Sentencing of Women

An overview of the current situation

Written by Georgia Clare

In a public lecture delivered at the Centre for Criminology, Oxford University, The Lord Chief Justice, Lord Phillips stated ‘only a fraction of the four and a half thousand women in prison are likely to fit the criteria that government policy says should be in prison, namely “only offenders who have committed violent or serious offences or who constitute any danger to the public”’. This is the crux of the complex problem surrounding the imprisonment of women: the detriment to the mental health, employment prospects and families of these damaged women coupled with the enormous financial cost of incarceration is weighed against merely the convenience of existing infrastructure and the anachronistic idea that prison is the answer to the problem of crime.

This paper will aim to explore a series of solutions to this problem, accounting for the resource limitations of a small legal charity specialising in criminal appeals and is divided into four parts. First, an overview of statistics surrounding women in prison to frame further discussion. Second, a summation of the issues associated with women in prison, including the structural causes of crime, the impact prison time has on families and children and the issues women face on release. Third, an overview of the options women have for appealing their sentences and why these options are in need of review. Finally, the paper will posit a number of both short and long term recommendations for the Centre for Criminal Appeals (CCA) concluding equality for female prisoners will only be achieved once a distinction is made between the way males and females are treated by the criminal justice system.

The Problem

Female offenders have a different profile of risks and needs to male offenders. Women are statistically far less likely to commit crime than men, yet more female first time offenders are given custodial sentences than male first time offenders. This gendered approach to sentencing is mirrored

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1 Lord Chief Justice Lord Phillips, ‘The Case for Community Sentencing’ (Speech delivered at the Centre for Criminology, Oxford University, 10 May 2006).
in the societal perception of women who commit crime. As Baroness Hale put it, “Many women still define themselves and are defined by others by their role in the family. It is an important component in our sense of identity and self esteem. To become a prisoner is almost by definition to become a bad mother..., wife or partner.”

Women currently comprise on average five percent of the total prison population, a figure which has grown from 1561 in 1993 to a high of 4414 in 2008. As of 17th July 2015, a snapshot of the female prison population stands at 3904. Across the UK, more than 13500 women are imprisoned each year, more than any other country in Western Europe. The vast majority of women offenders are not dangerous. They commit primarily acquisitive crime and have a much lower rate of professional crime, criminal damage and serious violence than men.

The thirteen women’s prisons in the UK do not represent the severity (or lack thereof) of the crimes committed. The women’s prison estate is comprised of only two security classifications – closed and open. There are only two open prisons with limited spots available meaning that many women are held in facilities with unnecessarily strict security, contravening the UN guidelines about separation of security classifications.

Of women currently in prison over 70 percent are serving sentences of less than 12 months, and 95 percent are serving sentences of less than four years. In 2014, over 4000 women entered prison to serve sentences of six months or less, accounting for 71 percent of all women entering prison under an immediate custodial sentence. The equivalent proportion for men is only 55 percent. This means that failing a first instance appeal, they have no option but to serve given that an appeal to the Criminal Cases Review Commission takes approximately five years from inception to completion.

**Issues Associated with Women in Prison**

**A Structural Causes of Crime in Women**

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10 *SmartJustice for Women Film* (Directed by Charlotte Rowles, Prison Reform Trust, 2011).
14 Ibid.
18 Ibid.
While there are innumerable causes of crime generally, three key causes of statistical prominence for women emerge in the literature.¹⁹ These are as follows: being victims of abuse, misusing substances and suffering mental health issues. This paper focuses on these three structural causes because they are not effectively rehabilitated by the prison system. For this reason, prison as it exists currently is not an effective solution for the many women offenders.

