

Chapter 6.1

Women and equality

Key points

- Though women and girls comprise more than half the population, they remain disadvantaged in many areas of life.
- Stereotypes and assumptions about women's lives can unfairly impede them and might frequently undermine equality.
- Care must be taken to ensure that our experiences and aspirations, as women or of other women, are not taken as representative of the experiences of all women.
- Factors such as ethnicity, social class, disability status and age affect women's experience and the types of disadvantage to which they might be subject.
- Women may have particular difficulties participating in the justice system, for example, because of child care issues.
- Women's experiences as victims, witnesses and offenders are in many respects different to those of men.
- Women are underrepresented in many areas of public life and amongst law makers, including the judiciary.
- As judges, we can go some way to ensuring that women have confidence in the justice process and that their interests are properly and appropriately protected.

6.1.1 Introduction

The purpose of this chapter is to:

- provide information and background knowledge about the impact of gender on people's lives;
- suggest ways in which the judiciary can contribute to promoting confidence in the administration of justice.

6.1.2 Gender inequality

Whilst much has been achieved in recent decades to secure greater equality for women, gender inequality remains a significant feature of both public and private life for women and men.

Such inequality is reflected in traditional ideas about the role of women and men and, though they have shifted over time, the assumptions and stereotypes that underpin those ideas are often very deeply rooted. Indeed, they so permeate our view of the world that they often appear to reflect no more than 'common sense'. Thus, it seems innocuous to assume that a woman will have children, look after them and accordingly take a break from paid work (if indeed she ever takes it up) to accommodate the family. However, such assumptions and stereotypes can and often do have the effect of seriously disadvantaging women. It does not take a great deal of thought to recognise the impact of such assumptions on, for example, an award of damages for loss of future earnings in a personal injury claim.

It is perhaps not surprising that gender inequality persists. Women were legally subordinate to men in a number of ways until well into the twentieth century. For example, marriage under the common law, known as 'coverture', caused and amounted to a legal expiry of a woman's being:

The very being or legal existence of the wife is suspended during the marriage or at least incorporated and consolidated into that of the husband under whose wing, protection and cover she performs.

'Commentaries on the Law of England' (1809), W Blackstone, cited in
Discrimination Law, Sandra Fredman, p.27 (2002)

As late as 1909, the courts refused to accept that the gender-neutral word 'person' could include women. In *Nairn v University of St. Andrews*,¹ a case about whether women could vote for the old university seats in Parliament, the Lord Chancellor said:

It is incomprehensible to me that any one acquainted with our laws or the methods by which they are ascertained can think, if, indeed, any one does think, there is room for argument on such a point. It is notorious that this right of voting has, in fact, been confined to men.²

When legislation granted women the municipal franchise in 1869 (Municipal Franchise Act 1869) this was interpreted promptly by the judges to exclude married women on the grounds that upon marriage a woman's 'existence was merged with that of her husband' and she could not therefore vote (*R v Harald* [1872] LR VII QB 361, cited in *Discrimination Law*, as above).

Women were not entitled to vote in national elections until 1918; even then a minimum voting age of 30 was imposed and true equality in voting rights was not fully established until 1928 when the voting age for men and women was equalised. Formal equality, insofar as membership of the House of Lords was concerned, was not established until 1963. At one time, a husband also had the power of 'domestic chastisement'. Though that power has formally speaking gone, domestic violence was quietly condoned for many years and still remains a feature of many women's lives. It was not until the last decades of the twentieth century that rape in marriage was recognised as a crime.

Thus, there is a long and recent history of inequality between men and women, sanctioned by law and apparently supported by the judiciary whose intransigence on occasions did much to impede the promotion of equality.

Whilst many of the formal barriers to equality have of course been removed, assumptions about the proper role of men and women continue to obstruct true equality and often do not reflect reality. For example, assumptions about the primary role of women as bearers and carers of children and of men as breadwinners do not necessarily reflect the true life experience of many people.

Underrepresentation

Women and girls account for around 51% of the UK population. As to educational attainment, in their last year of compulsory education, 57% of girls gain five or more A* to C grades at GCSE or grades 1 to 3 at SCE Standard/NQ whilst 46% of boys do so.³ Some 41% of girls gain two or more A level passes or three or more SCE/NQ Highers whilst 32% of boys do so.⁴

Around 45% of the UK workforce and 70% of all women of working age are in paid work (though this figure varies according to ethnicity so that 71% of White women, 64% of African Caribbean women, 60% of Indian women and 20% of Bangladeshi women, are in paid work).⁵

However, women remain underrepresented in important areas of public life with only 18% of female Members of Parliament, for example.⁶ Further, though the figures are improving, women remain significantly underrepresented in the judiciary, particularly at senior level. Thus women are underrepresented in all areas of law making.

