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### **Introduction**

In 2007 Baroness Corston undertook a review of women with particular vulnerabilities in the Criminal Justice System. This followed on from a number of suicides in HMP Styall and highlighted the particular stresses experienced by some women in custody, resulting in far higher suicide and self harming rates than for men. The Corston Report made a number of recommendations concerning women offenders but did not address any issues relating to women elsewhere in the CJS. Many of the recommendations were to do with how prisons are run which are clearly not in our remit. However, other issues were addressed which may lead to questions of how we sentence, and for that reason it is necessary to have a cohesive set of opinions which can be used to ensure magistrates' views are taken into account when these matters are debated.

The main focus at present is on women offenders. In 2007 the Corston Report brought many issues to the forefront of government thinking and although some work was already in train much more has been initiated as a result of the report. As sentencers we need to be aware of these issues and examine whether we need to change anything we do.

### **Should men and women be treated differently in sentencing?**

Does equality in the CJS mean sentencing men and women differently? The Corston Report says "From April 2007 the government will have a statutory duty to take positive action to eliminate gender discrimination and promote equality under the Equality Act. I have seen little evidence that much preparatory work is in hand in respect of the imminent statutory duty or of any real understanding that treating men and women the same results in inequality of outcome. Equality does not mean treating everyone the same. The new gender equality duty means that men and women should be treated with equivalent respect, according to need. Equality must embrace not just fairness but also inclusivity. This will result in some different services and policies for men and women. There are fundamental differences between male and female offenders and those at risk of offending that indicate a different and distinct approach is needed for women." On the other hand, justice has to be seen to be done. How do we show that we are treating women equally by treating them differently? And do we in fact need to do so?

One of the principle reasons why women may need to be treated differently is that many are vulnerable and therefore may attempt suicide if sentenced to custody. The Corston report proposes changes to women's prisons because women may suffer real psychological harm in prisons run on the male prison model. The reasons given include worries about what is happening at home, lack of support from partners, lack of privacy and poor hygiene standards, and low self esteem. There are few women's prisons so offenders may be far from home and visits rare. The incidents of self harm and suicide are much higher for

women than for men. The recommendation is that small geographically dispersed custodial centres replace women's prisons. This is a change to the provision of a custodial sentence, and not to the sentence itself. Baroness Corston also says 'I do not recommend a separate sentencing framework for women but this should be reconsidered in the light of early experience of the statutory gender discrimination duty.' So she does not recommend (or did not in 2007) treating women differently by sentencing differently, what she is saying is that the way the sentence is carried out should be different. As sentencers, what we should always do is ensure that we ask for reports before custody unless it is a foregone conclusion (current practice) and that we take into consideration vulnerability before sentencing. In the case of male offenders, if a report specifically said the offender was vulnerable and prison was not recommended because of the likelihood of self harm or suicide, we would think twice. We need to be aware that this is frequently a risk for women and although we should expect probation to bring it to our attention in the normal way, if it has not been mentioned we should still give the possibility consideration. However, not all women are vulnerable, some men are, and we should consider alternative sentencing on the basis of vulnerability rather than gender.

### **Primary carers**

Where a single parent, the primary carer for children, is imprisoned there can be long-term damage for the family. We should expect that a PSR would give us information on the likely impact on any children of a custodial sentence, and if we are aware that the defendant is a single parent then we should ask questions. By imposing a just sentence on the parent, we may severely punish the children, which is unfair to them. Even time spent on remand may be enough to cause loss of house and job, and if any accommodation is offered at all on release it is likely to be single accommodation. There could therefore be a long wait before a family could be reunited following a period in custody for a single parent. Again, this would apply equally to men who are single parents though the majority would tend to be women. The focus again is on avoiding custody where possible if children would suffer, rather than specifically avoiding custody for women.

### **Alternatives to custody**

There are in some areas of the country women's community projects which offer alternatives to custody. Some were already operational at the time of the Corston Report and many have started since and as a result. Women can go to a non-threatening environment and receive support to address their offending, including assistance with housing, debt management, substance abuse, education, life skills, parenting. To quote Baroness Corston 'It is ... clear that prison is not the right place for many women. They need help and caring, therapeutic environments to assist them rebuild their lives. This is not an easy option; it is demanding a great deal of women to delve into issues they prefer to block out. For those with drug addictions clinical detoxification does not stop the habit.' It seems that these centres are showing success in preventing reoffending however at present the claims are difficult to prove as the statistical samples are small. Some centres do not treat huge numbers and most have not been running for very long. If they really are as successful as claimed, then centres are needed right across the country and with sufficient places available for all the vulnerable women who should be diverted from custody. And centres for vulnerable men are also needed. Justice should not be subject to 'postcode lottery' and offenders who may come to harm in custody should not end up in prison because they live in the wrong area. As usual, sentencers should expect to be advised by probation where alternatives to custody exist. Sentencing to alternatives will always be considered where available.

There are concerns about the number of women on remand. One of the objectives stated in the Green Paper is to reduce the number of prisoners on remand especially where no custodial sentence is eventually given. The particular concern about women again is because of the vulnerability of many of them and the potential for self harm and suicide. It was another of the recommendations of the Corston report that bail provisions should be improved to reduce the numbers on remand. It seems that the desire to reduce remand has

stuck but the need to provide alternative bail accommodation has been overlooked. If the women's community projects are able to provide bail accommodation then there may be good reason to grant bail for a woman where it would not be possible for a man. But it would be because there was a suitable bail address, rather than because of her gender. There is of course a right to bail, so where it is possible to avoid remand in custody we would do so, but at present lack of a stable address is often the reason for remand, especially in DV cases where the only available address is the family home where offences have taken place.

Vulnerability may also be an issue for curfew sentences. There have been cases where breaches have occurred because the offender was unwilling to open the door to strangers at night so the monitoring company were unable to gain access. Again, the problem is really one for the sentence providers to address but as sentencers we should be aware of difficulties our sentences may cause and where appropriate make directions to ensure that compliance will be made easier, for example by directing that the monitoring company should attend in daylight or make contact first so that they are expected.

### **Conclusions:**

- a) While we agree with the Corston report that different provisions are needed for women in custody, sentencing should not be different for men and women.
- b) Some offenders may be at particular risk in custody because of vulnerability. This applies to both men and women, and magistrates take into account vulnerability highlighted in pre-sentence reports by the Probation Service and will endeavour to find alternatives to custody for any individual who may be liable to self harm or suicide in custody.
- c) Some offenders may need particular consideration because they are the primary (sometimes sole) carer for their children. This may apply to single parents of either gender and magistrates take into account the effect on children of a custodial sentence for a parent as highlighted in pre-sentence reports. Wherever possible, alternatives to custody would be considered in any cases where children would suffer from their parents being in custody. We note that the Sentencing Council has added "sole or primary carer for dependent relatives" as a factor of personal mitigation in the new assault guideline.
- d) There is good work being carried out by Women's Community Projects in many parts of the country. These projects can in many cases provide an intensive community sentence which is a suitable alternative to custody. It is however unfair that alternatives can only be offered to some, and this provision should be made available to all by extending the number of projects so that all courts have the same sentencing options. There should also be some provision for vulnerable males, especially young adults.
- e) Bail accommodation should be provided either by or through Women's Community Projects to reduce the number of women on remand.