1 Victims of Abuse

It has been well established that adverse childhood experiences, particularly abuse and exposure to violence may lead to future criminality and antisocial behaviour.²⁰ It follows that women who come into contact with the criminal justice system have often experienced “significant life traumas”.²¹ Up to 50% of women in prison report experiencing violence at home and one third of these women have suffered sexual abuse.²² This statistic dwarfs the equivalent percentage for men.²³ For women who have been victims of sexual abuse, strip searching can be extremely traumatic.²⁴ In a comprehensive study of prisoners generally, it was established that those who reported experiencing abuse and violence as a child were more likely to be reconvicted within a year than those who did not.²⁵

Women are also more likely to enter the criminal justice system via toxic relationships with partners, family and friends, which additionally increases their chances of reoffending.²⁶

The failure of the current prison system to acknowledge that so many women who end up committing crimes are themselves victims of abuse perpetuates the damaging victim-offender dichotomy. These women are removed from any existing support network and stripped of their coping mechanisms in prison.²⁷ What is thus created is a double punishment: the punishment of incarceration as an undamaged individual would experience it coupled with the ‘personal prison of previous traumas and abuse’.²⁸ It is for this reason that even short prison sentences can be exponentially damaging for women offenders who are victims of abuse.

2 Substance Misuse

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²⁸ Ibid.
The relationship women prisoners have with substances also has a significant impact on offending and reoffending rates. The Ministry of Justice Report on Improving Services to Women Offenders stressed that if drug and alcohol additions are not addressed, ‘offenders risk remaining dysfunctional and incapable of engaging with wider rehabilitative programmes that, collectively, could help them lead law-abiding lives on release.’

A higher percentage of women require clinical detoxification when entering prison than men (70% compared with 50%) and women are also more likely to engage in complex poly-substance misuse than men. Of the women reporting an alcohol problem, nearly three quarters also have a drug problem compared to less than half of men reporting an alcohol problem. In a study undertaken by the Department of Public Health at the University of Oxford in 2006, in the six months preceding prison 75 percent of women had taken an illicit drug and 42 percent drank alcohol in excess of government guidelines.

While the Corston Report noted that drug and alcohol addiction services for women have improved dramatically, the quality of the services becomes irrelevant when access is limited due to oversubscription. This is clearly the case in women’s prisons in the UK. In addition, for those who do receive help in prison for their substance issues, this support is often abruptly cut off upon release with dire consequences. In a study by the Home Office, it was found that in the week following release, former prisoners are 40 times more likely than the general population to die, with 90 percent of deaths being drug related. Due to the insufficiencies of available support services for women in prison with substance misuse issues, prison can be exponentially damaging. Such women would be much better served in the community where they can receive ongoing support in a realistic environment.

3 Mental Health Concerns

The Corston Report noted that ‘significant and substantial mental health morbidity is unlikely to be addressed during a prison sentence and is likely to have been a factor in the pattern of offending behaviour prior to sentence’. Women with mental health issues are significantly over-represented in the prison population with 78 percent of women exhibiting some level of psychological disturbance

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29 Ibid.
32 HM Inspectorate of Prisons, Alcohol services in prisons: an unmet need (2010).
36 Ibid 20.
on reception to prison, compared with 15 percent for the general female adult population.\textsuperscript{39} Despite the media attention mental health has received in the wake of a spate of suicides and prolific self harm in the women’s estate,\textsuperscript{40} the mental health provision in many prisons remains oversubscribed.\textsuperscript{41} While men are more likely to commit suicide in the community, this statistic reverses in prison. Likewise, despite only comprising 5% of the overall prison population, 56% of all recorded incidents of self harm in 2010 occurred in the women’s estate.\textsuperscript{42} The self-harming behaviour in question stems from complex life experiences not easily understood by insufficiently trained staff members.\textsuperscript{43} In the words of Baroness Corston, ‘These are problems created within the community, which is where they should be addressed’.\textsuperscript{44}

B Women Are an Integral Piece of the Family Unit

Probably the central differentiating factor between the prison experience of men and women is the impact on the wider family unit. Female prisons not only have the additional complexities of pregnancy and nursing to account for but also the fact that women are typically the primary caregivers for children.