Women's views of the justice system

It is very likely therefore that many women will feel that the justice system is not one that welcomes them. Further, women may have particular difficulties participating in the justice system, for example, because of maternity or child care issues.

In addition, many of the reasons why women find themselves subject to the civil or criminal justice system (including as victims of sexual offences and domestic violence, and as offenders) give rise to particular challenges for the judiciary and may warrant particular consideration. Some of these issues are touched upon below. In making those observations about specific areas of inequality, it is important at the outset to emphasise that women's experiences differ and factors such as ethnicity, social class and disability status affect the experience of women as women.

We should not assume that all women's experiences, as women, are much like those of the women we know. A woman asylum seeker, a woman with a learning disability or a woman surviving on state support will have quite different experiences relating to her gender than a White woman employed in professional work. Similarly, the experiences of being a transgendered woman, a lesbian or bisexual woman will be quite different from a heterosexual woman's experience in marriage. In all cases therefore we must be very careful not to make assumptions about women's experiences or any particular woman's experiences, expectations or aspirations.

6.1.3 Some facts

Gender stereotyping

There is significant evidence of gender stereotyping which disadvantages women and girls and, on occasions, men and boys. 'Gender stereotyping', like other forms of stereotyping, assumes that women's lives follow certain patterns and a departure from that is 'abnormal' or presumed against. For this reason, assertive women or women who otherwise do not match the female stereotype might be challenging to many men and women.

It is not difficult to see why stereotyping can and does have the effect of disadvantaging women and may offer some explanation for the statistical evidence of disadvantage and segregation described below.

It is easy to fall into stereotyping as a short-cut to make sense of what appears in front of us. Great care should be taken to avoid the trap of stereotyping. It may often be discriminatory and, in certain circumstances, has been found to be unlawful under the Sex Discrimination Act 1975 (*Hurley v Mustoe* [1981] IRLR 208, where an employer assumed a woman would be unreliable because of child care obligations and therefore had a policy of not employing women with young children). As the Equal Opportunities Commission (EOC) has stated: 'stereotypes pigeon-hole boys and girls, men and women into fixed roles and behaviours that deny individual aspirations.'⁷

A recent EOC survey demonstrated that children expressed fixed views about men and women's roles at a very early age. Of the primary school aged children surveyed, 95% of boys thought that car repairs should only be done by men and 85% of girls thought that washing-up and mending clothes should only be done by women.⁸ Such views are reflected in the working patterns of men and women which perhaps go to reinforce those stereotypes, thus creating a cycle. As has been observed, the costs of such stereotyping can be substantial – individual women and men who go against the grain face restricted job opportunities, isolation and harassment, and the talents of young people are wasted when their individual ambitions are impeded by stereotyping.

It is our function in providing fair and equal justice to those who come before us to take great care to avoid such stereotyping.

Pay

Women account for around 45% of the UK work force and 70% of all women of working age are in paid work (though this figure varies to 71% in the case of White women, 64% for those of African Caribbean origin, 60% for women of Indian origin and 20% for Bangladeshi women). Of those women who are employed, 43% work part-time (as compared to around 9% for men).⁹

The pay gap between women and men's earnings persists, notwithstanding that the Equal Pay Act 1970 came into force nearly 30 years ago. Indeed, in 2003 it was reported that the gender pay gap had actually widened in 2002 (to 18.8% from 18% in 2001).¹⁰ Women who work part-time continue to earn less than 60% of the average hourly rate for full-time men and this figure has barely changed for a quarter of a century.¹¹ As well as receiving lower pay, part-time workers are also disproportionately excluded from other benefits, for example, pensions and sick pay, and this impacts most significantly on women.

Research in 2000 indicated that over a lifetime a woman loses over £200,000 in earnings simply by virtue of being a woman. The cost of childbearing is in *addition* to the 'sex' penalty.¹² Recent research carried out by Sylvia Walby and Wendy Olsen for the Government's Women's and Equality Unit indicated that almost a third (29%) of the gender pay gap is attributable to women being paid less simply because they are women, more than 50% of the remainder (26%, 15% and 12% respectively) resulting from differences in the length of women's full-time work experience, from the more interrupted nature of women's working lives and from women's greater tendency to work part-time. Only a relatively small proportion of the gap (13%) was attributed to occupational segregation and a minimal 6% to differences in educational attainment. This demonstrates that the causes of unequal pay, although gender related, are more complex than merely differences in treatment based on sex. The pattern of women's lives as compared to conventional working patterns is such that conventional pay systems and merit systems can disadvantage them. The gender pay gap was even wider in weekly earnings (25%) because men work longer hours than women on average and were more likely to receive additional payments, such as overtime.

