

## Written evidence submitted by 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 - Summary***

This submission speaks mainly to the first three aims of the Female Offender Strategy; namely, to reduce the number of women entering the criminal justice system; increase the use of community sentences; and reduce short custodial sentences.

This response reflects upon the expansion of problem-solving courts (PSCs) as gender-informed responses to female offending. 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. However, there are outstanding

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<sup>1</sup> Lightowlers C. and Benefer N. (forthcoming). Assessing the viability of problem-solving courts for criminalised 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.

challenges yet to be reconciled concerning gender-specific courts. These comprise considerations concerning the operation and evaluation of such initiatives as well as intersectional considerations, ensuring consistency in access to services/support, and the need for wider sentencing reform.

Moreover, considering ongoing reform and challenges to the operation of the courts in England and Wales, the needs of women must not be side-lined given stretched resources in a post-pandemic era and in operationalising the reunification of the National Probation Service (NPS). The former presents predominantly a challenge in terms of diminished resources and court backlogs, requiring explicit financial backing and a commitment to the evaluation of and wider roll out of existing initiatives. The latter provides an opportunity to standardise processes across probation and courts and establish a baseline level of support for women. I also suggest a further promising mechanism lies in adopting national gender-specific sentencing guidelines, as this approach would promote a uniform approach, ultimately eliminating the need for bespoke women's courts.

### ***Consultation response***

In response to the long-standing call for gender-informed approaches to female offending (as in the Female Offender Strategy), and sparse government guidance on what form this should take or 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, but not limited to, lack of intersectional considerations and ensuring consistency in access to services/support. Consequently, wider sentencing reform shows more promise for ensuring consistent approaches and support for all women.

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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.

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 benefiting those women whose local court have such arrangements. Moreover, the way in which they operate, and the quality of service they deliver, varies in the absence of an approved process model and dedicated funding. Combined, this results in a post-code lottery for court outcomes for women. Reunification of the NPS represents an opportunity to rectify some of this, by standardising processes and more uniformly implementing best practice as well as establishing a baseline level of support for women. The reunified NPS model commits to improving the quality of advice and pre-sentence reports (PSRs) given to courts.<sup>4</sup> Combined with plans stemming from the Female Offender Strategy to ensure suitable PSRs are prepared for women, this should further support improvements to sentencing outcomes for women by allowing tailored and targeted interventions to be matched to individual circumstances. However, it is too early to establish how its implementation will impact women.

Whilst the success of female-specific courts is thought to be a result of the defendants expressed willingness to comply with the requirement (consent - one of the eligibility requirements for a Community Sentence Treatment Requirement), others have 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>5</sup>.

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

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<sup>4</sup> Justice Committee (2021) The future of the Probation Service. London: UK Parliament. Available at <https://publications.parliament.uk/pa/cm5801/cmselect/cmjust/285/28504.htm>

<sup>5</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. <https://howardleague.org/wp-content/uploads/2017/07/ECAN-bulletin-July-2017.pdf>

criminal justice system and health services (which deliver treatment requirements attached to community sentences). Yet there is a lack of intersectional consideration of how specialist/female specific 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. There is thus a need to consider the intersectional experiences of women in specialist courts and to clarify eligibility requirements concerning gender identity. Unfortunately, progress against the Female Offender Strategy is also only partially able to monitor and disaggregate official statistics by protected characteristics.<sup>6</sup> And, whilst, whilst a Female Offender Minority Ethnic Working Group has been established to engage BAME women with experience of the criminal justice system in developing approaches, it remains in its infancy<sup>6</sup> and the utility of PSCs in this regard has not been formally reviewed.

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>7</sup> issued by the National Probation Service (which sits alongside the Pre-Sentence Report) and expanded guidelines issued by the Sentencing Council<sup>8</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 such as adopting a female-focussed sentencing framework. Even with the Aide Memoir, women may be reluctant to disclose information about children for fear (that they will be removed

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<sup>6</sup> Prison Reform Trust (2021) Female Offender Strategy PRT Matrix 140421. London: Prison Reform Trust. Available at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women/Female%20Offender%20Strategy%20PRT%20Matrix%20140421.pdf>

<sup>7</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>8</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/>

into care) and given lack of trust in disclosing information about children to criminal justice officials. Moreover, PSRs are often carried out in haste with crucial information about children often missed.

Whilst specialist courts represent one model for working with criminalised women to divert them away from custody and facilitate desistance, these objectives could also be achieved by integrating gender specific considerations into sentencing across all courts. 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 could be achieved by either restricting judicial discretion to imprison criminalised women or issuing 'sentencing guidelines to structure judicial discretion in gender-sensitive ways' (Roberts and Watson 2017, p.547). Adopting gender-specific sentencing practice would result in more uniform benefits for women, rather than relying on the ad hoc availability of specialist women's courts, which can only produce marginal improvements for responding to female offending. Advocating a presumption against the use of custodial sentences also represents a more effective approach to criminalised 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). Assessing the viability of problem-solving courts for criminalised women. In (Ed.s) I. Masson and N. Booth. Handbook on women's experiences of criminal justice. Taylor and Francis.

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