Research Paper

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Prison as a place of safety for women with complex mental health needs

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Abstract

This report has been produced as part of the Griffins Society's work to research and promote effective practice with women in the criminal justice system.

This study utilised interviews and a focus group to examine the processes and perceptions of those working in the criminal justice system who are involved in the journey of women into custody with a specific focus on women with complex mental health needs. The research included examination of existing data and of practitioners' viewpoints of the use of prisons as 'places of safety' for women in need of protection – either from themselves or others.

A consensus emerged from those interviewed that current processes are unworkable, flawed and not in the best interests of the woman. Many practitioners reported having to make decisions on how women should be managed with little information, very limited training and no guidance. They reported doing the best they could in the circumstances. However, even then, many said they felt that their best was simply not enough. Participants argued that more must be done to help vulnerable women who appear to be moving through the criminal justice system without advocacy and without a voice.

Although this was a small-scale study which focused on a small geographical location HMP Low Newton is fairly typical in terms of the women it holds very similar to female prisons across the country so the findings are likely to apply to all female closed prisons in England and Wales. The findings indicate that the practitioners working in this area consider prisons being used as a place of safety for women with mental health needs as a highly problematic and potentially dangerous practice. These findings suggest that there remains a significant need for further national research in this area.

1 Introduction

As the Head of Reducing Re-offending at HMP & YOI Low Newton I became increasingly concerned by the number of women, many with significant mental health problems, being remanded into custody for their 'own protection.' In 2007 Baroness Corston, in her report on women with vulnerabilities in the criminal justice system, recommended that the only women who should be in custody are those very few that commit serious and violent crimes and who present a threat to the public (Corston, 2007; The Howard League for Penal Reform, 2014). Despite a fall in women's custody since the Corston report, women continue to be remanded and imprisoned for offences that do not necessarily demand a custodial sentence (House of Commons Justice Committee, 2013). Moreover, it is commonly understood amongst criminal justice practitioners that prisons are often utilised, inappropriately, as 'places of safety' for vulnerable women who become caught up in the criminal justice system. It is this problem that this report aims to explore further.

The use of police cells as places of safety for people with mental health needs, remanded under section 136 of the Mental Health Act, has been considered previously by the Care Quality Commission and Her Majesty's Inspectors of Constabulary and Prisons (Her Majesty's Inspectorate of Constabulary, 2013). However, a similar review concerning prisons and vulnerable women has not been carried out, despite the fact that it has been raised as a serious issue by a prisoner's relative and, was consequently, picked up by the Prison Reform Trust (Prison Reform Trust, 2014). This gap in the research literature is surprising, given that it is understood that the mental health needs of women prisoners are particularly acute (National Offender Management Service, 2008. p.12).

A number of independent reports have identified that prison is not a suitable place for those suffering from mental illness as it cannot provide the support required (Bradley, 2009; Corston, 2007). Furthermore, a woman who is held in custody, but is in need of a hospital bed, will often wait significantly longer to be placed in a mental health unit than a person in the community (Bradley, 2009; Corston 2007) this delay could indicate the viewpoint that prison is already deemed a place of safety by some. More recently Her Majesty's Inspector of Prisons once again highlighted the issue further questioning the suitability of remanding women for their "own protection" when they present as very ill (HM Chief Inspector of Prisons for England and Wales, 2015, p.70).

This study aimed to examine whether prison, in some cases, is being used as a "place of safety" for women who have complex mental health needs and deemed in need of "protection" from themselves. It considers the appropriateness of this and the impact that this has on the woman and staff within the criminal justice system. It also briefly examines the law in relation to this topic and its subsequent application to establish if this is a new or on-going problem considering alternatives to this practice. Overall, this research aimed to demonstrate that the inappropriate use of prison as a place of safety for women with complex mental health needs is a significant issue. To do so, it drew on the experiences and reflections of criminal justice practitioners in one local area. The findings show that staff working within the criminal justice system, were trying to do their best in difficult and often challenging circumstances and they acknowledged their best was not always 'good enough'. The report suggests that more support, awareness and alternative options should be made available to those making key decisions about women when they come into contact with different justice agencies. The report concludes with a number of key recommendations aimed at instigating change in relation to this topic.

Before discussing the existing literature it may be helpful to briefly set out the legal provisions that empower courts to remand women in custody. Mental disorder is defined at law as "any disorder or disability of the mind" (Mental Health Act 2007. Pt.1. ch.1. s.1(2)).

"Women must never be sent to prison for their own good, to teach them a lesson, for their own safety or to access services such as detoxification." (Corston, 2007, p.58). Baroness Corston's recommendation regarding the inappropriateness of sending women to prison "for their own good" in 2007 is explicit and yet it remains that a court can deny bail to a defendant if they believe they should be kept in custody for their own protection even if the offence is one in which prison would not be a likely outcome at trial (Bail Act 1976. Schedule 1, Pt 1 and Pt 2 s.3).

The Law Commission set out guidelines that intended to ensure application of the Bail Act was compatible with the Human Rights Act:

"A decision to refuse bail to a defendant under the exception in paragraph 3 of Part I of Schedule I to the act, that is for the defendants own protection (from self-harm or harm from others) would comply with the convention where;

1 – Detention is *necessary* to address a *real risk* that, if granted bail, the defendant would suffer harm, against which detention could provide protection; and
2 – There are exceptional circumstances in the nature of the alleged offence and/or the conditions or context in which it is alleged to have been committed" (The Law Commission, 1998, p.2.s.11).

Emphasis is placed on "necessary" and "real risk" that the person would suffer harm which detention could provide protection against. However, it is questionable if detention *in a prison* can ever provide protection that would ensure that a defendant would not suffer harm. Much research literature is available on the harmfulness of prison experiences for women (Bosworth, 1999) but, crucially, prison has never been defined in the law as a place of safety (Mental Health Act 1983. S.135 (6)).

In 2014, Her Majesty's Chief Inspector of Prisons stated, that "despite good safety processes women's prisons sometimes are unable to keep vulnerable women safe" (HM Chief Inspector of Prisons for England and Wales, 2015, p.15).

The Law Commission has argued that denying bail because there is a risk of self-harm may be compatible with the European Convention on Human Rights Article 5 (European Convention on Human Rights, 1950) providing that certain conditions are met. Specifically, bail may be denied on the grounds of risk of self-harm, even if unrelated with the alleged offence providing "Court is satisfied that there is a real risk of self-harm and that a proper medical examination will take place rapidly that the court may then consider exercising its powers of detention under the Mental Health Act 1983" (The Law Commission, 1998, p.2.s.12).

Those who appear before a court must be fit to plead. That is, "an individual (must be capable of contributing to the whole process of his or her trial, starting with entering a plea" (Bradley, 2009, p.60). The notion of fitness to plead relies upon this issue being raised by the defence, prosecution or, in the case of the crown court, a Judge and then is reliant upon evidence from two medical practitioners (Crown Prosecution Service, 2015). As previously stated, to get to this position would mean that whilst in police custody the possibility of a mental disorder was identified and the woman referred to the relevant professional for further assessment. Alternatively, it would rely upon the woman seeking legal representation and her advocate doing this for her. In the case of a woman

who does not seek legal advice and those the custody officer do not identify as potentially mentally disordered it could well mean that the court would assume there were no issues and proceed. A mental disorder may not be evident to the court if it is not raised by someone and it may be the case that the court would assume that if there were an issue someone would have identified it earlier so it is not something they need to consider.

Interestingly, the Crown Prosecution Service state that although dependence on alcohol and drugs does not come within the meaning of mental disorder for the purpose of the Mental Health Act, mental disorders which accompany or are associated with the use of or stopping use of alcohol or drugs, even if they have arisen from dependence upon these, may fall within the meaning of mental disorder for the purposes of the act (Crown Prosecution Service, 2015). It is known that 70% of offenders declare drug misuse prior to prison and 51% declare drug dependency. It could be suggested that half of those entering the criminal justice system, including at the point of arrest, have drug dependency issues which in turn could mean than a far higher number of people are suffering from a mental disorder associated with or accompanying this dependency (Home Affairs Committee, 2012).

It is well documented that significant delays in assessment and subsequent transfer to hospital from prison frequently occur (Bradley, 2009). It is therefore unlikely, from a custodial setting, that full medical examination would take place more rapidly than in the community (Bradley, 2009: 105-6). Therefore, it is questionable if application of the Bail Act in this way is actually compatible with the European Convention on Human Rights because proper medical examination is unlikely to be rapid once a woman is remanded into custody. The process within the custodial setting would not be expedited as quickly as if the woman was in the community where protocols are somewhat speedier and more effective (NHS Choices, 2014).

In 2011 the United Nations General Assembly passed a resolution that encouraged member states to adopt legislation which reflected their published rules for the treatment of women prisons and non-custodial measures for women offenders, also known as the Bangkok Rule (United Nations, 2010). A number of these rules are linked to this issue. HM Inspectorate of prisons has amended their expectations document to reflect this resolution however it appears it has done little to change or improve outcomes in this area for women in prison. It does not, to date, appear to have contributed to any legislative changes within England and Wales.