1 Pregnancy and Nursing

The most recent Prison Service figures show that 382 babies were born in prison between April 2005 and Dec 2008.\textsuperscript{45} Pregnant women can apply for a place in one of the seven Mother and Baby units across the country but these applications are not always successful. The State of the Estate Report found that of the 246 applications received between March 2011 and February 2012, only 116 were approved despite vacant places.\textsuperscript{46} This is likely due to a number of children being taken into care by social services immediately after birth and other expectant mothers failing the mandatory drug testing.\textsuperscript{47}

While overall the childcare facilities in prison are good,\textsuperscript{48} there are a few key areas that need improvement. Firstly, the childcare staff often employed by Mother and Baby units work alongside uniformed prison staff contradicting attempts to create an environment as similar as possible to that outside prison.\textsuperscript{49} Secondly, few mother and baby units have the facilities to allow mothers to cook for

\textsuperscript{43} Ibid.
\textsuperscript{44} Ibid.
\textsuperscript{45} Birth Companions, Statistics: Women in prison are a small but vulnerable group and the women we support face many challenges (2015) <www.birthcompanions.org.uk/statistics>.
\textsuperscript{46} Ministry of Justice, Freedom of Information request 175388.
\textsuperscript{47} Paul Vallely, ‘Mothers & Prison: Babies behind bars’ The Independent (London), 17 September 2012.
their children, denying the opportunity to ‘learn about nutrition, build confidence and cook on a budget.’\textsuperscript{50} This also fails to mirror the environment outside of prison.

\textit{2 Children of Imprisoned Women}

Women prisoners are significantly more likely to be the primary carers of young children than male prisoners. Thus the impact of their imprisonment is often much broader. Two thirds of women in prison were mothers living with their children before they were convicted and one third have a child under five years old.\textsuperscript{51} When their mothers go to prison only five percent of children remain in their own home and only nine percent are cared for by their fathers.\textsuperscript{52} Around 18000 children are separated from their mothers by imprisonment each year.\textsuperscript{53}

There is however some protection for children in these circumstances. Domestically, the Human Rights Act\textsuperscript{54} and existing case law require the best interests of the child to be taken into account by sentencers.\textsuperscript{55} Additionally, it is one of the international rights of the child to keep in contact with a parent provided it is in their best interests.\textsuperscript{56} Unfortunately, research has shown that in many cases the best interests of the child are not considered.\textsuperscript{57} The rights of the child are often not balanced against the seriousness of the mother’s offence as required.\textsuperscript{58}

Removing a child from his or her mother at a young age can have disastrous destabilising effects on that child’s life.\textsuperscript{59} This can lead to the development of some or all of the structural causes of crime discussed above, creating a cycle of incarceration. The Corston Report offers anecdotal evidence of a guard who knew of one woman in prison who had been born in the mother and baby unit at the same prison.\textsuperscript{60} Another once had in his care three generations of women from the same family.\textsuperscript{61}

Another key difference between the experiences of men and women in prison is that men’s home lives are typically maintained in their absence.\textsuperscript{62} The females in their lives are expected to (and largely

\textsuperscript{52} Ibid.
\textsuperscript{53} Howard League for Penal Reform, ‘Voice of a Child’ (Report) (30 September 2011).
\textsuperscript{55} See, eg, \textit{R (on the application of Stokes) v Gwent Magistrates Court} [2001] All ER (D) 125 (Jul); \textit{R (on the application of P and Q) v Secretary of State for the Home Department} [2001] EWCA Civ 1151, [79]; \textit{ZH (Tanzania) (FC) (Appellant) v Secretary of State for the Home Department (Respondent)} [2011] UKSC 4 [23], [25]; \textit{R (on the application of Amanda Aldous) v Dartford Magistrates’ Court} [2011] EWHC 1919.
\textsuperscript{58} Ibid 39.
\textsuperscript{61} Ibid.
\textsuperscript{62} Ibid.
do) ‘keep the home fires burning’. Women typically have stronger ties to the household and their removal often leads to the swift descension into chaos.

C Issues on Release

1 Re-offender Rates

Despite 25 percent of all women in prison having no prior conviction, over half will be reconvicted within a year of release. This statistic rises to two thirds when only women serving sentences of under 12 months are considered. This clearly demonstrates that today’s prisons are not addressing the structural causes of crime in women.

