



06 January 2023

Ms Jenny Rathbone MS  
Welsh Parliament  
Cardiff Bay  
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Dear Jenny,

## **Equality and Social Justice Committee evidence session: follow-up questions**

Thank you very much for your invitation to appear before the committee and give evidence on the two issues of the experience of women offenders and the experience of children and young people in court with speech and language difficulties.

At the meeting, I undertook to write to the committee with some further details on some of the questions. I set out the further information below. I hope the committee finds it useful as it continues its inquiries.

### **Women offenders**

#### *Impacts of the pre-sentence report (PSR) pilots*

At the session, I emphasised that pre-sentence reports were absolutely key in helping magistrates identify complex needs of women offenders. Magistrates are highly reliant on the suggestions of probation made through the pre-sentence reports, so the lack of information specific to the needs of female offenders can limit the options available to sentencers.

As the pilots began during an exceptional time for probation, with the reunification of the service and in the context of the pandemic, it is too early to assess impact. However, we consider that anything which has the potential to improve early identification and treatment of complex needs should be welcomed.

The pilots' impact should be regularly monitored and fed back to stakeholders, including magistrates, to ensure that they can be confident that the alternative delivery model works for female offenders as a distinct priority group.

#### *The resourcing of PSR pilots*

You asked me if I had evidence of the resourcing of these pilots. We are not aware of the funding decisions which govern these pilots. Decisions governing investment in individual pilots is a matter for the Ministry of Justice.

We know that confidence in the long-term viability and availability of services is a key element of the confidence sentencers have in alternatives to custody as a whole. It is important, therefore, that investment to fulfil the aims of the Female Offending Blueprint as a whole must be on a sustainable basis.

### *Observed regional disparities in short sentences*

The committee asked me about observed regional disparities in short sentences across Wales. It is difficult to explain these disparities in the absence of robust and detailed data. Statistics on offender outcomes are not broken down very clearly. In their current form, they obscure many variables that might reveal the factors which make custody unavoidable. That is one of the reasons why the Magistrates' Association calls for greater open data, as a key element of open justice, so that it is possible to learn from the data and to better understand disparities.

As it stands, the data does not currently make clear what offenders are sentenced for, whether the sentence is their first sentence or if they have been sentenced on breach, and the individual's offending history. It also does not make clear how many custodial sentences are due to an offender not agreeing to be subject to a community order instead.

Magistrates must sentence according to guidelines published by the Sentencing Council. These set out, among other things:

- The starting points for sentencing of a particular offence
- The factors the bench should consider makes the offence more harmful
- Factors that make the impact of the offence worse (aggravating factors), and those which can be seen to mitigate it (mitigating factors).

The guidelines point magistrates to the starting point when custody is unavoidable or when the case is serious enough, but they also strongly emphasise that the bench must consider the impact of sentencing on women, as they are aware that the impact on women of a custodial sentence is usually greater. The impact on dependants must be considered as a mitigating factor when considering whether an offender should be sentenced to custody.

While the content of the PSR is helpful to the bench in understanding alternatives to custody, whether these recommendations are made hinges on the availability of services (for example, whether there is a women's centre, and the viability of curfew).

Where there are no viable options available in the community and the threshold for custody is reached, the bench must sentence a female offender to custody. This, as I told the committee, shows the importance of robust community alternatives, such as residential women centres, in reducing custodial sentences which members tell us they feel adds a real additional option and alternative to prison.

As mentioned, the evidence of regional variances the committee outlined can only be understood fully when sufficient data is available. We would support the publication of statistics displaying this to allow for greater transparency.

### *Magistrates' appraisals and training*

Finally, you asked me about magistrates' appraisals. Magistrates are appraised every four years. Magistrates sitting in youth court are appraised every two years.

Magistrates receive much training, learning and development on the needs of female offenders. At the MA, we regularly hold sessions at conferences, post resources online on our training platforms and via our member magazine, hold webinars for members, and offer talks to our local branches on the unique needs of female offenders.

Training is focused on raising awareness of the underlying and complex needs of women that we know can make them more vulnerable in custody. Training in this area is pivotal as it means that – even in the absence of a detailed PSR – magistrates are aware of these needs and can ask questions in court to ensure they have all the relevant information.

### **Children and young people with speech and language difficulties**

#### *The available support in court for children with speech and language difficulties*

Support for children with speech and language difficulties in court tends to vary by area. Members tell me that some Youth Offending Teams (YOTs) have speech and language experts on the team, but ultimately each YOT is independent, and they all work differently.

In the youth court, the presiding justice on a bench of magistrates has an obligation to lead the process in a way that can be fully understood by a child or young person, and to ensure they have suitable support. The presiding justice should ensure all court users use suitable language to facilitate understanding. As a matter of good practice, the youth offending service should identify any issues and tell the bench; and if there are, suitable support needs should be sought as applicable.

Information on whether children and young people in court have speech and language difficulties is not available in all cases, but members tell me that the youth offending service (YOS) do try to prepare the child before court starts.

#### *Promoting trauma-informed practice*

Finally, the committee asked me about the one innovation that would best help foster a trauma-informed approach in the youth courts. In my answer to this question, I emphasised training and development for magistrates. Magistrates already undergo training specifically for sitting in youth court before they begin sitting in youth court and undertake consolidation training around a year after they start sitting. Ad hoc learning and development is also offered by the Magistrates' Association (both nationally and locally). However, our members often express a desire for more continuing training and development.

Youth panels of magistrates have regular meetings to which their local youth offending teams are routinely invited. Ensuring these teams make regular presentations to panels about the level of observed need in relation to speech and language difficulties in children and young people in the youth court would be a worthwhile area of best practice. This would alert the youth panel to trends in their local area, and would provide a training opportunity for magistrates on how best to accommodate a child before them with these difficulties.

On behalf of the Magistrates' Association, thank you once again for allowing me to speak about these issues before the committee. Please do not hesitate to get in touch if we may assist with anything further.

With all best wishes,



Tom Franklin  
Chief executive  
Magistrates' Association