There has been virtually no change in the full-time gender pay gap since the mid-1990s. Women working part-time earned only 59% of the average hourly earnings of men who worked full-time. This gender pay gap of 41% has hardly changed since 1975. In most major occupational groups and industrial sectors, average hourly earnings were higher for men than for women. But the width of the gender pay gap varied considerably. Amongst occupations, it was widest for managers and administrators than amongst industries, in banking, insurance and pension provision. The gender pay gap was wider for married/cohabiting people than for single people and for those with dependent children than for those without them. There was a wide gender pay gap at every qualification level including for graduates.¹³

Pay, ethnicity and employment

Particular issues arise for black and minority ethnic women whose pay patterns do not as clearly demonstrate discrimination but which might conceal less transparent forms of disadvantage. An important survey on the position of minorities ethnic in Britain indicates that amongst women, they earn more than White women at each job level with the highest average earnings enjoyed by women of Caribbean origin (despite having a greater incidence of lone parenthood). However, as the authors of this survey themselves remark, great caution needs to be exercised with this finding given the propensity of women with very low potential earnings to remain outside the labour force altogether.¹⁴

In addition, Black and minority ethnic workers suffer discrimination in a variety of other ways. Employment rates, for example, amongst almost all minority ethnic workers are lower than those of the White population, though (again) the extent and nature of disadvantage differs significantly by ethnic group.¹⁵

- Minority ethnic women's experience of work, unemployment and education is often different from that of White women, minority ethnic men and White men. Important differences also exist between women from the various minority ethnic groups.
- There are very large differences between ethnic groups in the proportion of women who join the labour force. Almost three-quarters of Black-Caribbean and White women join the labour force compared to only about a quarter of Pakistani and Bangladeshi women. These differences cannot be fully explained by cultural factors.
- Minority ethnic women are more likely to be full-time employees than White women. The main reason is probably financial since minority ethnic families are poorer than white families. Another important reason is the demands of certain industries, such as the clothing industry, which traditionally require the workforce to work full-time.
- Part-time work is a much more important source of work for White women than for minority ethnic women.
- Self-employment is an important source of paid work for South Asian and Chinese women, but it is less significant for Black and White women.
- Women from minority ethnic groups have different types of jobs from White women, minority ethnic men and White men. Indian and Pakistani women are concentrated in the food and textile industries; Black-Caribbean women work in the lowest paid sectors of the health service; Chinese and Bangladeshi women mainly work in the restaurant trade. Pakistani, Indian (Gujarati) and Bangladeshi women are more likely than White women to work in homeworking industries in particular localities.
- Minority ethnic women tend to be in the lowest status jobs within occupations. They are also likely to work in poorer conditions than White women.
- Young women from minority ethnic groups are more likely than young White women to continue their education after school. Chinese women are the most likely to stay on after school in full-time education, while White women are the least likely.
- The unemployment situation is considerably worse for minority ethnic women than for White women. Black-Caribbean and Indian women are twice as likely as White women to be unemployed.¹⁶

Further, minority ethnic women have not surmounted the basic obstacles facing all women. Like all women, women of Caribbean origin are grossly under represented in the top jobs category and have a high rate of unemployment. Women of Bangladeshi or Pakistani origin, by contrast, are strongly discouraged by their families and communities from undertaking paid work at all, and the minority who do work are often poorly paid and highly exploited, particularly if they are homeworkers in the textile industry. It is also crucial to recognise the extent to which the statistics obscure class divisions internal to groups.¹⁷

Occupational segregation

Statistics show that 75% of working women are still found in just five occupational groups. The tendency for women to predominate in some occupations and men in others matches the subject choices made by girls and boys whilst still at school.¹⁸ Occupational segregation affects both sexes, with child care being an almost exclusively female occupation (which has the additional problem of reinforcing the stereotypes about child care).¹⁹

Women as carers

Statistics demonstrate that women are still the primary carers of children. Some 73% of women with children, however, work and 53% of women with children under five work. They nevertheless spend three times as much time as men on caring for children. This pattern and the stereotype of women as child carers, however, disadvantages men as well. Men in the UK are spending more time with their children now and want to have more time with them, but they also work the longest hours in the EU.

As has been mentioned above, the fact that women are still the primary child carers is in part the cause of unequal pay. Women often resume work after childbirth on reduced hours. In many cases this is associated with a drop in pay much greater than that which is attributable simply to the shortfall in hours. (Part-time women workers earn, on average, only in the region of 60% of the male, full-time workers' hourly wage against 80% of the female, full-time women's hourly wage.)²⁰ Stereotypically 'women's work' has frequently been offered as part-time by employers who could not attract full-timers at the rates they were prepared to pay.²¹ The pressure to work part-time is increased by the long hours culture which attaches to full-time work in the UK.