2 Accommodation on Release

Women are often released from prison without a home to go to and without custody of their children. This is particularly the case for those suffering mental health issues – 96% of these prisoners are released without supported housing. Entitlement to government supported housing stops for prisoners sentenced for more than 13 weeks including any time on remand, meaning a large number of women prisoners lose their tenancy before the end of their sentences. If a woman’s housing is repossessed during this period she is likely to also lose all her possessions.

Of particular concern is the so called “Catch 22” situation noted by the Social Exclusion Unit report that many women find themselves in – priority status by housing authorities depends on having children in their care, but without suitable housing children will not be returned to their care.

3 Problems with Social Re-integration

The offender management, support and guidance on release offered by probation services is not available to those sentenced to less than 12 months in prison. Of women entering prison under sentence in 2011, 70 percent were serving sentences of less than 12 months. The fact that women serving shorter sentences receive no ongoing support goes some way to explaining the 62 percent

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63 Ibid.
64 Ibid.
65 Smartjustice for Women Film (Directed by Charlotte Rowles, Prison Reform Trust, 2011).
70 Ibid 23.
71 Ibid 42.
rate of reconviction within one year for those serving less than 12 months compared to the 51 percent rate of the general released prison population.\textsuperscript{74}

Only 8 percent of women prisoners have positive employment outcomes on release, compared to 27 percent of men.\textsuperscript{75} Given women are twice as likely to be serving short sentences than men, this is another way in which prison has a disproportionate impact on their lives after release.\textsuperscript{76}

The ongoing impact a criminal conviction has on employment prospects depends significantly on whether a custodial or non-custodial sentence was awarded. A prison sentence of four years or more has to be disclosed to employers for the rest of that person’s life.\textsuperscript{77} In many circumstances this disclosure period can also apply to insurers, landlords, education institutions and financial service providers among other things.\textsuperscript{78} If the sentence is less than six months the disclosure period is still two years plus the sentence itself.\textsuperscript{79} By contrast, the mandatory disclosure period for a community service order is one year from the end of the order.\textsuperscript{80} Thus, the awarding of a custodial sentence over a community service order or other non-custodial option can have a resounding broader impact on a woman’s life.

\textbf{Failings of the Current Appeals Mechanism for Women}

\textit{A The Appeals Process}

Before discussing the key reasons why the current appeals mechanism fails so many women I will outline the current process for appealing a conviction or sentence.

The process for appealing a criminal conviction is regulated by the \textit{Criminal Appeal Act 1995}.\textsuperscript{81} Currently you can appeal against your conviction and/or your sentence if you pleaded “not guilty” at trial. To appeal against your conviction, you usually need to be able to demonstrate new evidence or facts or that procedure was not followed during the trial.\textsuperscript{82} If you pleaded ‘guilty’ at your trial you are usually only allowed to appeal your sentence. Usually the decision to appeal will be on the advice of your trial solicitor.\textsuperscript{83}

From here, a single judge will decide whether your appeal has merit on the basis of your submission. If they grant leave for your appeal, the ‘full’ appellate court will hear your application in full. If they do

\begin{footnotes}
\item[74] Ministry of Justice, ‘Adult Reconvictions: results from the 2009 cohort, England and Wales’ (Report) (1 March 2011) Table A5(F), A9(F).
\item[76] Prison Reform Trust, ‘Why Focus on Reducing Women’s Imprisonment?’ (Report) (July 2015).
\item[77] disclose.me.uk, \textit{Table of Rehabilitation} (2014) <http://disclose.me.uk/resources/table-of-rehabilitation/>.
\item[79] disclose.me.uk, \textit{Table of Rehabilitation} (2014) <http://disclose.me.uk/resources/table-of-rehabilitation/>.
\item[80] disclose.me.uk, \textit{Table of Rehabilitation} (2014) <http://disclose.me.uk/resources/table-of-rehabilitation/>.
\item[81] Criminal Appeal Act 1995 (UK) c 35.
\item[82] Crown Prosecution Service, \textit{Appeals to the Court of Appeal} <www.cps.gov.uk/legal/a_to_c/appeals_to_the_court_of_appeal/>.
\item[83] FindLaw UK, \textit{Can I appeal a criminal conviction?} <findlaw.co.uk/law/criminal/your_rights/500413.html>.
\end{footnotes}
not grant leave for your appeal, the judge will provide you with written reasons.\textsuperscript{84} If you submit an out of time appeal, i.e., more than 28 days after your conviction/sentencing, you must give reasons for the delay for example bad advice from your trial lawyer.

