

Problem-solving courts for women: An evidence & practice briefing

Summary

While there are far fewer women in contact with the criminal justice system than men, the women who are caught up in the justice system have a higher prevalence of needs, including mental health issues, substance misuse issues and previous experience of abuse and trauma. Women also tend to commit less serious offences and those who are imprisoned tend to receive short custodial sentences.

Recognising the distinct needs of women involved in the criminal justice system, the Government's 2018 Female Offender Strategy outlines its commitment to reduce women's offending via specialist, gender-responsive approaches, prioritising the use of early intervention and community-based solutions. As part of the strategy, the Government states that it wants "to reduce the female prison population, with fewer offenders sent to custody for short periods."

In 2020, the Ministry of Justice announced its intention to pilot five new problem-solving courts, including one which should specifically focus on the distinct needs of women who offend. Based on the existing evidence base on problem-solving courts, and drawing from the admittedly limited existing practice of problem-solving courts specifically focused on the distinct needs of women, we outline a number of lessons learned to date, which include:

- **Target women at risk of custody:** Problem-solving courts for women should target individuals at risk of short custodial sentences, and avoid up-tariffing women with lower-level offending but complex needs;
- **Ensure judicial continuity:** Having the same judge or bench of magistrates at regular review hearings helps to build rapport and allows them to continually monitor an individual's progress and engagement;
- **Promote partnership working:** Effective collaboration between agencies that facilitates service user engagement is crucial to the success of a women's problem-solving court, as is the ability to refer women to local women's centres, where they can receive individualised support packages during their community sentence.

Purpose of this briefing

In the Sentencing White Paper, *A Smarter Approach*, published in 2020, the Government committed to the piloting of five new problem-solving courts, including projects that focussed on "*female offenders, given the high proportion of female offenders in receipt of short prison sentences... and our commitment to addressing the underlying needs of female offenders.*" This briefing aims to support practitioners seeking to enhance their court-based response to women by providing:

- A summary of the evidence base on the dynamics of female offending and what works to reduce reoffending for women who offend;
- An overview of existing problem-solving court approaches to female offending;

- A set of implementation lessons for operating a women’s problem-solving court, derived from their experience and wider research.

In writing this briefing, we are hoping to detail the importance of expanding the use of gender-specific approaches to women in the criminal justice system, highlight some existing good practice in this area, and outline some guidance for those seeking to implement a problem-solving court for women.

Female offending

The dynamics of female offending

While women are only 26% of all the people arrested, charged, prosecuted, convicted and imprisoned by the criminal justice system each year,¹ the women who are convicted are:

- More likely to have experienced trauma: 60% have experienced domestic abuse;² 53% of women in prison report having experienced emotional, physical, or sexual abuse as a child, compared to 27% of men,³ and 71% of women in prison report having mental health issues, compared to 47% of men;
- More likely to be primary carers of children: a 2013 study found that six in ten women in prison had dependent children and one-fifth were lone parents before imprisonment;⁴
- More likely to offend due to their relationships: nearly half of women prisoners (48%) reported having committed offences to support someone else’s drug use, compared to 22% of male prisoners;⁵
- Less likely to be violent: In 2017, women who were convicted were 27% less likely to be charged with violence against the person, 46% less likely to be charged with robbery and 53% less likely to be charged with possession of weapons. They were 59% more likely to be charged with theft and 113% more likely to be charged with fraud. 30% of women were prosecuted for TV license evasion, compared to only 4% of men.⁶

Sentencing of women

In 2019, 50% of women sentenced to immediate custody received a sentence of three months or less.⁷ In the words of the Government’s Female Offender strategy, “short sentences offer limited public protection, and fail to offer time for meaningful rehabilitative activity. In some cases, short sentences can aggravate vulnerabilities and raise the risk of reoffending. Going into custody often causes huge disruption to the lives of offenders and their families, causing crises in employment, housing and contact with dependents.”⁸

We also know that women can experience particular harms in prison. The smaller number of women’s prisons means that women are held further away from their families than men and experience fewer visits – something which is associated with higher rates of reoffending.⁹ Women in prison are also much more likely than men to experience self-harm. In 2020, women made up 22% of all self-harm incidents despite representing only 4% of the prison population.¹⁰

Imprisoning women also creates harms for children. Women who are imprisoned are significantly more likely than men to have dependent children (60% to 45%).¹¹ Extensive international evidence has found that parental imprisonment increases children’s risk of anti-social behaviour.¹² More recent research in the UK has highlighted how the children of imprisoned mothers face disruptions to care and home life, difficult and upsetting prison visits and stigmatisation.¹³

Given the harms that can be caused by women’s imprisonment and the fact that the vast majority (94%) of women in prison are categorised as either low or medium risk to the public,¹⁴

it seems both possible and desirable to find ways to effectively manage a wider spectrum of women who offend in the community.