Considering detention in police custody for assessment under the Mental Health Act. A recent ruling supports the notion that the police are discouraged or would now be reluctant to use police custody as a for mental health assessment however it could be suggested that what must improve is the timeliness of the assessment and the need for more appropriate facilities to detain someone under the Act.

In 2012 the European Court states a Breach of Article 3 of the European Convention on Human Rights had occurred when a person was detained for a prolonged period in police custody where the police station is an unsuitable place for him/her even if the detention itself is in accordance with the Mental Health Act 1983. This person had been held longer than necessary because of delays in completing the mental health assessment (MS v United Kingdom, 2012).

2 Literature Review

This literature review considers the limited evidence available to examine the appropriateness both legally and morally in detaining women with complex mental health needs in a custodial setting. Prisons as places of safety for women with mental health needs is an under-researched area. Research in prisons has tended, instead, to focus on women's social and sexual lives in prisons (Kruttschnitt and Gartner, 2005), women's resistance or negotiation of prison life (Bosworth, 1999; Rowe, 2015) or the machinery of social control in women's imprisonment and punishment (Carlen, 1983; Howe, 1994). Relatively few academic studies have focused exclusively on women with mental health needs in prison. However, this is an area that is beginning to receive greater attention, particularly in the U.S. (Green, et al., 2005).

To the best of my knowledge there have been no research studies that have focused specifically on prisons being used as places of safety for women with mental health needs in the United Kingdom. The use of prisons in this way has, however, been acknowledged and criticised in the policy work published in the Corston (2007) and Bradley (2009) reports.

2.1 Mental Health of Women Offenders

Baroness Corston's report in 2007 identified the need for a different, holistic approach to women in the criminal justice system. She identified that most of the women she encountered "had mental health problems" (Corston, 2007, p.4). Baroness Corston identified this as a problem for other women within the female prison estate. Many women who come into custody are alarmed at sharing cells with women who have mental health needs. It has been stated that women were so affected by the mental illness of other women that the issue had far wider implications than just the affect it had on those who have mental health problems (Corston, 2007, p.4).

Baroness Corston was critical of mental health provision in the community and also the suitability of prison as a place to locate mentally ill women. "Many women in prison have been failed by society including the NHS long before they arrived at the prison gates and many are simply too ill for prison to be an appropriate location for them. Prison is being used to contain those for whom there is no proper provision outside prison. And of course prisons are being asked to do this on the cheap. It is

also clear that mental health services in the community are failing to adequately address the mental health needs of women" (Corston, 2007, p.11).

Despite these concerns raised by Baroness Corston a Griffin's Society research paper identified magistrates would remand for own safety if they felt that a woman was not safe to be let out or had a mental illness this viewpoint was echoed by probation staff (Maraugka, 2012).

Worryingly, Lord Bradley identified that 60% of women remanded do not receive a custodial sentence. Given the known impact imprisonment has on female offenders and their families and the level of mental illness known to exist within this group it is difficult to understand why courts continue to remand women to custody when it is unlikely that their offence will ultimately warrant a custodial sentence. This raises the question of why bail is denied to this extent with women who then do not go on to receive a custodial sentence anyway (Bradley, 2009, p.63). Bradley's report supported Baroness Corston's earlier findings that proportionately more women were remanded into custody than men (Corston, 2007, p.3).

Additionally, figures produced by the Prison Reform Trust state that women are nearly twice as likely as men in prison to be identified as suffering from depression, and more than three times as likely as women in the general population. Almost a third of women in custody had a psychiatric admission prior to entering prison (Prison Reform Trust, 2015).

Further, the Mental Health Foundation states that female prisoners are 35 times more likely than women in general to have two or more mental health disorders, (Mental Health Foundation, 2015). These figures were based upon 2014-2015 which is disturbing given that the Corston Report in 2007 identified the same issue that mental health problems were more prevalent among women in prison that in the male prison population or the general public yet little seems to have changed (Corston, 2007, p.3). Moreover, self-harm is endemic within the female prison population with women representing only 5% of the prison population but accounting for 26% of the self-harm that occurs (HM Chief Inspector of Prisons for England and Wales, 2015, p.15).

A recent inspection of HMP Low Newton identified that three quarters of the population were being treated for mental health problems (HM Inspectorate of Prisons, 2015, p.5-6). More concerning were the comments the Chief inspector made in his annual report about HMP Low Newton that

stated "a prison can never be a hospital and we had particular concerns about a small number of women who had been remanded at the prison 'for their own protection.' Identifying that these women had significant mental health problems and prison was not an appropriate 'place of safety' for them" (HM Inspectorate of Prisons, 2015, p.70). This demonstrates the Chief inspector's concern around this issue and signals the inappropriateness of using prison in this way.

2.2 Contact with the Criminal Justice System

This section specifically considers literature available specifically related to the mental health of female offenders and the processes adopted in dealing with mentally ill women to this topic at each stage of a woman's journey through the criminal justice system to prison.

Police

In 2013 a joint review was carried out by HM Inspector of Constabulary, Prisons, the Care Quality Commission and the Healthcare Inspectorate of Wales to examine the extent to which police custody was used as a place of safety (HM Inspectorate of Constabulary, 2013).
There were a number of key findings that could be linked directly to the issue of women ending up in prison as opposed to the most appropriate place for them.

They found:

- There was an absence of available beds at the health-based place of safety, insufficient staff at the health-based place of safety (HM Inspectorate of Constabulary, 2013, p.8).
- Police stations should only be used for those who are mentally ill in exceptional circumstances defined at law where the behaviour would pose an unmanageably high risk to other patients, staff or other user in a healthcare setting (HM Inspectorate of Constabulary, 2013, p. 14). Could the effect of this be directly linked to women finding themselves in prison rather than a healthcare setting? If the drive to reduce this has been acted upon by forces across the country in line with the recommendations could it be the case that those who would have been taken into custody for assessment are being taken in for the substantive offence hoping that assessment will identify a Mental Health need?

- The report found a lack of Section 12 doctors- those doctors medically qualified to act under the mental health legislation. Who have specific expertise in mental disorder and have received training in the application of the Act (HM Inspectorate of Constabulary, 2013, p.20).
- Positively the report found that officers in all forces demonstrated a genuine concern that police custody was not an appropriate place for those with mental illness (HM Inspectorate of Constabulary, 2013:, p. 28). However if it is not appropriate and there are not enough beds in the healthcare based places of safety. What can be done with vulnerable women in need and in crisis?

It is undeniable that the custody sergeant when processing someone into custody does so with a significant amount of responsibility. The Police and Criminal Evidence Act 1984 (PACE) Code C states "the custody officer is responsible for initiating an assessment to consider whether the detainee is likely to present specific risks to custody staff or themselves" (Police and Criminal Evidence Act, 1984, code C, Para.1.4). The Police and Criminal Evidence Act (PACE) code specifically relies upon the Custody Offices ability to identify if a detainee "appears to be suffering from a mental disorder" (Police and Criminal Evidence Act, 1984, code C, Para.9.4).

The level of training the police receive to carry out this task of identifying mental illness is discussed as part of the results section however it is clear that the custody team are pivotal in the initial referral of those detainees they have concerns about to the relevant healthcare practitioner.

Those held in custody are entitled, if they so request it, to consult a solicitor (Police and Criminal Evidence Act 1984, Part V. s.58 (1)). The police cannot instruct a person to access legal advice but they are instructed not to dissuade a person from obtaining this (Police and Criminal Evidence Act, 1984. Code c. para.6.4). This is particularly important when considering vulnerable groups such as female offenders, although advocacy arrangements can be made, the police cannot obtain this for a person if they do not request it when asked. If the Custody Officer does not believe that the person "appears" to be suffering from a mental disorder and does not subsequently refer them the woman will likely never have any form of advocacy or legal representation. The police could request an appropriate adult however this may be difficult to obtain meaning the woman remains in police custody longer. Potentially making an already vulnerable individual more disadvantaged.

Court

Baroness Corston identified a number of concerns in relation to the courts being able to obtain timely, specialist reports stating that most sentencers believed there was a shortage of clinicians to provide these (Corston, 2007, p.12). Further concerns were raised in relation to liaison and diversion schemes stating these were “patchy and under resourced” (Corston, 2007, p.12). From these concerns a recommendation was made that “all magistrates courts, police stations, prisons and probation officers should have access to a court diversion or criminal justice liaison and diversion scheme to access timely psychiatric assessment for women offenders suspected of having a mental disorder” (Corston, 2007, p.13). The emphasis here is placed on whether a mental disorder is *suspected.* This demonstrates the level of responsibly placed upon magistrates to be able to identify a mental disorder if it is not picked up prior to court. Magistrates’ actual ability to do this and their training in relation to mental health is discussed later.