If your appeal against your conviction proceeds to a full hearing, the appellate court can either decide the original conviction was correct and dismiss the appeal or decide the original decision was ‘unsafe’.\textsuperscript{85} From here, if the conviction is found to be ‘unsafe’ the court can direct that the appellant be acquitted, reduce the conviction to a lesser charge or direct that there is a retrial.\textsuperscript{86} Likewise, if your appeal against your sentence proceeds to a full hearing, the appellate court may dismiss the appeal or reduce the sentence imposed by the original sentencing court.\textsuperscript{87}

If your appeal is unsuccessful before the full appellate court there is some scope to appeal this decision to the House of Lords.\textsuperscript{88} This will only be successful however, if the case is considered to be of general public importance.\textsuperscript{89} Usually at this point you will contact the Criminal Cases Review Commission (CCRC), a independent organisation established to investigate suspected miscarriages of justice.\textsuperscript{90} The CCRC will assess your case and either refer it back to the Court of Appeals for a new trial to be heard or decide your case cannot be reviewed.\textsuperscript{91} If they decide your case cannot be reviewed, you have 28 days to respond with any information that may change their minds. After this exchange, the decision is final unless new information arises.\textsuperscript{92}

B Sentence Length

Appealing a criminal conviction or sentence is a lengthy process. In October 2009 – 2010 the average time for a first instance appeal against sentence was 4-5 months.\textsuperscript{93} For a conviction it was double that time.\textsuperscript{94} If the appeal is denied before the Full Court, the last port of call is the CCRC. The CCRC have an incredibly long waiting list and often take months or years to even consider a case.\textsuperscript{95} The process of appealing to the CCRC from start to finish typically averages five years or more.\textsuperscript{96} This becomes a significant issue when around 95 percent of women are in prison for four years or less.\textsuperscript{97}

\textsuperscript{84} Crown Prosecution Service, \textit{Appeals to the Court of Appeal} <www.cps.gov.uk/legal/a_to_c/appeals_to_the_court_of_appeal/>.
\textsuperscript{85} FindLaw UK, \textit{Can I appeal a criminal conviction?} <findlaw.co.uk/law/criminal/your_rights/500413.html>.
\textsuperscript{86} Ibid.
\textsuperscript{87} Ibid.
\textsuperscript{88} Ibid.
\textsuperscript{89} Ibid.
\textsuperscript{90} Ibid.
\textsuperscript{91} Ibid.
\textsuperscript{92} Ibid.
\textsuperscript{93} House of Commons Justice Committee, ‘Criminal Cases Review Commission’ HC (2014-15) 850 [3].
\textsuperscript{95} Ibid.
\textsuperscript{96} Marie Akers, ‘How and when to appeal’, \textit{Insidetime} (online), 16 December 2014 <insidetime.org/how-and-when-to-appeal/>.
\textsuperscript{97} Ibid.
\textsuperscript{98} Ibid.
\textsuperscript{99} Ibid.
\textsuperscript{96} House of Commons Justice Committee, ‘Criminal Cases Review Commission’ HC (2014-15) 850 [27].
\textsuperscript{97} Ministry of Justice, ‘Offender Management Statistics Quarterly Bulletin, October to December 2011, England and Wales’ (Report) (26 April 2012), Table 2.1c.
C Resource Availability

Appealing a criminal conviction or sentence is often an incredibly long and expensive process. While legal aid is available in some instances, the means testing is complex and closefisted. Legal professionals providing legal aid are increasingly discouraged from doing so following repeated cuts to fees. The Ministry of Justice recently announced an 8.75 percent cut to criminal legal aid fees following a similar cut last year. They also announced that the number of solicitors at local police stations providing 24 hour cover would be reducing from 1600 to 527. Thus, for many women, appealing is simply out of the question because they do not have adequate resources.