Gender-responsive approaches to female offending

A distinct approach

The distinctive needs profile of women who offend necessitates a distinctive approach to providing support. The Ministry of Justice's rapid evidence review, *Better Outcomes for Women Offenders*, identifies that gender-responsive approaches to female offending are more effective at reducing rates of re-offending than gender-neutral interventions.¹⁵ Based on the evidence reported in the evidence review, the Ministry of Justice set out seven priority areas for intervention: (i) addressing substance misuse problems; (ii) addressing mental health problems; (iii) improving family contact; (iv) building skills in emotion management; (v) helping women to resettle and build social capital; (vi) helping women to develop a pro-social identity; and (vii) helping women to believe in their ability to control their lives and have goals.¹⁶

Example: Women's centres

Based on this evidence, one of the most prominent areas of effective practice has been the emergence of women's community services/women's centres, which deliver wrap-around support aimed to address the issues which women face. These centres provide a 'one-stop-shop' women-only environment, where women can access individually tailored support, including advice and guidance with a range of issues including substance misuse, domestic abuse, family and parenting support, debt and benefits, housing as well as a range of others that vary across different centres.

A number of women's centres have worked closely with the criminal justice system, in some cases working alongside probation agencies to support women as part of community sentences, and as part of existing problem-solving courts. The Ministry of Justice 'Justice Data Lab' reviewed the data from over 30 women's centres across England and found that the one-year re-offending rate for women who received support from a women's centre throughout England was 30% in comparison to 35% for a matched control group, demonstrating a statistically significant reduction in the re-offending rate.¹⁷

The Tavistock Institute has outlined a number of key features of this model, including being values-driven, ensuring support is strength-based and co-produced with service users and using trauma informed approaches to provide holistic, relationship-based and non-judgemental support services in women-only spaces that incorporates multiple agencies in one support model.¹⁸ The high incidence of trauma in their backgrounds means women who offend can be re-traumatised by the criminal justice process, leading to heightened stress responses and withdrawal from treatment and services. Trauma-informed approaches reduces the risk of re-traumatising vulnerable individuals by adapting procedures, communications and the courtroom environment.¹⁹

Example: The 'Whole Systems Approach'

A 'Whole Systems Approach' to women is a multi-agency initiative which seeks to utilise existing resources more effectively by providing more targeted interventions and support, avoiding gaps or duplication in service provision and supporting women to access services successfully so they can address the issues that drive their offending. Within this approach, women's needs are assessed when they first come into contact with the criminal justice system, and they are provided with gender-responsive support as they move through and beyond the criminal justice system, diverting them away from the system where possible. Since 2015, the Ministry of Justice has supported the development and expansion of 'Whole Systems Approaches' in areas across England and Wales, initially in Greater Manchester,

Norfolk, Surrey, Sussex and Wales. This was later extended to include Lancashire, West Mercia and Devon in 2017.

Example: Understanding the impact on children

There is also promising new practice that seeks to gain a greater understanding of the harmful impact on children of having a primary carer in the justice system. The Child Impact Assessment framework is currently being piloted across the UK and it is hoped that following the pilot project, there will be a robust and carefully evaluated Child Impact Assessment that can be used widely at all stages of the criminal justice system. You can find more information about this initiative [here](#).

Problem-solving courts for women

Problem-solving courts and female offending

Problem-solving courts are a diverse family of court models, albeit with shared characteristics, and are used in adult criminal justice, youth justice and family justice settings. Their common features are that they (i) specialise in a specific set of issues or around a specific target group; (ii) integrate the court process with a multi-agency approach that rests on a collaborative intervention and supervision; (iii) use the court to hold individuals and agencies to account through regular reviews of the order in front of the court (a technique known as judicial monitoring); (iv) endeavour to create a procedurally fair environment; (v) focus on improving outcomes.²⁰

As part of our review of the evidence on problem-solving courts in 2016, we concluded that a “problem-solving court for female offenders who have complex needs or are at risk of custody has the potential to reduce reoffending and address criminogenic needs. We see a strong theory of change for a specialised approach informed by evidence-led trauma-informed and gender-responsive practice which responds to the distinctive needs of women offenders.” Moreover, we take the view that implementing a women’s problem-solving court as part of a wider Whole Systems Approach to women’s offending could provide an opportunity to holistically and comprehensively address the seven priority areas for intervention outlined above.