Caring responsibilities are not just undertaken by younger women with children of their own but are spread across the generations. Older women are disproportionately represented as carers with one in ten women between 45 and 64 who are economically inactive spending more than 20 hours a week caring. A quarter of older women who are not in paid work are looking after family or home. Of the 400,000 people between 50 and 65 who are looking after home or family, 85% are women. This contrasts with 6% of men

in this group. Older carers are one of the poorest groups in society and have little support from health and social care services.²²

Breastfeeding and pregnancy

EOC guidance on breastfeeding women²³ states that women should be given rest periods and access to a comfortable, private room in which they can express milk, and to a refrigerator where they may safely store the milk. They further advise that efforts should be made to ensure that there are no health and safety risks that could affect a woman breastfeeding or the health of her baby. The EOC observes that it is generally accepted that it is in the interests of the health and safety of the baby to be breastfed for at least six months.

A refusal to allow a woman to return to work (and by analogy to enjoy equally the provision of services or facilities in other areas of private and public life covered by the Sex Discrimination Act 1975) because she is breastfeeding or a refusal to accommodate breastfeeding would be automatically unlawful sex discrimination.²⁴

Where possible, the requirements of a woman who may be breastfeeding should be accommodated in any case management decisions.

Women face significant disadvantage by reason of pregnancy. On 1 September 2003, the EOC launched a formal nation-wide investigation into discrimination faced by pregnant women at work. Small-scale research carried out before then revealed that pregnant women experienced problems at work across many industries and occupations, including from the legal profession. The range of unfair treatment experienced included dismissal, lack of promotion, change of salary terms, unfounded criticism, downgraded appraisals, non-payment of bonus, change of shift hours, and disciplinary action about performance. Many pregnant women who left the work force struggled to return to their pre-maternity employment status.²⁵ Some 25% of women and 16% of men knew someone who had experienced problems at work because they were pregnant, including 33% of women aged 25–34.²⁶

Consideration should always be given to accommodating pregnant women in any proceedings in whatever capacity they are taking part, whether as parties, witnesses or representatives. This may require sensitive listings and breaks during the proceedings.

6.1.4 Sexual harassment and violence against women

Sexual harassment remains a problem for women both at work and outside of work. It is difficult to put a figure on the extent of sexual harassment inside the workplace or out because it often goes unreported. However, in 1996 the Industrial Relations Service (IRS)

found that 54% of organisations had had a complaint of harassment made in the last year and a survey of TUC Women's Conference delegates found that 27% had been sexually harassed at work.²⁷ This is not a problem that uniquely occurs at work. The EOC in its *Good Practice Guide: Service Delivery*²⁸ recommends that service providers have procedures in place to define unacceptable behaviour, ensure staff are trained in the policy and that effective complaints procedures are in place.

Sexual harassment has been defined and explained as:

‘Unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men’... This can include unwelcome physical, verbal or non-verbal conduct. A range of behaviour may be considered to constitute sexual harassment. It is unacceptable if such conduct is unwanted, unreasonable and offensive to the recipient; a person's rejection of or submission to such conduct ... is used explicitly or implicitly as a basis for a decision... The essential characteristic of sexual harassment is that it is unwanted by the recipient, that it is for each individual to determine what behaviour is acceptable to them and what they regard as offensive. Sexual attention becomes sexual harassment if it is persisted in once it has been made clear that it is regarded by the recipient as offensive, although one incident of harassment may constitute sexual harassment if sufficiently serious. It is the unwanted nature of the conduct which distinguishes sexual harassment from friendly behaviour, which is welcome and mutual.

European Commission Recommendation 92/131/EC and Annexed Code of Practice, paragraph 2

Sexual harassment is serious and in many spheres of activity, unlawful:

Sexual harassment at work is problematic in a unique and corrosive way. Its perpetrators feel entitled to invade a woman's privacy and to strip her of the public identity owed to her as an equal participant in the public sphere of the workplace. It is particularly destructive in that it threatens not just her personal dignity but also her ability to continue in employment.

Discrimination Law, Sandra Fredman, p. 35

In 1999 a Cabinet Office document, *Living Without Fear*, recognised that violent and sexual offences against women make up a significant proportion of crime in this country.