Recommendations for the Centre for Criminal Appeals

This section will begin with an ideal strategic approach to addressing the problems associated with women in prison. In light of the resources and expertise of the CCA, two key areas of significant concern will then be discussed. To conclude, specific short and long term recommendations will be proposed.

A Strategic Approach

To achieve optimum results with limited resources, outcomes which are most critical must be weighed against those which are most achievable. On the whole, the UK has a good criminal justice system with checks and balances in place to prevent the misuse of incarceration. For this reason, these recommendations focus on regulating and improving the implementation of the existing system rather than instituting a complete overhaul.

Many issues associated with women in prison are rooted in stable policy and infrastructure meaning the most desirable outcomes make unrealistic goals. This paper thus recommends a three pronged approach whereby roughly equal resources are allocated to litigation, education and policy. While this does mean spreading the CCA’ resources quite thinly to begin with, this method will best account for the possibility of further specialisation in the future, both by the centre and by other organisations.

The second strategic recommendation is to utilise the existing areas of expertise at the CCA, namely in death penalty and wrongful conviction mitigation and investigation in the United States and UK. If the mitigating circumstances of these women were made known to sentencers through pre-sentence reports and adducing evidence in sentencing hearings, the treatment of women by the criminal justice system would likely improve.

B Pressure Points

Of the plethora of issues surrounding the imprisonment of women, there are two of particular concern which the CCA should focus on. The first is the “Catch 22” situation where mothers who are released from prison are unable to be priority listed for housing because they do not have the care of their children. They are subsequently not able to get their children back because they do not have secure housing.\(^{100}\) This intersection of accommodation on release and the impact of prison on children means that focusing on this issue has the potential to impact a wider range of women. It also allows for the potential collaboration with organisations supporting both people with housing problems, for example Shelter\(^{101}\) and those upholding the rights of the child, for example Children’s Rights Alliance for England.\(^{102}\) Although collaboration does open the CCA up to potential risk, for example damaged reputation via association, working with other organisations has two significant benefits. First, organisations that have an existing relationship with policy makers would be ideal for challenging policy. Second, organisations that currently have more community support could assist in educating a diverse group of people on the problems associated with women in prison. This intersection between housing and children is also an area where experience in strategically using mitigating circumstances to influence sentencing will be particularly useful.

The second pressure point is the significant percentage female prisoners that are first time offenders. Research indicates that 21 percent of women in prison have no previous convictions, compared to 10 percent of men.\(^{103}\) This sentencing behaviour would be somewhat understandable if the ‘first time offenders’ were in fact women who had repeatedly breached their community sentence orders and were receiving their first custodial sentence. This is not the case. The 21 percent of women sentenced to prison for a first time offence had no previous convictions or cautions.\(^{104}\) These women could thus hardly be considered ‘prolific offenders’. The majority of all recorded crime is committed by so called ‘prolific offenders’, those with four or more convictions.\(^{105}\) Home Office research indicated that only eight percent of women in prison have four or more convictions, compared to 25 percent of men.\(^{106}\) Given the high likelihood of reoffending often shortly after release of those serving short sentences\(^{107}\) compared to those serving community sentences, and the experience the CCA has in mitigation, this would be an ideal area of focus.

C Short Term Recommendations

1 Pre-sentence Reports


\(^{103}\) Prison Reform Trust, ‘Why Focus on Reducing Women’s Imprisonment?’ (Report) (July 2015).


\(^{106}\) Ibid.

A pre-sentence report is a report which aims to assist the court in determining the most appropriate method of dealing with an offender, as per s 158 of the Criminal Justice Act 2003 (UK). The court is required to obtain a pre-sentence report before imposing a custodial or community sentence as per s 156(3) of the Criminal Justice Act. Section 156(4) however gives the court wide discretion to deem a pre-sentence report ‘unnecessary’. While there are no recent statistics on whether pre-sentence reports improve sentencing outcomes, s 156(1) makes it mandatory for the court to consider “all such information as is available to it about the circumstances of the offence..., including an aggravating or mitigating factors” including those raised in a pre-sentence report.