Current women’s problem-solving court practice

In the same evidence review, we recognised that, in practice, there are only limited examples of them being implemented and, therefore, even more limited evaluation evidence of their impact. Nevertheless, below we outline the approaches taken in two courts.

Manchester and Salford’s women’s problem-solving court

Manchester and Salford’s women’s problem-solving court began operating in 2014 as part of the city’s Whole Systems Approach to women in the justice system. Central to the approach was the establishment of women’s centres across Greater Manchester, as well as a problem-solving court focused on women, which aims to deliver gender-responsive joined-up support to women at the key stages of arrest, sentence and release from custody.

Manchester’s problem-solving approach targets women with additional support needs, such as addiction, mental health issues or unstable housing, who have offended. Needs are identified as part of a pre-sentence assessment process and probation officers can propose a referral to the problem-solving court as part of the woman’s Pre-Sentence Report (PSR). The courts are supported by specialist teams including legal advisors, probation officers and a panel of magistrates. If a woman receives a sentence with a problem-solving approach, she is allocated

a keyworker from a local women's centre and a tailored package of support will be provided to her throughout the sentence. As part of their sentence, women must regularly attend the court for review hearings to monitor progress. The reviews are much more informal than a standard court hearing and the magistrates adopt an asset-based approach, emphasising individual skills and strengths and recognising the importance of building relationships, to encourage the woman to comply with the order, take responsibility for her actions and to engage with agencies that can help her move forward with her life.

While there has been no specific evaluation of the women's problem-solving court, recent data suggests that the wider Whole Systems Approach is working, with Greater Manchester reporting lower rates of reoffending for women who have offended in comparison to similar metropolitan areas, as well as England and Wales as a whole (15% compared to 23% for the period April 2017 to March 2018).²¹ Moreover, in the first of two evaluations of Manchester's Whole Systems Approach, the court was recognised for the impressive level of multi-agency commitment at the outset of the project, describing it as a "gold standard", though some concerns about "up-tariffing" (increasing the punitive burden) were noted.²²

Aberdeen problem-solving approach

This project was set up in 2015 to provide an alternative approach for women with complex needs and multiple previous convictions, and was later expanded to include young adult men aged 18-25. The aim of the court is to reduce the use of short-term custody and reduce re-offending by combining the authority of the court with rehabilitative community sentences which includes a personalised package of support to address the underlying causes of offending.

Once accepted onto the programme, individuals are given a Structured Deferred Sentence (SDS) usually for six months but with the possibility of an extension, while they engage with service providers to address their needs. Female service users receive enhanced support from a Criminal Justice Social Worker (CJSW) and from a support worker based in a local women's centre. Attendance is also required at review hearings at the court every four weeks to discuss their progress in front of a specially-trained dedicated sheriff. If successful throughout the SDS, they will receive an admonition.

An early-stage review of the court, which looked at the first 30 women found some promising signs. They noted that participants reported that receiving support often led to increased motivation to comply and that, given the highly complex nature of the client base, engagement and compliance was moderately good. Professionals were also very positive about the PSA overall – while acknowledging that it was less successful for those with more entrenched problems and who were not at a point where they were ready to change. The evaluation noted the importance of the Women's Centre in the delivery of the court, both during clients' engagement and as a provider of after-care, suggesting that areas with pre-existing provision will have an advantage in implementing similar models.²³

Implementation lessons for women's problem-solving courts

A challenging environment

As already mentioned, the existing practice base for problem-solving courts specifically for women is limited. Moreover, the environment in which the new pilot(s) of problem-solving courts for women is likely to be challenging. For example, a 2018 study explored the perceptions of a range of stakeholders, including magistrates, probation officers and providers of women's specialist services on the potential of problem-solving courts specifically for women.²⁴ It identified a number of challenges which would need to be overcome for implementation to be effective, including the need for training and the risk of "up-tariffing". In the same year, a report

on the Manchester Whole Systems Approach noted how Transforming Rehabilitation reforms to probation had undermined inter-agency working, while the emphasis on speed under the Transforming Summary Justice reforms might be “a barrier to approaches which seek to engage and reflect pre-sentence, key features of a problem-solving court approach.”²⁵