- Police are called out to more domestic violence incidents than any other kind of incidents.
- In 1999–2000, there were 8,500 reported rapes, of which only 7% resulted in convictions.
- Women are three times more likely than men to say they feel ‘very unsafe’ walking alone after dark.²⁹

6.1.5 Domestic violence

Statistics on domestic violence reveal the following results:

- Domestic violence is extremely common: it accounts for nearly one quarter of all recorded violent crime.³⁰
- Approximately one in four women will experience some form of domestic violence in their lifetime.³¹
- It is estimated that an incident of domestic violence occurs within the UK every six to 20 seconds.³²
- Domestic violence has the highest repeat victimisation of any crime.³³
- Less than one in three (31.3%) of victims of domestic violence report the incident to police.³⁴
- Every year around 120 women are killed by a current or former partner and domestic violence affects the lives of thousands more.³⁵

Domestic violence is primarily a problem for women, but not uniquely so.

There are a number of significant reasons why women do not leave dangerous partners, including safety – survivors can be at a higher risk when they leave violent partners. There are other ties to homes including identity, family, money and status which operate as strong motivators for staying in a violent relationship. A number of implications have religious and cultural significance amongst particular communities or may be particularly relevant for women with disabilities or lesbian couples. For example, in some communities a woman leaving her abusive husband may be at risk of reprisals or even being killed by her own or her husband's family for bringing 'shame' onto the family or community; the loss of a support network for survivors with disabilities or special needs may mean particular hardship, isolation and the possibility that similar support may never be found in the area she moves to.³⁶

6.1.6 Domestic violence – the judge's role

The courts and judiciary have an important role to play in conveying to the public that domestic violence will not be tolerated and sending out a message that abuse and violence in an intimate relationship is a serious matter and is unacceptable. Guidance is given by the specialist training manuals on the courts' role in securing, insofar as possible, the proper protection of victims of domestic violence.³⁷

While addressing domestic violence in a particular case is a matter for specialist guidance and is outside the ambit of this chapter, regard should always be had to the need to make safe a survivor of domestic violence and make them feel safe. Whilst it is true that most victims of domestic violence are women, men and partners in same-sex

relationships might also be victims of domestic violence. Insofar as possible, gender neutral language should be used to describe domestic violence without losing sight of the fact that the reality is that some of the most physically violent incidents are committed by men on female partners or ex-partners.³⁸

6.1.7 Sexual offences

In 2002, a Home Office study found that 5% of women over the age of 16 had been raped.³⁹ It is likely that this is an under-estimate: a 1991 survey indicated that a quarter of the women had experienced rape or attempted rape and that the most common perpetrator was a current or former partner.⁴⁰

Notwithstanding the above, women are reluctant to report certain crimes against them. On average, a woman is assaulted 35 times before she reports it to anyone.⁴¹ A recent study reported that evidence from experts suggested that some women are inhibited from reporting because of fear or distrust of authority – not only of the police but also of immigration and social services.⁴² For lesbians and black women this may originate in poor earlier experiences of racism or homophobia against themselves and/or the perpetrator. Rape complainants may be reluctant to report crime because they fear that they will be blamed for the attack (because of what they were wearing or the amount they had drunk). They expect to be humiliated about their lifestyle and sexual relationships and think that the court will consider them to be not capable of belief. They believe that the courts accept myths about male behaviour; that, once aroused by women, men get ‘carried away’ and only an attack by a stranger in the dead of night is unequivocally ‘real rape’.

Changes in practice may mean that there is now a gap between women's perception of the treatment of rape and the reality. Nevertheless a recent study suggests that more needs to be done about how the system is perceived.⁴³ In court itself the treatment of rape complainants by lawyers has been the subject of significant research.⁴⁴ In the past, rape victims have rarely felt satisfied that their case is well presented by the prosecution and often complain that defence counsel were allowed to attack them unfairly.⁴⁵ There is much evidence to show that rape complainants have felt that they are the ones ‘on trial’ and not the defendant.⁴⁶

6.1.8 Sexual offences – the judge’s role

We should always take particular care to provide appropriate protection to women victims and witnesses against intrusive and oppressive questioning or treatment in court. Questions designed to reinforce inappropriate stereotyping should be particularly scrutinised – such questions are rarely legally relevant and may undermine the requirements of a fair hearing.

Article 8 of the European Convention on Human Rights (set out in Chapter 1.6) protects private life, and as representatives of public authority we are bound to ensure that during the court process unjustified interferences in a person's private life are not permitted by questioning or otherwise.

Special measures

Consideration should always be given to using the court's general and special powers to effect a fair hearing where the case involves allegations of sexual harassment or violence. These include the 'special measures' introduced by the Youth Justice and Criminal Evidence Act 1999 (allowing evidence to be given by television link, by video recording or behind a screen; allowing hearings in private in certain circumstances). In addition, a criminal court may exercise its common law powers and its powers under section 11 of the Contempt of Court Act 1981 and the Sexual Offences (Amendment) Acts of 1976 and 1992 to grant anonymity to a victim of rape or of other specified sexual offences.