Baroness Corston went so far as to say that if a sentencer could not access a timely psychiatric report then they must fail to remand in custody or sentence if not available (Corston, 2007, p.78). It is unclear from the literature whether this would ever be the case and what other options would a court have? If this was the case would sentencers be reluctant to fail to remand?

Alternatives disposals to prison for the court to consider do exist within the legislation. However, in practice, processes tend to rely on the woman having been identified as mentally ill prior to the appearance in court. If a mental health issue is not detected and the appropriate evidence from a medical practitioner is not made available to the court then the court cannot utilise these sections of the Act (Mental Health Act 1983.s.35, S36, S37 see also Mental Health Act 2007).

Prison

“Prisons are being asked to do the impossible: the fact is that many women in prison have been failed by the NHS long before they arrived at the prison gates and many are simply too ill for prison to be an appropriate location for them. But prisons cannot refuse anyone sent to them no matter how unsuitable the facilities available and what staff are doing in respect of Mental Health, can be best summed up as fire-fighting” (Corston, 2007, p.70).

2.3 Availability of Hospital Beds

The lack of available hospital beds for those requiring assessment or admission under the Mental Health Act has been well documented in recent years with a significant reduction in beds and an increase in admissions with investigators reporting that "demand outstrips supply" (Community Care, 2013).

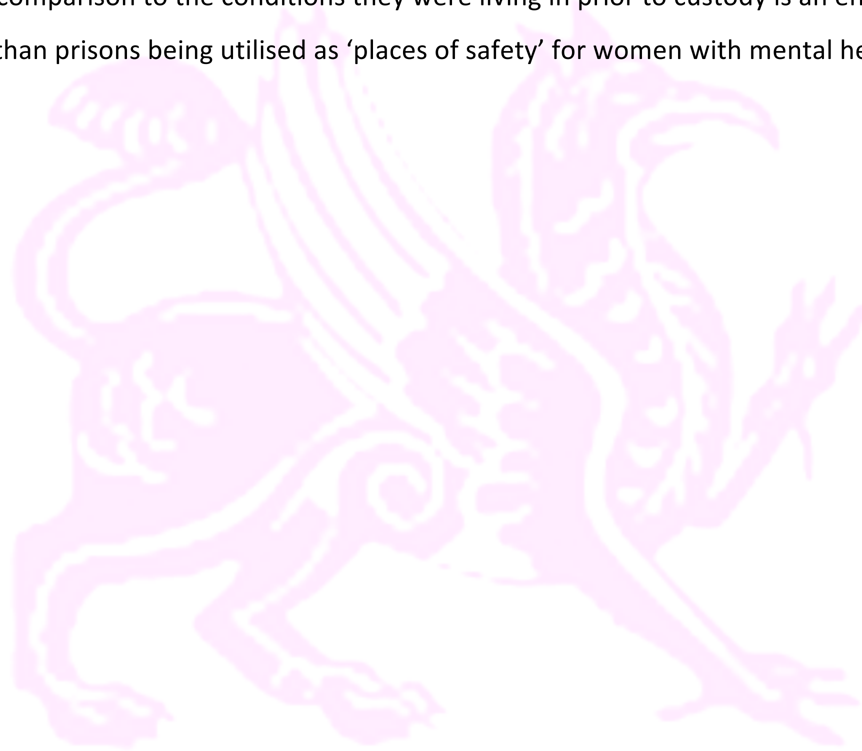
The Royal College of Psychiatrists reported in a survey in 2014 that 30% of their staff were sending critically ill patients home because there were no beds available for them and 18% report making decisions on detaining someone on bed provision and availability (The British Psychological Society, 2015). A lack of available beds could be compounding the issue of getting women who need treatment under the Mental Health Act to the most appropriate place.

There were 50,408 cases of people being detained for compulsory treatment under the Mental Health Act in England during 2012-13; the total topping 50,000 for the first time (Campbell, 2014) demonstrating the huge pressure placed on mental health resources and perhaps explaining why so many mentally ill women end up in custody due to the lack of available resources and beds. This supports Baroness Corston's concerns regarding sectioning from custody being time consuming as sectioning is delayed until a bed is secured. Corston concluded that "staff report it takes months to find a suitable bed for a woman, meanwhile their health deteriorates, sectioning is delayed until a bed has been secured (a practice I deplore) and, moreover, specialist staff outside the prison play no active role in the care of the woman before the transfer is effected even though her needs has been identified" (Corston, 2007, p.12).

The literature review identifies a number of key issues at each stage of the criminal justice system. Including difficulties the police face in terms of accessing medical advice and advocacy for women, the courts have accessing reports and alternatives to prison. Finally prisons having to deal with mentally ill women when they do not have the provision to do so effectively and a well-documented lack of hospital beds.

Despite the absence of research literature on prisons being used as places of safety for women with mental health needs, there has occasionally been mention within research studies on women's imprisonment of women feeling 'safer' within prison environments than they have on the outside.

One such study, by Bradley and Davina (2002), conducted in the U.S., found that for some women prison environments could provide a relatively safe place – away from the threat of domestic or interpersonal violence or other abuse, but that the perceived relative safety of the prison environment varied with the extent of abuse the women had endured in childhood and adulthood. As the wider research literature on women in the criminal justice system shows, histories of abuse are extremely common (Milligan and Andrews, 2005). Moreover, such a finding is also frequently reported in the policy literature and is 'common knowledge' amongst criminal justice professionals who work with women. However, the idea that some women may find prisons to be a relatively 'safe places' in comparison to the conditions they were living in prior to custody is an entirely different issue than prisons being utilised as 'places of safety' for women with mental health needs.



3.0 Methods

The aim of this study is to establish if prisons are being used, in some cases, as a place of safety for women who have complex mental health needs and to consider the appropriateness of this. In order to establish if this was the case it was important to speak with those involved with women throughout the process from initial arrest through to remand. This involved speaking with the police, court staff and prison staff to gain understanding of the process and to seek opinions in relation to this topic. It was also important as part of the study to examine a number of warrants received from the courts to establish the courts reason for disposal into custody with specific emphasis on those cases where “own protection” was the primary factor.
Formal approval from the necessary departments was obtained prior to any interviews or data gathering commencing.

3.1 Warrant data gathering

Examining the warrants to determine if women had been remanded for their “own protection” was straightforward. Access to the warrants was provided by the governing governor and NOMS research approval team. Gathering this data involved manually checking warrants that the prison received from the court, as authority to detain. If the court had made a decision to deny bail on these grounds it was clearly noted and this was then taken as a decision to remand for the woman’s own protection or safety and was counted towards the total number. To ensure anonymity and protection for those women affected no reference to any other details contained within the warrant were extracted or will feature as part of this report. However I did follow through each woman individually to establish what happened to them either from custody or once released in order to identify if they were subsequently sectioned under the Mental Health Act. Numbers are included as part of this report however no further details are given to ensure ethical compliance and to protect the anonymity of the woman concerned.

3.2 Recruitment of participants

Despite being a prison service employee I still sought formal approval from the National Offender Management Service via the Integrated Research Application System to carry out this research,[1] which was granted. Within my own prison establishment, I interviewed 4 prison staff at managerial level. Additionally, I also secured formal approval from Cleveland Police to carry out interviews with a full team of custody suite staff in a local police station. These staff were approached by their Senior Officer and all asked if they would like to participate in the project. Four members of the custody team agreed to take part and the group consisted of three custody sergeants and one custody inspector. All those who agreed to be interviewed signed a consent form and were given an Information form for participants before the interview commenced.

It had also been my intention to interview a number of court staff to include within this study. However, despite regular contact with the local court and attempts to secure formal approval to do so I was unable to access interviewees from the court due, finally, to personal time constraints as the report had to be concluded within twelve months. However, in order to ensure that the views of the judiciary and sentencers were considered I was able to, with the assistance of the Prison and Offender Research in Social Care and Health (PORSCH) network, arrange a round table, focus-group event. Expressions of interest were circulated to interested parties who then subsequently applied to attend. Those who attended all did so on a voluntary basis, consented to being part of this process and received the information sheet for participants. Eleven participants attended on the day that included a court clerk, local court team leader, magistrate, legal advocate, NHS representatives and recently retired prison managers.

3.3 Interviews and Focus Group

At the start of each interview I went through the consent form with the participant and also explained fully the information sheet for participants. I had intended to record each interview however I was unable to do so with both the police and prison staff. The police did not wish to be

[1] Granted on 20th February 2015 by the North East Psychological Services Lead Psychologist.

audio recorded and due to current legislation I was unable to take a recording device in to the prison environment, as this is a criminal offence. Contemporaneous notes were taken throughout which meant the interviews took longer than anticipated and clarification was sought throughout the interviews regarding meaning and intention of responses. The interviews were semi–structured that ensured a standard format was applied to all participants. However the participant had the opportunity to give more detail and was encouraged to expand upon a particular area of interest or knowledge if they so chose.