The pre-sentence report is prepared by the probation service and can be oral or written depending on whether a serious risk or need has been identified or whether the sentence proposed by the court is deemed suitable. Oral reports are delivered that day and written reports are usually submitted within five days, unless one of the high risk exceptions are met. For this reason, oral reports are more widely used. A template for oral pre-sentence reports is provided to probation officers (see Appendix). This template does not include any reference to being the primary carer of children – a mitigating factor which should unquestionably influence whether a custodial sentence is awarded. Recent case law suggests that whether a woman in the primary carer of children is routinely not considered, and if it is considered it is given insignificant impetus when weighed against the severity of the crime. There is also no reference on the template to the offender having been a victim of abuse themselves and the mental health section is unhelpfully brief.

Pre-sentence reports are thus a good feature of the criminal justice system with two key flaws. First, the court’s wide discretion to deem them unnecessary and second, the template does not get to the crux of the mitigating circumstances typically affecting women. If these two flaws were corrected, this small change to existing infrastructure is likely to improve outcomes for women exponentially. Therefore, this paper recommends the CCA put forward guidelines as to when pre-sentence reports should not be waived, i.e., when the offender is the primary carer of children.

This could be achieved through educating legal professionals including judges and magistrates on the benefits of the aforementioned guidelines with the hope that they will become soft law. Advocating policy makers to absorb the guidelines into the Criminal Justice Act 2003 would be an ideal final outcome. Secondly, the CCA should lobby for the amendment of the pre-sentence report template

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108 Criminal Justice Act 2003 (UK) c 44.
109 Ibid.
110 Ibid.
111 Ibid.
113 Ibid.
114 Ibid 2.
115 See, eg, R (on the application of Stokes) v Gwent Magistrates Court [2001] All ER (D) 125 (Jul); R (on the application of P and Q) v Secretary of State for the Home Department [2001] EWCAT 1151, [79]; 2H (Tanzania) (FC) (Appellant) v Secretary of State for the Home Department (Respondent) [2011] UKSC 4 [23], [25]; R (on the application of Amanda Aldous) v Dartford Magistrates’ Court [2011] EWHC 1919.
issued by the Ministry of Justice: National Offender Management Service. This instruction is updated approximately every two years.117

2 Strategic Litigation

The CCA should engage in strategic litigation to improve the treatment of women by the criminal justice system. Again, accounting for the experience of the team at the CCA, taking cases with a clear policy outcome in mind is an achievable way of making a difference in the short term. By beginning with few, specific cases the CCA can employ a mitigation strategy from the outset, as is often done in death penalty cases in the United States. This will set an example for other lawyers in the field and is an opportunity to raise awareness regardless of whether the case is successful or not.

D Long Term Recommendations

1 Further Research

Much of the research and recent policy surrounding women in prison refers to the recommendations made in the 2007 Home Office Report chaired by Baroness Jean Corston (The Corston Report).118 This report remains influential, and is frequently referenced in this paper due to its unmatched level of detail on some key issues. It is however nearing a decade old and thus must be treated with a degree of caution. A second comprehensive overview of women in the criminal justice system is thus well overdue.

The CCA has two potential courses of action here, either lobby the government to commission another report or apply for research funding to investigate some issues associated with women in prison in more detail. While another government commissioned report would be the best outcome, the CCA is unlikely to be able to exert influence over whether it happens and when. If the CCA was to conduct small scale research itself instead, a gendered study on whether pre-sentence reports improve sentencing outcomes as they currently exist would be a good place to begin.

2 Evaluation

Since the Corston Report was released,119 there has been a huge amount of research on women in prison produced by government and non-government organisations across the UK. Where research is failing in this area is in follow up evaluation and assessment. There is no government body or non-government organisation that evaluates changes that have come about following research and subsequent policy changes. The CCA could contribute in this area by carefully evaluating any research produced by the CCA against unambiguous, dated objectives. The CCA could then work towards

117 Ibid 1.
119 Ibid.
developing a standard guideline for evaluating research in this area that could be adapted and used by the government and other organisations.