Evidence via video link and anonymity

In the context of civil proceedings, the courts have power to permit evidence to be given by video link (Rule 32.3 Civil Procedure Rule (CPR) and Practice Direction 32, Annex 3). Rule 32.3 CPR provides a general discretion (without limits) to permit evidence to be given by video link.⁴⁷ Though the usual rule is that hearings will be in public (Rule 39.2 CPR), except in certain classes of case, the civil courts also have power to hold hearings in private if it is considered necessary in the interests of justice (Rule 39.3(g) CPR and see Practice Direction 39, paragraphs 1.1–1.10).

In addition, a court may order that the identity of any party or witness must not be disclosed if it considers it necessary in order to protect the interests of that party or witness (Rule 39.4 CPR).

Equal footing

The employment tribunal has fewer express powers to protect vulnerable witnesses. It has no express power to hear cases in private and indeed its rules provide that all hearings (save certain specified hearings which are not relevant to this chapter) should be in public (Rule 10, Schedule 1 to the Regulations). However, regulation 10 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2001 (the 2001 Regulations) provides that the overriding objective of the Rules (as set out in Schedule 1) is to enable tribunals to deal with cases justly. Dealing with a case justly includes, 'so far as practicable, (a) ensuring that the parties are on an equal footing and ... (d) ensuring that [the case] is dealt with fairly.'

The specific rule permitting video evidence in the Civil Procedure Rules (Rule 32.3 CPR) is itself based on the requirements of the 'overriding objective' under Rule 1.1 CPR,

namely to ensure that parties are placed on an equal footing.⁴⁸ The relevant parts of the duty to deal with a case justly in accordance with the overriding objective as contained in the 2001 Regulations are framed in identical terms to those contained in Rule 1.1 CPR. The Rules themselves provide an employment tribunal with very wide powers to conduct hearings 'in such manner as it considers most appropriate for the clarification of the issues before it and generally to the just handling of the proceedings' (Rule 11(1)). There is no reason why, therefore, a tribunal should not order that evidence be given by television/video link in appropriate cases (indeed it has been so ordered in at least one case). In addition, a tribunal may make a restricted reporting order under Rule 16 ordering that a person may not be identified until promulgation of the decision. Rule 15 permits a tribunal, in any case involving the allegations of the commission of a sexual offence, to further order that any identifying matter which would be likely to lead members of the public to identify any person affected by or making such allegations to be deleted from the register, thereby providing permanent anonymity.

6.1.9 Women as offenders

Women offenders experience the criminal justice system in a particular way. Contrary perhaps to expectation the female prison population is significant and increasing.

- Between 2001 and 2002 alone the number of women in prison increased by 15% compared with a 6% increase for men.
- In 1993 there were 1,560 women in prison, but 4,460 at the end of October 2003, a growth rate which far outstrips the growing male prison population.
- Suicide amongst female prisoners is now at the highest level – there was one female suicide in 1993 but 12 between January and November 2003 alone.⁴⁹

However, research demonstrates that women accused or convicted of criminal offences are often invisible in debates around criminal justice policy because they are a minority, accounting for around 20% of known offenders and fewer than 6% of the prison population. Women prisoners are particularly disadvantaged. They pose a far lower security risk than male prisoners and because security is the priority, resources are channeled into maintaining the security of male prisoners and away from areas that would address women's needs.⁵⁰

Women prisoners face a double disadvantage: they are more likely than male prisoners to have dependent children but are imprisoned geographically further from their families than men, making family visits difficult. This is despite research which shows that maintaining contact with family members is an important factor in reducing future re-offending.

Male behaviour is the norm around which criminal jurisprudence, law and practice have evolved and women are 'shoe-horned' into this male model. The context of women's offending is often quite different because women's lives are different from men's in a number of respects. For example, as has been referred to above, women suffer pay and employment disadvantages:

- 40% of women have a gross individual income of less than £100 a week compared to just over 20% of men.
- Around one in four women experiences domestic violence at some point in their lives.
- Women are far more likely to have caring responsibilities.
- Nine out of ten lone parent households are headed by a woman.

The result is that women have different pathways into crime and 'coercion by others, particularly males, upon whom women...may become economically dependent, may form part of these pathways into lifestyles in which criminal activity plays a strong part.'⁵¹

Patterns of offending

There is a substantial body of literature about women offenders which has long shown that their patterns of offending are different from men. A Department of Health report, *Mainstreaming Gender and Women's Mental Health* (2003), states that:

Women are more likely than men to commit 'acquisitive' crimes, e.g. shoplifting, fraud through financial hardship particularly in relation to children...and less likely to commit arson, violent or sexual offences.