The round table event followed a similar method to that of the interviews. For this group it was possible to make an audio recording. The recording was transcribed over a number of days following the event. Again a semi-structured approach was adopted. However with this group three case study examples were presented to the group to promote and encourage discussion. Their feedback and discussion of these case studies were based around examples that had been given by participants in the interviews and my personal experience, ensuring ethical compliance throughout.

3.4 Analysis of data

All transcripts and notes from the interviews were analysed using thematic analysis. I grouped the comments made by participants into key themes. These themes were based upon responses to particular questions. Key emerging themes were:

- lack of training in mental health awareness and confidence in dealing with mental health issues across all interviewees;
- lack of information sharing and ability to divert from custody;
- a sense of powerlessness where agencies were trying to do their best in the circumstances for vulnerable women but many felt their best was not good enough due to a lack of resource and alternatives.

All participants identified women in the criminal justice system as vulnerable and reported that legal representation was not always obtained by women even if available to them they chose not to access this. All participants were passionate about this topic however a real sense of frustration appeared to exist particularly in relation to the process of accessing hospital beds for mentally ill

women both from police cells and from prison. Notably, processes within prison were perceived by participants as significantly slower than they would be in the community for example transfer to a secure hospital.

3.5 Reflexivity

I was aware, throughout the research processes that as a practitioner working within a female prison and having experienced some of the issues the research touches upon that this could have an effect on the process and I was mindful of this throughout. This is something I discussed in depth prior to commencement of the research with my supervisor and I ensured that I systematically analysed the effect of this research upon me, and my feeling around this throughout.

To ensure reflexivity I took full advantage of a range of support mechanisms including regular meetings with my supervisor and Griffins Society Fellowships meetings. I also kept a journal of my decision-making that I discussed with my supervisor.

The data gathered from interviews with prison staff was noticeably richer and more detailed than the data gathered from police and court staff. As part of the data analysis I have reflected on the reasons for this qualitative difference and suggest the following two possible explanations.
Firstly, it tends to be the case that prison staff spend more time with those remanded to custody than any other criminal justice system professional group. As a result it is possible that prison staff have a deeper level of understanding in relation to this issue and dealing with women.

A second explanation for why the interview data with prison staff was richer may be associated with having known all of the interviewees in a professional capacity prior to my interviewing them. As a result of these prior professional relationships, rapport was easily achieved and interviewees viewed me as a trusted colleague. Thus they may have been more willing to discuss this topic very openly.

4 Findings

The findings reveal that a general consensus emerged from those interviewed that current processes are unworkable, flawed and not in the best interests of the woman. As many quotations below will reveal, interviewees reported having to make decisions on how women should be managed with little information, very limited training and no guidance. They reported doing the best they could in the circumstances. However, even then, many said they felt that their best was simply not enough. Participants argued that more must be done to help vulnerable women who appear to be moving through and round the criminal justice system without advocacy and without a voice.

The findings are broken down into three specific areas; police interviews, court staff focus group results and interviews with prison staff. Within the results are key emerging themes. Unsurprisingly there is some overlap between the different agencies.

4.1 Police Interview Findings

A key feature emerging from the interviews with the police related to the lack of training they receive in mental health and the identification of mental health and the desire to receive more of this training to support them in the delivery of their role. When I asked about how much training they received, many reported 'none' or that they had had some form of training once, but that it was a long time ago.

> "None, it's just based on my experience"

> "None, I think maybe basic mental health awareness once."

> "I think I did some in my initial training in the late 80's since then nothing."

Despite the lack of training received, however, many expressed a desire to be given more training:

"I would welcome it, mine is based upon experience but I do think there are merits to having it in the initial policing training."

"I am not confident no, it is very busy in the custody suite and sometimes you just don't have the time to speak to people for long enough – I would welcome further training."

Though it was also acknowledged that it should not be the role of a custody officer to identify a serious mental health issue:

"I trust my common sense and judgement, yes I think further awareness is important and required. I think skills have been lost but I don't think it is the job of a custody sergeant to identify Mental illness, however you can use your common sense and judgement and gut instinct."

An issue raised during all interviews was that not everyone who is held in police custody is seen by a medical professional. Interviewees stated that this is something that is left to the discretion of a custody sergeant who has no training to identify and refer the woman on. In a high pressured and busy environment such as a custody suite it may be very difficult to identify that need based upon one interview upon arrival. When a person is received into custody at prison, it is a mandatory requirement to be seen by a nurse and a doctor, why is the same not applied to holding someone in a police cell?

Interviewees stated that a woman was only likely to be seen if concern became evident during a risk assessment or if a prisoner self-disclosed a mental health issue:

"No not at all only if they are highlighted as needing to be seen when we do the risk assessment and ask the question or if we feel there is something more."

"No, they don't if they've raised no issues then not it is up to the custody sergeant or prisoner to self-disclose,"

Even if the Custody Sergeant does refer to a doctor for an assessment there is no guarantee that the Doctor will be trained in identification of mental illness. Each of the participants interviewed stated

that they believed not all of the doctors they called upon for assessments were trained in identifying mental illness. Worryingly, despite the responsibility for the person in custody resting with the Custody Officer, only two of the respondents said they would feel confident challenging the assessment of the doctor if they felt something had been overlooked.

> "I am confident, I have called another doctor or waited until a shift changeover so I got another doctor. No I would feel confident to challenge."

> "Yes, I stood up and disagreed I stood my ground ran through my concerns, I pushed it until I got another doctor, an example was when I was told there were no mental health concerns about a prisoner and I went back to the cell and they were naked licking the floor and I said "you think this is normal lucid behaviour" the prisoner was re-assessed. Sometimes the assessments are very brief when they initially see the doctor."

However, the majority of interviewees stated they would be unlikely to challenge the judgement of the attending doctor:

> "Probably not, I would maybe send an email raising some concerns…but actually no they are medically trained not me."

> "No, not medically trained and not for me to say."

All respondents stated that although a woman would be offered legal representation they could not encourage her to take it that potentially could leave women more vulnerable.

> "No we cannot encourage them if they do not want it."

> "No, not given just offered and if they refuse we wouldn't encourage."

All respondents agreed that they believe the prevalence of mental health illnesses in women is greater than the men they see, despite there being fewer women passing through the custody suite.

> "I think men are more vocal and say they have but women say very little, yes I think so."

> "I think men are more vocal women probably don't say much about mental illness at all."

Interestingly when the custody team were asked for suggestions as to what could improve this situation each made a direct recommendation not to use police cells as a place of safety and a suggestion that this may be the catalyst for this current problem:

> "I think there are more appropriate services in the community rather than custody as a means of holding those vulnerable people. Discouraged to use 136 in custody, I feel we arrest for the offence and assess whilst being held for that but I don't think this works many may be missed."

> "I think we struggle to divert anyone from anywhere due to a real lack of beds also pressure to not use police stations for 136 and lack of 135,[2] so charging with offence first hoping that the mental health problem will be picked up during, rather than using a 136 to bring into custody for assessment."

Funding issues and relationship with other departments also featured as a concern:

> "we need more funding, we do not use 135/136, encouraged not to so limited use, but I think it could be used more, Plus using these is resource intensive on front line officers so there is a cost involved plus a lack of beds. The triage and liaison and diversion teams need to expand and work 24 hours a day and maybe use more drug testing to see if it is a drug problem."

> "There are real cost issues and limited number of beds, and lack of support from other agencies."

4.2 Court Staff Focus Group Findings

The court results indicate a similar trend to that of the police, it became clear that court staff knew there was a problem but in the face of it they were trying to do the best for the woman and felt they

[2] Section 135 and 136 of The Mental Health Act which allows for someone to be taken to a place of safety i.e. hospital or police station for a full mental health assessment to be carried out.

had little option but to remand into custody in the hope that the woman would get the appropriate help within the prison environment. It did become apparent, though, that many magistrates were not aware of what prison can actually offer (and what it cannot) and it may be a misguided, yet well-intentioned belief, that prison would be better for women.

On sending women to prison as a means of protection, some magistrates clearly felt uncomfortable about such a course of action:

> “It doesn’t always feel right.”

However, many felt they had few options, given the fact that they have very little information available to them when they are making their decisions:

> “Difficult for a bench of magistrates as they have to bail or remand and are often given very little information about the person even when they do present with concerning behaviour.”

A few interviewees reflected on the fact that some magistrates may have a misunderstanding about what may be available to a woman with mental health problems in custody:

> “Prison is simply seen as a secure areas with a healthcare team…..it’s a better position than they were in before, many magistrates see prison as a positive as it provides that security, however, this may be based on insufficient understanding of the full situation and range of other options available.”

