

# Are magistrates doing justice to women?

Gillian Hunter and Polly Radcliffe consider magistrates' rehabilitative potential

*The profile of the women who tend to get caught up in the criminal justice system has changed little over the past 30 years. Compared to the general population, they are socially and economically disadvantaged, poorly educated and have high incidence of mental health and substance misuse problems. Experience of physical violence and sexual abuse is depressingly prevalent in their biographies (see for example, Gelsthorpe et al., 2007). In addition, the steep rise, compared to men, in the imprisonment of women throughout the 1990s, most commonly for short sentences of six months or less, exacerbated their marginalisation and failed to reduce reoffending.*

## Women's community services

The policy impetus to reduce women's imprisonment alongside long term advocacy from charities and campaigning organisations such as the Fawcett Society and Prison Reform Trust secured some important developments for woman caught up in the criminal justice system. The *Together Women* demonstration projects, started in 2005 in the North West, Yorkshire and Humberside and similar projects around the country developed as 'bottom up' initiatives, involving partnerships between voluntary sector women's services and criminal justice agencies. They were designed as women-only spaces, where women could attend voluntarily or as a part of a community sentence or condition of their licence. Their strength was the on-site provision of 'holistic' support for the range of complex needs that may have led to women's offending. This included access to substance misuse treatment, a range of basic educational and vocational courses,

parenting support, debt and housing advice, assertiveness training, access to domestic violence services and various sexual and physical health checks.

Baroness Corston's report into vulnerable women in the Criminal Justice System (2007) included the recommendation that community sentences are the norm for non-violent women offenders and reiterated the importance of being able to complete these at local women's community services (WCSs). Her vision was that these 'centres' would be used as court and police diversions; as part of a package of measures for community sentences; and for the delivery of probation and other rehabilitative programmes.

By 2010 funds from government and charities had made possible a network of approximately 40 WCSs across England and Wales and there is great consistency in what both women service users and stakeholders have found valuable about them (Hedderman et al., 2011a). This includes their needs-led, holistic approach, the perceived safety of a women-only environment and the befriending and emotional support provided by staff. There is less evidence available about their impact on women's rates of reoffending but the social and economic case for supervising punishment and rehabilitation in the community rather than in custody is strong (see Radcliffe and Hunter, 2013 for review of evidence). However, there is uncertainty concerning the future funding of WCSs and with the increasing prospect of payment by results commissioning, there is an urgent need to demonstrate their worth compared to alternatives of probation or custody.

## Magistrates views about WCSs

We focus here on how WCSs have been promoted to magistrates. As a group, magistrates have undoubtedly contributed to the increasing numbers of women in prison. The majority (approximately 80 per cent) of short custodial sentences are handed out to women by magistrates; for example, between 1992 and 2002 there was a five-fold increase in the number of women being sentenced to custody via the magistrates' courts (Hedderman, 2012). Yet, despite the best policy intentions, the extent to which the WCSs are being considered by sentencers as a viable alternative to custody for women appears to be limited.

Historically, there is good evidence that expanding the choice of community orders does not necessarily result in reduced use of custody and magistrates tend to view WCSs as a low-tariff sentencing option (Hedderman, 2012; Jolliffe et al., 2011). A more radical approach to reversing the rise in women's imprisonment is removing magistrates' powers to imprison (Hedderman, 2010, 2012), however, in the absence of such changes to sentencing policy, our starting point was exploring how best, given the *status quo*, to raise the profile of WCSs with local magistrates.

Our own recent interviews with magistrates (Radcliffe and Hunter, 2013) and other research has suggested magistrates' awareness of WCSs remains disappointingly low (see for example, Jolliffe et al., 2011) and this persists even where promotion has been attempted through activities such as service open days, information leaflets and local training seminars run by WCS staff. However, more encouragingly, where magistrates report some knowledge about their local WCS, they tend to view it favourably and commend the general approach to supporting women involved in the justice system. We also found that when they were made aware of the existence of a local WCSs they wanted to know more about that service (Jolliffe et al., 2011; Radcliffe and Hunter, 2013). However, magistrates expressed concerns

about the uneven geographical spread of WCSs, about service capacities and the sustainability of existing WCSs in the current economic climate (Radcliffe and Hunter, 2013).

There are certainly some inherent challenges in communicating with magistrates. These include their vast number (approximately 30,000 nationally with upwards of 200 magistrates per bench), but also the voluntary and part-time nature of the magistracy means that their participation in any training beyond what is expected for initial qualification is largely optional. As volunteers, they may have difficulty keeping up with the wide-ranging information received about new initiatives or sentencing options. In addition, cuts to training budgets and to expenses allowed for attendance at training events, both for magistrates and for the probation service which provides some magistrates' training locally, mean less training is available. There is no specific training for magistrates on the needs of women offenders, for example, although this might exist locally in some areas.

Individually, magistrates are unlikely to come across many women offenders (in 2011, women comprised only 24 per cent of all those proceeded against in magistrates' courts in England and Wales; Ministry of Justice, 2012). Magistrates may only sit in court a few times per month and sometimes across a variety of different courts (e.g. youth, family). They also depend largely on probation and court legal advisors who act as gatekeepers in terms of the sentencing advice they receive about possible disposals and resources for women offenders (Jolliffe et al., 2011; Radcliffe and Hunter, 2013). Our research also indicates that probation staff's engagement with WCSs is uneven both at level of individual staff and probation trusts.

### Raising the profile of WCSs

So what can be done to develop expertise amongst magistrates and legal advisors on sentencing options for women and to strengthen

working relationships between magistrates' courts, probation and WCSs?

There would be obvious benefits in being able to demonstrate to magistrates and probation low rates of reoffending for those attending the WCS compared to custodial or probation alternatives and good progress towards resettlement, but as yet that evidence is not easily available. Our work has shown the importance of ensuring good operational partnerships between the WCSs and probation (steered through strategically). This is often facilitated through collocation of probation officers at the WCSs and in turn is likely to increase the criminal justice profile of the WCSs locally (Radcliffe and Hunter, 2013).

There are certainly practical checks which can be made by probation trusts to ensure that all probation staff who work at magistrates' courts are aware of WCSs therefore that pre-sentence reports prepared by probation for women appropriately and consistently reflect the range of local provision. While there is the prospect of probation trusts losing their role of supervising low risk people in the community, they will continue to have a part to play in presentence planning. In addition, it might also be possible for the women centre staff to attend the magistrates' courts and/or contribute to the writing of presentence reports and the reviewing of sentences for low risk women offenders.

More radically, there might be some efficacy in establishing groups of magistrates on each bench who become specialists in the sentencing of low-risk women, who liaise with other professionals and where possible schedule low-risk, non-violent female offenders to appear in a model similar to the family and drug and domestic violence court pilots in England and Wales and to the problem solving community justice courts piloted in Scotland.

The development over recent years of this network of WCSs is an impressive achievement, yet work remains to integrate WCSs more fully into criminal justice provision for

low-risk women and to attain greater success in reducing the numbers of these women being imprisoned. Such a task is increasingly difficult under current economic conditions. Ideally, there would be well funded women's community services available as disposals in each magistrates' court area in England and Wales, and concerted work undertaken with sentencers and legal advisors on their role in providing a range of women-specific programmes and case work. ■

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