Implementation lessons

Taking these challenges into consideration, along with insights from the wider evidence base and our work with practitioners, we outline below a number of lessons for practitioners to heed if implementing a problem-solving court for women:

- 1. Target women at risk of custody:** Problem-solving courts for women should primarily target those at risk of short custodial sentences. They should guard against up-tariffing women who may have complex needs but whose offending is not serious enough for them to be at risk of custody (for example, women facing fines or low tariff community orders);
- 2. Avoid ‘overdosing’:** The sentence conditions set by the court need to avoid creating overly burdensome orders that women with multiple needs will find difficult to complete. Moreover, the conditions set should seek to address the complex needs of women involved in the criminal justice system, including their experience of trauma and abuse;
- 3. Ensure judicial continuity:** Ensuring continuity between the judge or bench of magistrates and individual at review hearings is important in helping to foster relationships that support the development of concrete goals, increasing self-esteem and engagement and holding individuals and agencies to account. Establishing a process for ensuring judicial consistency should be considered prior to implementation;
- 4. Support practice through training:** Additional training would be required for judiciary and court staff involved in specialist sittings to support the use of trauma-informed approaches. While this may be a challenge given the current available funding, it also presents an opportunity for greater training and specialisation amongst magistrates and highlights the potential of e-learning approaches;
- 5. Adopt a non-adversarial approach:** Review hearings should be less formal and less adversarial, to encourage the women to engage in the process; collaborative approaches to goal setting will maximise the perceived fairness of the process;
- 6. Promote partnership working:** Effective collaboration between statutory and voluntary sector organisations within the justice sector and beyond in a multi-agency approach is essential to ensuring that individuals receive appropriate interventions and supervision, as well as access to the necessary community treatment and support services. Robust resourcing of women’s centres and other specialist services is integral to delivering these approaches effectively;
- 7. Operate within a gender-responsive framework:** Women’s problem-solving courts work well when they form part of a wider Whole Systems Approach to women’s offending, which seeks to be responsive to the distinct needs of women in the justice system every stage of the criminal justice system, and especially, one which prioritises diverting women from the system where possible.

While each of these points highlights the complexity of developing problem-solving for women in magistrates’ courts, they also present a number of opportunities to improve the way that we work with women, particularly those with complex needs and histories of trauma. As previously mentioned, women who can be diverted away from the criminal justice system, should be. However, this doesn’t mean that everyone else is suitable for a problem-solving approach.

For some, the additional complexity of these orders in comparison to a standard community sentence may prove too challenging, thus increasing the risk of breach for women who can be safely supervised in the community. Robust assessment criteria must be implemented to avoid setting women up to fail and ensuring women receive the right intervention at the right time.

Concluding thoughts

With the impending Government problem-solving pilots, it is timely to re-iterate the importance of good partnership working and collaboration between statutory and voluntary agencies in order to deliver effective, joined-up, gender-responsive approaches to women's offending that offer a viable alternative to short-term custodial sentences. These should work to address the complex needs of women in the criminal justice system resulting in a long-term impact on rates of re-offending, access to services and on women's experiences of the justice system itself while avoiding overloading and up-tariffing vulnerable women.

The Centre for Justice Innovation is keen to act as a bridge between projects in this area to share and learn from the challenges and successes that each scheme has faced when designing, delivering and evaluating their approach. Similarly, we are available to provide free advice and support to areas interested in submitting an Expression of Interest to become one of the Government's new problem-solving pilots.

If you are interested in sharing your experiences as a practitioner and learning about how courts are implementing gender-specialist problem-solving approaches, or if you want to know more about how we can support areas interested in piloting a problem-solving approach, please get in contact with Suzanne Smith, Innovative Practice Officer, at ssmith@justiceinnovation.org.

Endotes

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About the Centre for Justice Innovation

The Centre for Justice Innovation seek to build a justice system which all of its citizens believe is fair and effective. We champion practice innovation and evidence-led policy reform in the UK's justice systems. We are a registered UK charity.

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This series of evidence and practice briefings aim to share and champion good practice in court innovation. Thanks for the support of Porticus and the Hadley Trust.

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