Healthcare staff who work at the court who were in attendance at the focus group raised a number of concerns relating to lack of understanding of informal hospital admissions and how these can and could be used by the courts. These healthcare staff also raised concerns regarding the transfer of women from custody to an appropriate hospital for treatment, stating that it would never be quicker to section and send directly from a prison than it would be if the woman was sectioned from the community:

> “I have said to a bench of magistrates that his person isn’t detainable yet they still remanded even though X had agreed to go to hospital, I think there is a lack of understanding about

informal admissions…..I was asked if X would be allowed to leave the hospital if would they be detained….of course I had to say yes so they remanded, they didn't want X to be able to leave….but it is not that straightforward."

A number of interviewees were concerned by the process and the time it takes to secure a bed for a woman in custody and how this is not on a par with how a person in the community would be treated:

"feels wrong as it takes so much time to get a bed the nurses in the prison do their best but sometimes it takes such a long time to get a bed, something should be done before they get there (to prison) as it takes so long"

"it is much easier to get a bed in the community rather than when they are in custody, in the community you are assessed….if you need a bed a bed is found. In custody it isn't a priority, you need a bed but you have to wait until a bed is found before you will be sectioned, which takes a lot longer given the process you have to go through"

When asked how often magistrates visit prison and what they think prison is and can offer most reported that they didn't really know and that it was not mandatory to visit regularly nor was mental health training a priority and even if it were it was stated that it would be very difficult to deliver:

"Magistrates only really visit a prison in the first two years, if they visit at all, and some have been sitting for 40 years and don't ever revisit prison and see the changes which have occurred in terms of what prison can offer and treatments available."

"With 1000 magistrates in this area it's not really possible to train them all, maybe legal advisors could have some specific training."

Interviewees also reported that of the women who have been presented before them for which they may have had concerns that as a rule these women are not legally represented.

"In my experience many of these women are not ever legally represented."

> "None of the women were legally represented."

As with the police the court staff were asked for opinion and judgements on what could improve this situation all agreed that more was required in terms of opportunity to divert. A suggestion was made that the police should look behind the offence and have a role in identifying why the woman may have committed that offence:

> "I think the problem with many of these women is that the police don't ask why they did this (the offence) or what is going on in your life which made you commit this offence, the police see the crime, gather the evidence, interview then charge, we need to ask more about what has caused this person to behave in this way."

One respondent suggested that the police should be empowered more in terms of asking questions of doctors who assess these women:

> "Need to empower the police to ask questions of the doctor, they will say no to a superintendent and they feel empowered in their capacity to do this as a custody sergeant however not to a doctor, yet in an inquest it would be the custody sergeant who would be asked why he did not get further information from the doctor if he wasn't sure….as ultimately the decision to keep that person in custody lies with the custody sergeant."

The findings demonstrate that most magistrates feel uncomfortable remanding a woman into custody for her own protection but feel they have limited options available. Many magistrates are not aware of what prison is like or what it can actually offer in terms of support for mentally ill women. A concerning issue is the lack of legal representation for women even though it is available many seem to decline this and the court do not seek to ask why this is the case.

4.3 Prison Staff Interview Findings

Interviews with prison staff were revealing, the frustration prison staff felt in terms of managing women in what they believed was an inappropriate environment was palpable in every interview.

Interviews with prison staff generated strong findings. All agreed that despite their best efforts, prison was the wrong place for women with mental health problems.

The first theme apparent was the lack of information prisons believe they receive from the court and police in relation to the mental health of prisoners:

> "Prison is a place which removes a person's liberty. It is the end point for the legal system and it relies on the transfer of information. Information from the court will inform of the crime leading to the conviction and can advise of the possible danger to others. The courts rarely provide mental health information. Prison is not specialist mental health facility. The transfer of information is not rapid. Those who care for women for most of the day are not trained to deal with mental health issues. There is an information void between the point (time) of reception and support for those with mental health issues. I would suggest that this the period when women with mental health issues are at greatest risk."

> "The information received from the courts is often negligible in relation to the health of the woman. What is received is often concerned with their physical health and little is received about their mental wellbeing. When considered in the context of the safety of the woman during the first few days and nights in custody this is a very serious failing"

> "We get nothing, court services/cells are managed differently more could be demanded from them as there is currently no interaction."

> "No information is received other than limited information on the prisoner escort form which expresses a concern in terms of self-harm – not regarding mental health status."

When asked about healthcare screening upon arrival at prison further concerns were raised:

> "There is an understanding that there is vulnerability at the point of first contact with the Criminal Justice System, this is the point at which they are most vulnerable. When they come into custody they are seen by a nurse and GP but not all of these are mental health trained and I am aware that this may be the first real contact with a GP or nurse as not all are seen by

these people at court or in the police cells which is worrying that they may have spent hours in custody and this is the first time they have been assessed."

As is the case with the police and the court prison interviewees also reported that training in mental health was lacking. Many participants said they had not received sufficient training in mental health and mental health needs are therefore often not promptly identified.

"People do miss things, as sometimes the behaviour can conform and sometimes people who are quite ill don't get seen and picked up."

"I personally have not had any training and would not recognise any behaviour which would allow me to make a judgement about a woman's mental health needs."

"I am not mental health qualified however have a long experience of working in prisons which I feel would give me the experience to know if someone was not right or responding in a way which was of concern, are they responding in a way in which others would or have before? There are some clear cases of people responding differently or having different behaviour and clearly need an assessment straight away. For example those who are charged with Murder always locate into HCC for assessment, as it is known that a charge of murder may impact on the mental health of that person or that there may be some mental illness that would require assessment before progressing to normal location. People do miss things as sometimes the behaviour can conform and sometimes people who are quite ill don't get seen and picked up. Sometimes instinct just tells us that someone's behaviour is odd and we have to go with that."

"Not very much formal training, some mental health awareness that was a very long time ago. There is enough background knowledge to know that mental illness is more pronounced in a women's prison than in a man's prison."

A number of respondents also felt they lacked in confidence when dealing with women who have complex mental health needs:

"Uncomfortable as unsure if I was taking the most appropriate actions for the individual."

> "I feel that I am not qualified to make decisions regarding the woman's immediate needs."

Each participant was specifically asked about their own view regarding Prison as a place of safety. All participants agreed that prison was not a place of safety:

> "It is not unusual for a warrant to include a phrase like 'for her own safety 'without any apparent support for the assumption that prison is a place of safety for women"

> "It may be well meaning (by the court) but we would never expedite the process quicker from a prison than it would be from the community. Prison is not a place of safety, there are two places you can be assessed either at hospital or in a police station. Some become ill whilst in custody or some fall just short to be treated in hospital, we have many people in prison who are seriously ill, waiting for beds. There is an idea or notion that prison can cope with these people my point of view is that mentally ill people should not be in prison."

> "Prison cannot on an on-going basis hour to hour day to day deal with the complexities of people with serious mental health issues. At the end of the core day most specialists go home leaving operational staff to muddle through."

Comments from prison staff included concerns about the affect this has on the staff within the prison having to deal with women and the difficulties they face personally and morally in managing women:

> "Managing staff in prison….restraining someone when they have committed an act against discipline like an assault, or been a part of significant disorder or violent that's part of it but it really doesn't feel comfortable having to restrain someone who is mentally unwell and is acting in this way because of that….that you need to intervene…..that feels really uncomfortable."

All agreed that the prevalence of mental health problems within the women's prison was high and they felt it was increasing:

> "Yes, I think that the population in the women's prisons gets to be more concentrated with multiple problems and an increase in mental illness."

As with the court and the police each participant was asked for further suggestions to improve this situation. Most of the responses centred around information sharing and screening:.

> "The police and the courts should have the information available to them prior to sentencing. Mental health professionals should provide guidance to judges and magistrates."

One participant commented specifically upon the regime in prison and how this is not tailored for those who are so mentally unwell:

> "Putting people in custody for a reason like this…we don't deliver, prison cannot and will not deliver…we protect the public and run on routine, this routine assumes that the person can cope with it."

Another participant felt there was a direct link with the closure of mental health hospital led to an increase of those who are mentally ill ending up in prison:

> "Once all the mental health hospitals closed…there wasn't anywhere to send women with these needs so prison became the only option."

Each of the prison participants were asked if they could recall specific examples where this had been a problem for them, in terms of dealing with a woman who was remanded into custody as a place of safety. These examples prove illustrative as to the problem experienced in women's prisons:

One participant told me about a particularly damaged young woman who had been raped when sleeping rough. She could not interact fully with staff and she would not clean herself up. She tied a ligature around her neck and attacked staff when they tried to remove it. The participant described prison as "the worst place" for her.

One participant reported feelings of the system having failed a woman who took her own life in custody whilst waiting for a bed to be secured:

"I recall a woman who was released from a secure hospital one day then sent to prison the next who killed herself whilst in prison and I felt we as a society let her down she should have not been sent to prison she was so unwell and we were trying to find her a bed in a hospital when she did this, so we knew she was to be sectioned but the process let her down having to wait for a bed before we could section, terrible."

