

12 FEBRUARY 2026

RE: Response to Senedd Equality and Social Justice Committee

Dear Jenny,

Thank you for your letter on behalf of the Senedd Equality and Social Justice Committee highlighting the sharp increase in women in Wales remanded in custody by magistrates' courts.

We at the Magistrates' Association have campaigned for years on alternatives to custody for women defendants and have previously conducted research with magistrates on women defendants in Wales in 2022, which was shared with the Committee at the time.

The Magistrates' Association is a membership body of magistrates across England and Wales. While we develop policy and research alongside our members, and support our members through learning and development, it is important to note that we do not set the rules or guidelines regarding either custody or sentencing. but rather draw on perspectives from our over 11,000 strong membership. It may be that you will also want to approach HMCTS, the Judicial Office and/or the Sentencing Council.

To address both issues raised in your letter – an increase in remand and reasons behind short custodial sentences – we have split this letter into two parts.

Remands at magistrates' courts

We note the 25% increase in women remanded at magistrates' court in Wales in 2024, with this number creeping up from 280 women defendants in 2023 to 350 in 2024. This appears to be part of a wider trend across both England and Wales. As remands data shows, there was a national increase of women remanded in custody at magistrates' courts of 29.6% between 2023 and 2024¹.

¹ From 3,528 in 2023 to 4,571 in 2024 (Ministry of Justice, Criminal Justice System Statistics Quarterly: December 2024 (Remands data tool)).

As the Committee will be aware, whilst there is a general right to bail, there are a number of reasons why magistrates may make the decision to remand defendants in custody. These include, but are not limited to

- Risk of absconding;
- Risk of reoffending whilst on bail;
- Risk of witness interference;
- A history of non-compliance to bail conditions;
- A lack of alternative recommendations from probation;
- Risk of causing harm to another or;
- For their own protection.

Magistrates must also satisfy themselves that these risks cannot be suitably ameliorated through bail conditions.

Magistrates are guided by the same legislation in England and Wales and adhere to their power of remand as set out under Section 128 in the Magistrates' Courts Act 1980. They receive initial training on remand as well as continuation training to ensure that their knowledge and skills are kept up-to-date. The Judicial College provides training and develops learning products and tools for magistrates. There are clear flowcharts on bail decision-making. These set out the process for deciding whether unconditional or conditional bail should be granted and, if both of these fail, then circumstances in which bail should be refused. You can find copies of these flowcharts on the Crown Prosecution Service website:

- [The Magistrates' Court - Simple Bail Structure - Card 1 - Adult Defendant: Indictable Only or Either-Way Imprisonable Offence](#)
- [The Magistrates' Court - Simple Bail Structure - Card 2 - Adult Defendant: Summary Imprisonable Offence](#)
- [The Magistrates' Court - Simple Bail Structure - Card 3 - Adult Defendant: Non-Imprisonable Offence](#)

Please note there are different procedures for youth defendants.

There is a significant lack of statistical data on magistrates' bail decision making. This makes it difficult to assess why there has been this national increase in women offenders remanded in custody. Without detailed case data, it is hard for us to comment on the drivers behind this national trend.

In 2022 I gave [oral evidence](#) to the House of Commons Justice Select Committee on the role of adult custodial remand in the criminal justice system and spoke on the increase in remand then. When questioned about the cause of this increase, my answer was and unfortunately remains that we do not have the data available to explain this and can only guess at the drivers of this upward trend. We are pressing for greater data to be made available across the justice system, to aid policy development, and will be publishing a report on this soon.



Short custodial sentences

It is important to acknowledge that magistrates must ultimately apply the law as set out by Parliament and adhere to guidance when making sentencing decisions. When in court, magistrates rely on their own knowledge and take appropriate direction from legal advisers, as well as use Sentencing Council guidance, particularly a digital tool used for building pronouncements. Magistrates use their judgement to assess law and guidance against the individual cases they deal with day-to-day.

The Sentencing Council's [imposition guideline](#), which magistrates follow, is clear that custody is reserved for cases where other avenues have been exhausted. It is only when the 'custody threshold' is met that a custodial sentence would be imposed. This threshold is met when the seriousness of the offence means a fine or community order cannot be justified. However, the guideline cautions that:

- "Even where the seriousness of the offence indicates that the threshold for a custodial order has been passed, a custodial sentence should not be imposed if in all the circumstances of the case it is appropriate to impose a community order, for example, if a community order achieves the purposes of sentencing.
- "Custody should not be imposed on an offender who is pregnant or within the postnatal period (within 12 months after giving birth) where the impact on the offender or dependents, including unborn children, would make a custodial sentence disproportionate to achieving the purposes of sentencing."

Magistrates must also consider aggravating or mitigating factors, such as previous convictions or whether the offence was committed on bail, as well as any guilty plea and whether any ancillary orders are required. The bench should also ask the probation service to prepare a Pre-Sentencing Report, which sometimes indicates that probation would not recommend a community sentence either due to lack of available requirements or the offender's history of breaching orders.

When addressing the effectiveness of sentencing, the imposition guidelines acknowledge gender differences in offending and sets out guidance for female offenders, as well as mothers with dependents, pregnant women or post-natal women. This highlights the links between women offenders and complex trauma, the lack of female prisons and the risk of homelessness post-sentence.

The imposition guidelines acknowledge that there will be circumstances in which short custodial sentences are "unavoidable". This will likely be due to a combination of factors including, but not limited to, the offence sentencing range and seriousness, the offender's history of non-compliance with orders, re-offending whilst on license or there being a significant risk of harm posed to the public.

This shows that custodial sentences of a month or less would be issued in circumstances where there are no other options available to magistrates. Examples could include repeat offending with multiple breaches of a



community order, a low-level offence committed whilst on license or persistent traffic offending, such as drunk driving.

Final considerations

There is a likelihood that recent changes to the policy and legislative landscape could slow this upward trend. Sir Brian Leveson's Independent Review of the Criminal Courts recognises that the "under-representation of women and children in custody has led to fewer and fewer remand and treatment facilities offering non-custodial options" and recommends expansion of funding for community-based facilities for women.

The Sentencing Act 2026 introduces a presumption against short custodial sentences and bolsters community orders. If implemented effectively, this could widen magistrates' community orders 'toolbox', therefore giving them greater options in sentencing. However, we have also cautioned about the importance of maintaining judicial discretion in the "exceptional circumstances" where a short custodial sentence should be issued which is also recognised in this legislation.

Further, the Act makes amendments to the Bail Act 1976 limiting custodial remand in cases where immediate custodial sentence is unlikely. It also adds several factors that should be taken into consideration when making bail decisions which are relevant to women offenders – namely whether the defendant is pregnant, a primary carer for another person or has been the victim of domestic abuse. We welcome these changes, which will assist magistrates in their decision-making.

Another promising development is the women-focused and problem-solving magistrates' court in Swansea, which was highlighted to this Committee by the Lady Chief Justice. We have long advocated for a smarter sentencing system and problem-solving courts - such as the one in Swansea - are key to making this vision a reality. Learnings from Swansea should be taken and used to identify opportunities for replication elsewhere.

The Magistrates' Association Chair David Ford JP is a magistrate currently sitting in Cardiff. He shares your concerns about these trends in England and Wales and is open to discussion as to how the MA could contribute to better understanding this trend.

Please note that I shall be retiring from the Magistrates' Association next month. My successor will be Catherine Feast, and she can be contacted at catherine.feast@magistrates-association.org.uk.

Yours sincerely,



Tom Franklin
Chief Executive