Women are around two and a half times less likely to offend than men; they commit more minor offences, have shorter criminal careers and pose little threat to public safety. Theft and handling stolen goods are the most common indictable offences committed by both men and women, accounting for 60% of female offending, but only 36% of male offending.⁵²

Other issues

Women from Black and minority ethnic communities, who are at particular risk of poverty and who face a combination of sexism and racism in their lives, are over-represented in the criminal justice system. They form 26% of the female prison population but only 8% of the total female population of England and Wales. Around 19% of women in prison are foreign nationals.⁵³

A lack of child care facilities causes significant problems for all witnesses with dependent children. The situation may be worse for women defendants who have to attend court a number of times, sometimes for days at a time, and who may be remanded into custody

for part or all of the time. In the course of a recent study one professional commented that:

The difficulties women with caring responsibilities have is never, in my experience, taken seriously by courts...Small children are occasionally given to ushers to look after...[and] the waiting area in most courts is not a suitable place for small children.

Interim Report on Women and Offending, The Commission on Women and the Criminal Justice System, Fawcett Society (2003)

Although directed at the criminal justice system, these comments are equally applicable to the civil and family courts.

Sentencing

When it comes to sentencing, women may still be seen as something of an anomaly and there has been much debate about whether women are sentenced more or less leniently than men. There is a perception that individual women who transgress gender roles by committing 'male' offences such as burglary may be dealt with more harshly, whilst shoplifting and social security fraud may be seen as more socially acceptable. It has been observed that 'women who do not occupy the appropriate gender role (as a good wife and mother) may be seen by the courts as 'doubly deviant'.⁵⁴

The reasons for the steep growth in women imprisoned are complex. Home Office research published in 1997 on the sentencing of women offenders found that magistrates tend to see them as 'troubled' rather than 'troublesome' and therefore adopt a 'welfare' approach when sentencing women.⁵⁵ Provisions which contain an element of supervision are favoured over sentences lower down the sentencing ladder such as fines, which may be deemed not suitable for women on account of their financial circumstances, or community service.⁵⁶ Though this approach may appear and be intended as benign, in reality women may not have had access to the full range of sentencing options resulting in them starting further up the sentencing ladder and thus reaching prison sooner than men. This may explain why women in prison have fewer previous convictions than men.⁵⁷

Women in the prison population

- Half of all women prisoners have dependent children and it is estimated that 17,000 children are separated from their mother by imprisonment each year.
- Female prisoners are a disproportionately disadvantaged population with high levels of poverty and low levels of educational attainment and employment histories.
- Women with histories of abuse and violence are over-represented in the prison population.
- Half the women in one Home Office survey said they had experienced domestic violence and the true figure is likely to be higher.

- Women prisoners suffer from particularly poor physical and mental health: 'Women are twice as likely as men to have received help for a mental/emotional problem in the twelve months prior to custody, have symptoms associated with post-traumatic stress disorder and more likely to have a serious mental illness.'⁵⁸

Women who are foreign nationals in prison face particular problems. They account for the largest proportionate rise in the prison population in the last five years and represent a fifth of the female prison population.⁵⁹ Almost half of this group are Jamaican women who have been convicted of drugs offences, mostly importing drugs. Such women usually come from a background of extreme poverty and are rarely high up in the criminal gangs which use them. Most are single parents and first-time offenders and there is evidence to suggest that coercion plays a part in their decision to become a drug courier against a background of violent, abusive and exploitative relationships.⁶⁰ Foreign nationals are often held thousands of miles from their family. They experience particular cultural problems in prison. A recent study observed that one prisoner had reported that, 'There are a lot of women from all over the world in this prison and staff need more training about the foreign nationals' backgrounds and way of life. Certain words can be misinterpreted, as can gestures and loud voices,' suggesting that such women face both racial and gender-based prejudice and stereotyping.⁶¹

Some 75% of women in prison have been sentenced to less than 12 months. The most common offences for which women are imprisoned are theft and handling stolen goods.⁶² Recent Home Office figures show that close to six out of ten females re-offend after leaving prison leaving the question open as to whether prison is the best way of dealing with the vast majority of women prisoners who have been convicted of non-violent property or drug-related offences, and who have received a sentence of less than one year.

It should be noted that the stereotyping of offenders does not uniquely disadvantage women. Research indicates that female young offenders sentenced to custodial sentences are routinely prioritised for non-prison service accommodation – local authority secure accommodation – over male young offenders. There is no stated explanation for this, which appears to be based on the stereotypical assumption that boys will find such detention more bearable – an assumption not supported by the suicide rates.