Interviewees reported feelings of helplessness and vulnerability in dealing with women:

"I've been locking people up for a long time… it makes me feel helpless… all that is left is that you are doing your best… but your best isn't good enough".
One interviewee commented on offences for which women are remanded but the offence was commissioned with the intention of the woman ending her own life:

"I am alarmed as lots of these women are charged with arson with intent but they were actually trying to kill themselves, for example set fire to a bedroom with them in it, so we are used as a place of safety for these women who are seriously unwell when they have done something in total despair with an attempt to kill themselves, ultimately there is an argument that if you attempt to kill yourself then there is something wrong with you in order for you to want to do that."

5 Discussion

There were a number of findings that emerged from the interviews that directly addressed the initial research questions. There were also a number of other interesting points which were raised during the process, particularly in relation to the way professionals felt about this topic and how many revealed a sense of frustration and powerlessness in knowing there is a seemingly irresolvable issue in some cases and that many are trying to do their best in the circumstances.

Are prisons being used as a place of safety for women with complex mental health needs?

The interviews, particularly with the prison staff support that this is the case. A number of court warrants supported this notion however the courts were effectively allowed to do this under the guise of “own protection” as per the Bail Act. The court staff interviews demonstrated that there is a real concern for these women and in their opinion prison probably is the best place however it was acknowledged this may be a misguided belief as most court staff are unaware of what prison actually is and what it can offer to women.

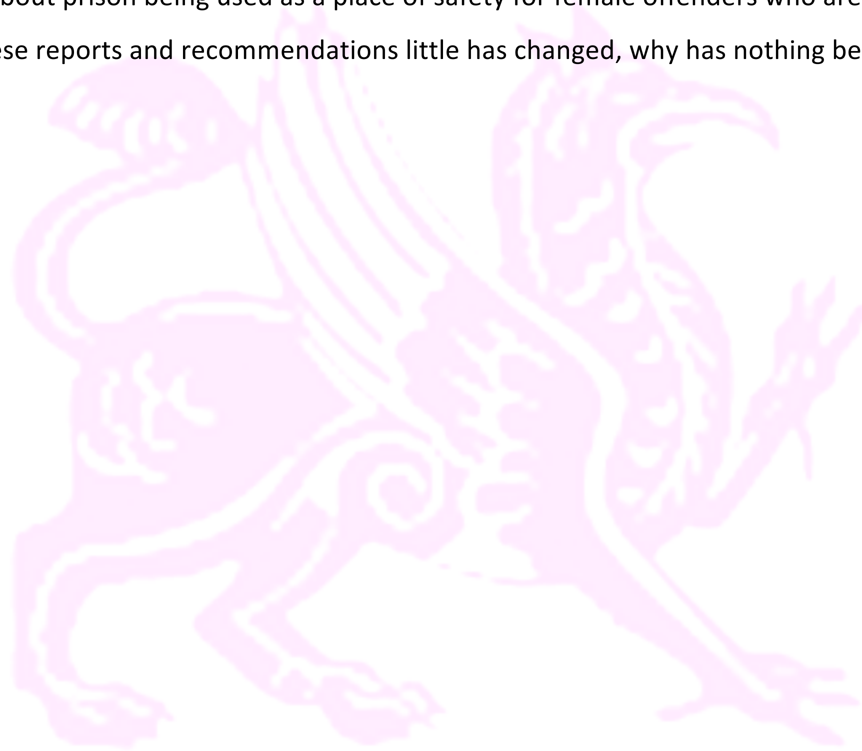
The police reported being under pressure to not use police cells as a place of safety which could go some way in identifying why these women are ending up in prison. The custody sergeant will charge a woman for the offence and then it is up to them, with limited training, or the woman herself to be identified as having mental health needs, to request an assessment. Even if an assessment is made some police sergeants reported a lack of confidence in challenging the assessment of a doctor if they feel they’ve missed something therefore women could be presented before the court having not had their needs fully assessed or addressed and potentially missed the opportunity to be diverted. Despite an acknowledged vulnerability of female offenders the police cannot enforce a person’s right to legal representation so many go without this advocacy. The police report a struggle to divert given a known lack of beds and pressure not to use Section 136 of the Mental Health Act so women may be picked up for an offence with no real link between the fact that the mental health issue may have caused them to commit the offence and it is this which is the real underlying issue. All police interviewees reported that there is an increased prevalence of mental health concern with women in custody than men.

The court staff reported that they receive little information in relation to those presented before them and many reported that they had not visited a prison in many years. There appeared to be a lack of knowledge both in terms of mental health training and also awareness around prisons and alternative options available with it being cited that they can only bail or remand and have little option to do anything else even if they don't necessarily feel comfortable with this. The court staff reported delays in accessing mental health assessments as an issue and some reports of a lack of understanding regarding hospital admissions. Courts are reported as being very busy places and often there is a pressure to get through a list on a specific day. This pressure may be a factor in terms of a bench being able to spend the time ensuring that specific, individual needs are explored and addressed. During the interviews with the court staff it was apparent that many are trying to do the best for those women they identify as vulnerable however most felt that the options were limited and that in the circumstances prison would be the best place as there is a belief the woman would and could be taken care of better in that environment.

The prison staff very passionately expressed their opinions about this issue with many reporting that they perceived other agencies as not aware of what prison is and what in can offer to women in these circumstances. The richness of the prison staff data may be attributed to a deeper understanding they have of women and their needs. Many of the prison staff interviewed have a significant amount of time in direct contact with women in comparison to other professionals who perhaps have less contact with the women as they progress through the criminal justice system. All reporting categorically that prison is not a place of safety and should not be viewed as such particularly given the regime that operates in prison not being conducive to managing women who are mentally ill. There was a real sense of frustration in terms of being able to manage women both in terms of the impact it has on the woman herself but also the staff involved with use of force being highlighted as a particular area of concern for the prison staff. The issue surrounding sectioning from custody featured as it is not the same as it is in the community. It takes a lot longer and a bed must be found before a person is sectioned. It appears this may be to do with cost and responsibility however the delays are also attributable to the Ministry of Justice having to change the warrant. In the prison which was used for the study over an 18 month period 14 women were remanded and sectioned whilst on remand which appears high. Why was it the case that these women were not identified before being placed into custody? The prison staff also reported concerns over the lack of

information they received about women who come into custody and also a lack of training in relation to mental illness.

The policy and academic literature supports the notion that more women who come into contact with the criminal justice system have mental health problems than women in the community. This research further supports the findings of the literature review. In particular, Baroness Corston and Lord Bradley both previously raised concerns about the delays in transferring those who are mentally unwell from custody to hospital and question the suitability of prison for those with mental health problems. Furthermore Nick Hardwick Chief inspector of prisons raised concerns in the annual report about prison being used as a place of safety for female offenders who are mentally ill. Yet, despite these reports and recommendations little has changed, why has nothing been done to help women?



6 Conclusions and Recommendations

This report was based on a small sample of practitioners working within the criminal justice system so the findings must be taken in context. A review of the literature highlighted a number of prominent reports that have identified the use of prison in this context as an area of concern. The results of this study, despite the small sample size and geographical location, are entirely in keeping with existing research and inquiries into this area. What this study uniquely demonstrates, however, are the views of criminal justice professionals who are involved in the processes by which women are remanded into custody for their 'own protection' and it demonstrates where some of the difficulties with these processes emerge.

The report acknowledges the difficulties those working in the criminal justice system have when working with female offenders and that those involved are striving to do their best in the circumstances. There appears to be a real sense of frustration at every level in terms of what can be done for women and questions remain in terms of is whether or not what we are doing right (i.e. in the best interests of the woman concerned) and are these processes really the best we can offer. Most interviewed suggested not.

On the basis of the information obtained during the literature review, data gathering, interviews, and analyses this report recommends the following:

Recommendation 1

Review the Bail Act 1976 and provide guidance for courts in its application

Parliament should review the Bail Act 1976. This is now an old piece of legislation that is in need of review or clarification.

Guidance should be published by the Law Commission for court staff with regards the use of and meaning of "own protection" contained within the Act. This should be considered alongside a real assessment of what a prison is and what it can offer. If someone requires to be held for their own

protection is prison really the right place? If a court is considering the use of this provision it should be mandatory that a full mental health assessment is carried out prior to being remanded into custody. If someone needs protecting from themselves, then something is wrong and a high level of careful, individualised support is required.

Given the known damaging effect imprisonment can have on women, further analysis of the reasons bail is so often denied to women offenders should be carried out by the Women and Equalities Committee. Specifically focusing on why so many women are remanded into custody and then do not, subsequently, receive a custodial sentence.

Recommendation 2

Full evaluation of the progress made in implementing the recommendations contained within the Corston Report and Lord Bradley's report.

The Ministry of Justice should conduct a review and honest assessment of the current success in the implementation of the recommendations contained in both Lord Bradley's report and Baroness Corston's report. This research suggests some work has been completed however years after these reports were published little seems to have changed for women. The most recent annual report by Her Majesty's Inspector of Prisons highlighted significant concern in this area, why has nothing been done or changed?

