treatment will not facilitate substantive equality, the existing gender-neutral sentencing framework persists. Although this has now been modified with the recent 'Aide Memoir'<sup>5</sup> issued by the National Probation Service (which sits alongside the Pre-Sentence Report) and expanded guidelines issued by the Sentencing Council<sup>6</sup> to include the consideration of dependents for those women who are mothers, which is promising, it only pertains to a very distinct set of circumstances for some women, and as such falls short of more radical reform in adopting a female-focussed sentencing framework. Indeed, even with the Aide Memoir as a guide, women are reluctant to disclose information about children for fear (that they will be removed into care) and lack of trust in disclosing information about children to criminal justice officials. Moreover, Pre-Sentence Reports are often carried out hurriedly so crucial information, for example, about children is often missed.

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<https://howardleague.org/wp-content/uploads/2017/07/ECAN-bulletin-July-2017.pdf>

<sup>5</sup> National Probation Service (2019). P SR Interview Aide Memoire – reports about women. Available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/844843/annex-a-psrs-on-women-interview-aide-memoire.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/844843/annex-a-psrs-on-women-interview-aide-memoire.pdf)

<sup>6</sup> Sentencing Council of England and Wales (2019). Expanded explanations in guidelines. London: Sentencing Council of England and Wales. Available at <https://www.sentencingcouncil.org.uk/blog/post/expanded-explanations-in-guidelines/>

Against a widespread reluctance amongst the judiciary to alter their sentencing practices, a female-focussed sentencing framework would better enable sentencers to support women's diversion from prison and guide more gender appropriate punishments for women in a systematic manner at national scale. This also represents a more effective approach to advocating a presumption against the use of custodial sentences for women than investing in multiple bespoke courts across the country in a post-austerity, post-pandemic context in which resources are stretched. If this approach cannot be adopted, further training for magistrates (who usually hear low level cases relating to female offending in court) in how they can best consider the specific needs of women in sentencing is also crucial alongside the addition of further female-specific mitigating factors in sentencing guidelines (such as abuse and coercion).

***Further reading***

Lightowlers C. and Benefer N. (forthcoming). Improving court outcomes and probation services for women. In (Ed.s) I. Masson and N. Booth. Handbook on women's experiences of criminal justice. Taylor and Francis.