Conclusion

Change for women in prison is long overdue. The repercussions of even a short custodial sentence for women are disproportionate to their crimes, particularly for their children, employment and housing prospects.\textsuperscript{120} Appealing their sentences at first instance is difficult due to limited personal resources and scant availability of legal aid.\textsuperscript{121} Waiting approximately five years for the completion of an appeal through the Criminal Cases Review Commission is impractical for the 95 percent of women serving sentences of less than four years.\textsuperscript{122} There is however light at the end of the tunnel. The CCA has incredible scope to improve the treatment of women by the criminal justice system in the UK.

Adopting the three pronged approach of combining policy, education and litigation through focusing on pre-sentence reports and strategic litigation will be the best way to bring about change for women in prison in the short term. Following the success of the Corston Report in raising awareness of the issue,\textsuperscript{123} another comprehensive review of women in prison is needed. Due attention should also be given to mechanisms for evaluation, promoting government accountability and continued commitment to bring about change for women in the criminal justice system.

To conclude, in the words of David Ford, Northern Island Minister of Justice, “The number of women offenders is comparatively small but the impact is not and it is obvious that within the criminal justice system we cannot simply replicate what we provide for men and hope it will work for women.”\textsuperscript{124}

\textsuperscript{122} Ministry of Justice, ‘Offender Management Statistics Quarterly Bulletin, October to December 2011, England and Wales’ (Report) (26 April 2012), Table 2.1c.
\textsuperscript{124} David Ford MLA, Northern Island Minister for Justice, ‘Justice System Working to Deliver for Women’ (Speech delivered at a Women’s Information Northern Ireland (WINI) event, 5 November 2013) < http://www.dojni.gov.uk/justice-system-working-to-deliver-for-women-ford>. 
APPENDIX

Pre Sentence Report (Template for Reports Delivered Orally)\textsuperscript{125}

Pre-Sentence Report
Court Details
Sentencing Court:
Hearing date:
Offender's Details
Name:
Address:

Telephone number(s):

Date of Birth: \hspace{1cm} Age:

Case Reference No: \hspace{1cm} PNC ID Number:

Offence Details

Court Directions
Seriousness:
\hspace{0.5cm} Low \hspace{1cm} Medium \hspace{1cm} High
\hspace{0.5cm} Custody \hspace{1cm} N/A or not stated

Sentencing Purpose(s)
Punishment \hspace{1cm} Crime Reduction \hspace{1cm} Reform/Rehabilitation
Public Protection \hspace{1cm} Reparation \hspace{1cm} N/A or not stated

Report Writer Details
Name:
Office Location: \hspace{1cm} Telephone Number:

Date Report Completed & Signed:

Reasons for offending and impact on victim

Accommodation:
Tenant Owner/Occupied ☐  B&B/Hotel ☐  Hostel ☐  NFA ☐
Living with Stable ☐  Unstable ☐

Employment:
Unemployed ☐  Casual Seasonal ☐  Employed Part Time ☐
Employed Full Time ☐  Education/Training ☐  Retired ☐
Other ☐ (Please specify)

Hours of work/education/training per week:

Skills For Life:  Assessment Required ☐  Not Required ☐

Substance misuse:  Drugs ☐  Alcohol ☐  Other ☐

Physical/Mental Health Problems:  Yes ☐  No ☐

Response to supervision:  Good ☐  Satisfactory ☐  Poor ☐  N/A ☐

Risk of Harm:  Very High ☐  High ☐  Medium ☐  Low ☐

Likelihood of reconviction:  High ☐  Medium ☐  Low ☐

Proposal:
Conditional Discharge ☐  Fine ☐  Community Order ☐
Custody ☐  Unpaid Work ☐  Curfew ☐  Other ☐

Signature:  

Result:

<table>
<thead>
<tr>
<th>ASSESSOR’S NAME</th>
<th>Date:</th>
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<tbody>
<tr>
<td>Signature</td>
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<tr>
<td>OFFICE:</td>
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