Recommendation 3

All women who are taken into police custody should have a full mental health assessment carried out by a qualified and competent practitioner.

It is known that women who come into contact with the criminal justice system have a far higher likelihood of mental illness than men or women in the community. As such the Home Office should ensure that all women who are taken into police custody have a full mental health assessment by a qualified practitioner. This should take place in a timely manner and also be revisited if concerns are raised by any of the agencies throughout the process. It should not be assumed that once an assessment has been completed that the woman is fit. It may be that the illness may not be

immediately identifiable and may develop during progression through the justice system or that it was initially masked by the effects of drugs or alcohol. Moreover, it can be extremely difficult for an individual to self-disclose, especially when the person is in an unfamiliar situation or speaking to someone who they do not know or trust.

Recommendation 4

All women taken into police custody should be automatically given legal representation even if they do not request it.

The police cannot require a person to obtain legal advice if they do not wish to do so however given all of those interviewed identified women as being vulnerable and more likely to have mental illness a duty solicitor should be automatically provided for all women who are taken in to police custody.

Recommendation 5

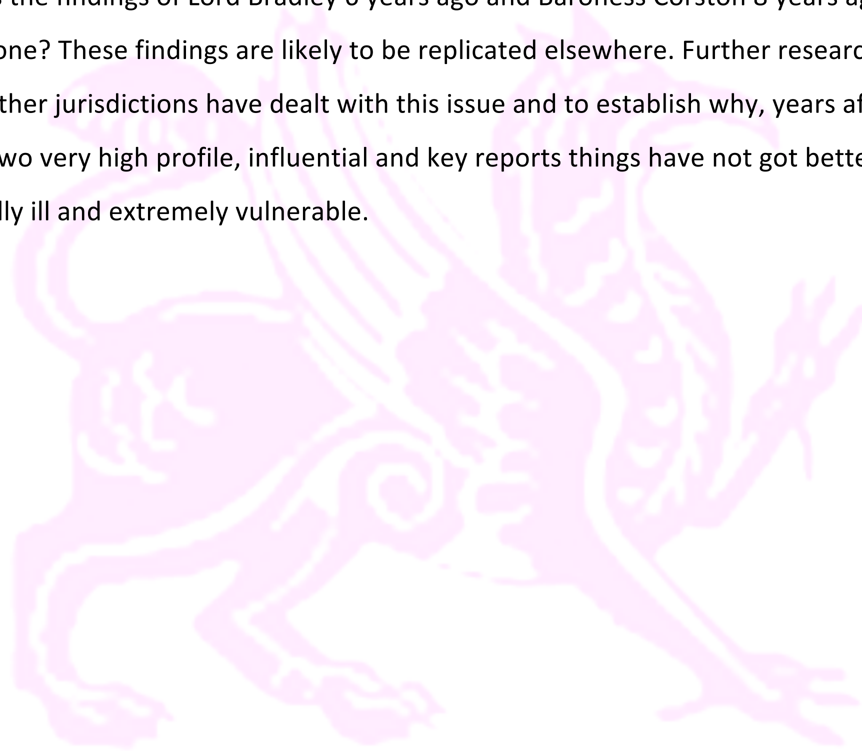
More training for all staff within the criminal justice system in relation to mental health and prison.

The police, court and prison staff are asked to do a very difficult task with limited training.
The Home Office should ensure police custody teams are trained, and regularly refreshed, in mental health awareness and empower the police to feel confident in sharing their concerns or asking questions of medical practitioners when they have conflicting views.

The Ministry of Justice should raise awareness of prison and what it can offer (and, crucially, what it cannot) to those working within the courts particularly considering the use of "own protection" within the Bail Act. This should include regular visits for court staff to prisons and mandatory mental health awareness training.

The National Offender Management Service should provide mental health training to staff working within prisons and make it a mandatory requirement to repeat this training regularly. There should also be a requirement ensuring adequate support is provided for staff working in this environment.

In conclusion this report has corroborated existing evidence that had suggested that prisons are being used as a place of safety for women who have complex mental health needs. The true scale of this problem on a national level is unknown. Given the clear strength of the results from this small scale study – as evidenced through the perceptions of a number of criminal justice professionals – and it's coherence with existing policy literature it is likely to be a national issue. The bail act seems to confuse matters as it supports the use of remand for own protection however there is little clarity in law as to what this actually means and in what circumstances it is suitable to be used. Further research would be beneficial in relation to this topic to explore the issues further. The finding of this report supports the findings of Lord Bradley 6 years ago and Baroness Corston 8 years ago. Why has so little been done? These findings are likely to be replicated elsewhere. Further research could consider how other jurisdictions have dealt with this issue and to establish why, years after the publication of two very high profile, influential and key reports things have not got better for women who are mentally ill and extremely vulnerable.



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Appendices

Appendix A – Semi structured interview questions

Police:

How often, on average, do you come into contact with women being charged for offences?
What types of offences are women usually charged with?

How long, on average, are women held in a police cell before appearing at court?

Do all women charged and held in police custody pending court appearances, see a Doctor? And how often are they seen?

Is the Doctor specifically trained in recognising mental illness or is the medical examiner a general practitioner? Does it vary?

If not how are women who require specialist intervention identified?

Who decides if a woman should see a psychiatrist? (Women offenders are 35 times more likely than women in general population to have significant mental health problems)

What training do police receive in identifying mental illness?

Do you feel confident in identifying women who may require further investigation as to their mental health? How would you do this? Do you think further training is required?

If a woman was identified as requiring intervention from mental health services what would be the process adopted by the police? Would this information be given to the court or would the women be diverted from court?

If you believed that a women before you was mentally unwell and yet the FME had identified no concerns, would you ask more probing questions of the FME or challenge their report?

Would you feel confident to challenge the FME?

Have you ever challenged? If so what was the result?

Are all women brought into police custody given legal representation? If they refuse are they encouraged to accept it?

In your judgement do you see women in police custody having a higher level of mental health concerns than men in custody?

Do you have any suggestions/ideas which would ensure that women who have complex mental health needs are diverted from custody and that custody is reserved for only those women that commit serious and violent crimes and who present a threat to the public (as per BC)

Sentencers:

What information do you receive regarding the Health status of defendants, in particular women? Are all female defendants represented?

Do you receive any specific information in relation to mental health of the women defendants? (If state ensure FME has seen woman at police station)

How does the FME report influence the courts decision in relation to imprisonment or asking for further information?

Would you request further investigation if you believed that the woman required assessment by a psychiatrist and this had not been completed whilst she was in police custody? Or would you follow the recommendations from the FME and continue if it was stated that she was fit to attend court?

Do you receive any training regarding mental health or the identification of those with mental health needs?

What is your understanding/interpretation of Para 3 Part 1 Schedule 1 of the Bail Act 1976 that makes provision to refuse bail for the defendant's own protection?

How do you define/apply own protection?

Do you believe it incorporates welfare?

Why do you believe prison is a safer place for these women?

What do you believe will happen if you remand a woman into custody for her own protection? What is your understanding of a prisons healthcare department and the arrangements on a wing for women who are remanded in this instance?

Do you believe that prisons are equivalent to a mental health secure unit?

Would you consider prison as a place of safety for women with complex mental health needs?

What is your understanding of the process followed to section someone to a secure unit from prison? Discuss Corston report as it was identified that prison is the only place where a bed would have to be located before the section takes place – heavily criticised by BC.

Do you believe that because those in prison have to wait for a bed before being sectioned that this somehow implies that prison is an acceptable place to hold someone pending allocation of a bed?

If you do remand for own protection, do you receive any expert advice or input in court which supports the being remanded into custody for own protection? Such as reports from a psychiatrist or forensic medical examiner?

Any suggestions as to what needs to be done to keep women who have complex mental health needs out of prison?

Prison Staff:

Roughly how many women do you deal with on a daily basis from the court?

What type of offences do you regularly see women imprisoned or remanded for?

What information do you receive from court/escort staff regarding the health of women received into custody from court?

Do you receive any specific information in relation to the woman's mental health status?

Are all women seen by a healthcare professional upon arrival at prison? Who sees the women and how soon?

How do you identify if a woman has mental health needs? What behaviour would lead to you making this judgement and what would you do if you suspected?

In your judgement are more women coming into custody with mental health issues? What leads you to answer the way you have?

Do you have any specific training in relation to mental health or the identification of mental health needs?

Are you confident in dealing with women with complex mental health needs? Have you dealt personally with any women who have complex mental health needs upon arrival at the prison? How did you feel about this?

Have you ever personally been involved in dealing with a woman brought into custody with later identified complex mental health needs? Can you give an example? What were you thinking/feeling?

It has been suggested that women are remanded into custody disproportionately to offending (Baroness Corston) can you give any examples where this has occurred? Particularly considering women who were later found to have complex mental health needs?

What are your views on prison as a place of safety for women who have complex mental health needs?

Any suggestions on what would improve/need to be done to ensure that women who have complex mental health needs are diverted from custody?

Appendix B – Information sheet for participants

Information sheet for participants in research project.

Prison as a place of safety for women with complex mental health needs.

You are invited to take part in a research study. The study has received funding form the Griffins Society as part of their annual fellowship programme. The Griffins Society research and promote effective practice in working with women who are in prison or subject to criminal justice interventions in the community.

This information sheet aims to provide an outline of what participation involves.

Background to the research:

The Corston review recommended that the only women who should be in custody are those very few that commit serious and violent crimes and who present a threat to the public.[3]

The issue of police cells being used as a place of safety for people with mental health has been considered by the Care Quality Commission and Her Majesty's Inspectors of Constabulary and Prisons.[4] Although this review considered children and young people it did not consider any gender specific concerns.

There does not seem to be any evidence that a similar review concerning the use of prisons for those with complex mental health needs has been carried out despite the issue being raised by a prisoner's relative through the prison reform trust.[5]

[3] The Howard League for Penal Reform. Women in Prison. 2014 http://www.howardleague.org/women1/ accessed 16 May 2014

[4] HMIC. A Criminal Use of Police Cells? 2013 http://www.hmic.gov.uk/media/a-criminal-use-of-police-cells-20130620.pdf accessed 16 May 2014

[5] Prison Reform Trust. A Place of Safety? 2014 http://www.prisonreformtrust.org.uk/ProjectsResearch/Mentalhealth/TroubledInside/Aplaceofsafety Accessed 16 May 2014

Women prisoner's needs are particularly acute in the area of mental health[6], therefore it is a priority area for women offenders to examine whether prisons, in some cases, are being used as a place of safety for women who offend and have complex mental health needs.

This research aims to identify if there are any current concerns regarding the use of prisons. If any concerns are identified the research aims to raise awareness of this issue and perhaps provide assistance in identifying when any potential diversion from custody should take place and how women in these circumstances may be better managed.

What does participation involve?

If you participate, you will be interviewed for up to an hour. The questions will be around prisons as a place of safety including questions around processes adopted and your own experiences.

What will happen to the information you provide?

The interview will be tape-recorded and then transcribed to allow for analysis of the data. You can choose to not be tape recorded, if this is the case the researcher will keep notes of the discussion. You will be given the opportunity to view the transcript or notes before the information is analysed. All information gathered will be anonymous and remain strictly confidential. Only the researcher will have access to this information which will be securely kept on an encrypted device. The tape will be destroyed following transcription.

Participants can access the final report via the Griffins Society website.

If you would like further information about the study please contact Tamara Pattinson on 07834 222005 or Tamara.J.Pattinson@hmps.gsi.gov.uk

[6] Prison Service Order 4800. Women Prisoners. 2008 http://www.justice.gov.uk/downloads/offenders/psipso/pso/PSO_4800_women_prisoners.doc#D Accessed 16 May 2014. Page 12.

Appendix C – Consent form

Consent form for persons participating in a research project

Prison as a place of safety for women with complex mental health needs

Name of participant:

Name of principal investigator(s):

1. I consent to participate in this project, the details of which have been explained to me, and I have been provided with a written statement in plain language to keep.

2. I understand that my participation will involve interview and I agree that the researcher may use the results as described in the plain language statement.

3. I acknowledge that:

   (a) the possible effects of participating in this research have been explained to my satisfaction;

   (b) I have been informed that I am free to withdraw from the project at any time without explanation or prejudice and to withdraw any unprocessed data I have provided;

   (c) the project is for the purpose of research;

   (d) I have been informed that the confidentiality of the information I provide will be safeguarded subject to any legal requirements;

(e) I have been informed that with my consent the data generated will be stored securely on an encrypted government secure system and will be destroyed after five years;

(f) if necessary any data from me will be referred to by a pseudonym in any publications arising from the research;

(g) I have been informed that a summary copy of the research findings will be forwarded to me, should I request this.

I consent to this interview being audio-taped □

yes □ **no**

(please tick)

I wish to receive a copy of the summary project report on research findings □

yes □ **no**

(please tick)

Participant signature: Date:

Principal Investigator – Tamara Pattinson

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Research Supervisor- Dr Deborah Drake

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Appendix D – Research Proposal

Tamara Pattinson: Prisons being used as a place of safety for women with complex mental health needs.

I am the Head of Reducing Re-offending at HMP & YOI Low Newton, where I have worked for the past 6 years. I recently completed a part time law degree, achieving First Class Honours. I have significant interest in women within the Criminal Justice System.

Rationale:

Increased numbers of women, often with significant mental health problems, have begun to be remanded into prison for their own safety. For example, a number of warrants received by Low Newton imply the reason for disposal is as a "place of safety". The Corston review recommended that the only women who should be in custody are those very few that commit serious and violent crimes and who present a threat to the public.[7] The issue of police cells being used as a place of safety for people with mental health needs under section 136 of the mental health act been considered previously by the Care Quality Commission and Her Majesty's Inspectors of Constabulary and Prisons.[8] There does not seem to be any evidence that a similar review concerning prisons has been carried out. Although this issue has been raised by a prisoner's relative through the prison reform trust,[9] little research attention has been paid to this area. This is surprising, given that it is

[7] The Howard League for Penal Reform. Women in Prison. 2014 http://www.howardleague.org/women1/ accessed 16 May 2014
[8] HMIC. A Criminal Use of Police Cells? 2013 http://www.hmic.gov.uk/media/a-criminal-use-of-police-cells-20130620.pdf accessed 16 May 2014

[9] Prison Reform Trust. A Place of Safety? 2014 http://www.prisonreformtrust.org.uk/ProjectsResearch/Mentalhealth/TroubledInside/Aplaceofsafety Accessed 16 May 2014

understood that prisoner's needs are particularly acute in the areas of mental health.[10] This research aims to examine whether prisons, in some cases, are being used as a place of safety for women who have complex mental health needs and consider the appropriateness of this. This research would provide assistance in identifying when any potential diversion from custody should take place and also examine the courts use of "own protection" as per Bail Act 1976.[11]

The Aims of the Research are:

1) To establish how many women with complex mental health needs, over one year within the North East Area have been imprisoned for their own protection. This includes seeking to define "own protection" and what a place of safety is.

2) To examine the processes adopted by the Police and Courts in the identification of women who have complex mental heath needs and what happens if a need is identified.

3). Explore the levels of knowledge and understanding these agencies have about what prison is and what it is able to provide.

4) To identify any other options that may be available to the courts to divert these women from custody and any barriers to this.

The Proposed Outcomes of the Research are:

1) To establish a profile of female offenders who have been imprisoned to "keep them safe" identifying their needs, difficulties and subsequent issues.

2) To make a qualitative evaluation of the processes adopted by, and the perceptions external agencies have, about prison and how they believe that this is the best place for someone to keep them safe.

[10] Prison Service Order 4800. Women Prisoners. 2008 http://www.justice.gov.uk/downloads/offenders/psipso/pso/PSO_4800_women_prisoners.doc#D Accessed 16 May 2014. Page 12.
[11] Bail Act 1976 Ch. 63. Sch.1 Part 1. Para 3.

3) To consider other options for women in these circumstances, according to professionals working in relevant agencies.

4) To discuss the advantages and disadvantages in diverting these women from custody.

Research Methods:

1) Identify the number of female offenders within the North East Area, who have been imprisoned for their own protection/safety. Using court warrants examine the offences (ensuring anonymity and grouping offences together to ensure non specific) which the women were remanded into custody for to identify any trends. Further, to assess compliance against the recommendations set out in the Corston report. Particular emphasis will focus on those subsequently sectioned under the Mental Health Act.

2) From the above group identify two Courts and Police Stations involved and through interviews with sentencers and court staff examine the processes/procedures adopted. This includes perceptions in relation to prison as a place of safety and the Courts use of "own protection" provisions within the Bail Act 1976.

3) Through interviews with prison staff/managers identify the concerns and issues that have arisen during the imprisonment of these female offenders and discuss how they were managed.

4) Identify the agencies that provide any current diversion from custody to women who fit this profile exploring any concerns. Seek advice and guidance from these agencies offering to work with them during the research to find ways to collaboratively raise awareness of this issue and how, through a multi agency approach, we might work together to achieve better outcomes for the women concerned.

Timescale

October 2014 – January 2015

- Make initial contact with prisons and external agencies.
- Review/Research any literature relating to this area.
- Interview Offender Management Unit staff and external agencies (for example Courts, Mental Health providers and Police).
- Offer to work alongside external agencies to review current practise and raise awareness.

February 2015 – April 2015

- Consolidate findings.
- Write up literature reviews and interviews.
- Consider feedback and follow up with further interviews if necessary.

May 2015 – July 2015

- Write the first draft of the research report.
- Consider feedback and follow up with further interviews where necessary.

August 2015 – September 2015

- Write the final draft of the research report. Write the summary.
- Prepare presentation.
- Present to the Griffin Society

END