6.1.10 Women as workers in the justice system

All the main agencies and regulatory bodies concerned with administering the justice process have equal opportunities policies. The Secretary of State for Constitutional Affairs and Lord Chancellor has said that in making judicial appointments:

the guiding principle...in selecting candidates for judicial appointment is that appointment is strictly on merit. The Lord Chancellor appoints those who appear to him to be the best qualified regardless of gender, ethnic origin, marital status, sexual orientation, political affiliation, religion or disability. Decisions on merit are based on assessments of candidates against the specific criteria for appointment. Extraneous matters such as a candidates' chambers or firm are immaterial.

The Bar Council and the Law Society both specifically address discrimination in their rules. The Bar's Code of Conduct provides that:

A barrister must not in relation to any other person (including a client or another barrister or a pupil or a student member of an Inn of Court) discriminate directly or indirectly or victimise because of race, colour, ethnic or national origin, nationality, citizenship, sex, sexual orientation, marital status, disability, religion or political persuasion. (Para. 305.1)

The Law Society's professional conduct rules requires solicitors to comply with the Solicitors' Anti-Discrimination Rule (1995), which provides that:

Solicitors and their staff must deal with all persons with the same attention, courtesy and consideration regardless of race, colour, ethnic or national origins, sex, creed, disability or sexual orientation. Solicitors must not discriminate on grounds of race, colour, ethnic or national origins, sex or sexual orientation, and must not discriminate unfairly or unreasonably on grounds of disability, in the selection, treatment or promotion of staff.

The Guide to the Professional Conduct of Solicitors, Chapter 7

However, there remains concern about the extent of discrimination against women in the legal professions. Whilst women are entering the legal professions in increased numbers they are leaving in disproportionate numbers suggesting that a career in law is not a friendly career for women or women with children. Women in the law, of course, face the same problems that affect all working women in relation to pregnancy, child care, sexual harassment, concentration in particular areas of work and so on.

An unrepresentative judiciary

The judiciary remains unrepresentative. The importance of women on the Bench has been the subject of much discussion. In a lecture to the Association of Women Barristers, the Rt Hon. Beverley McLachlin, P.C., Chief Justice of Canada described the importance of increasing women's participation in the judiciary as follows:

I believe that women on the Bench are necessary to the public confidence of our judicial systems. From the view point of public perception, the presence of women on the Bench makes the legal system less alien and more relevant to the female half of our population. The courts of our country should no longer be viewed as all male preserves into which females and minorities venture at their peril... Let me tell you a story of an experience I had as a trial judge, which may bring home to you the importance of our representative Bench. One slow afternoon, I was asked to take a family property division case. The wife's counsel was female. The court reporter was female. The court clerk was female. I was female. The only male in the room was the husband, representing himself... I turned... to the husband, and invited him to make submissions. He seemed to have trouble rising to his feet... Finally, he struggled to his feet. With a look of umbrage he said 'Frankly, your honor, I feel outnumbered.'... It was only when I went home later that evening that the thought struck me, how many times, for how many decades had women stood before all male tribunals - if they had been encouraged even to enter them - and felt more than a little outnumbered?...

The most important reason why I believe we need women on our Benches is because we need the perspectives that women can bring to judging. For cultural, biological, social and historic reasons, women do have different experiences than men. In this respect women judges can make a unique contribution to the deliberations of our courts... The presence of women on the Bench can and does make a substantive difference. Insofar as women are possessed of special experiences, concerns and interests, these must inevitably affect the way they address the problems that confront them. This is not to say that men may not share, or indeed lead, in the enunciation of these perspectives; it is to say, however, that the presence of women on the Bench helps ensure that they are brought to the fore.

As of 1 December 2003 there was not a single woman Law Lord in the House of Lords - and nor had there ever been a woman in the House of Lords. The appointment of Lady Justice Hale in 2004 made her the first female Law Lord. There are now two women Lady Justices ; seven women High Court judges (6.5%); 60 women circuit judges (10%); and 82 district judges (18.8%).

It is easy to see why the law and the justice process might seem an unfriendly and alien place for women. The history of the law's involvement in subordinating women might be thought to offer little reassurance for women appearing before the courts. Care should always be taken to recognise the difficulties faced by a person appearing before a tribunal that does not appear on its face to reflect their concerns or interests, and to take appropriate steps to ensure they are reassured.

6.1.11 Women in the courtroom – the judge’s role

Accommodating different sitting hours and breaks

As participants in the justice process, women are entitled not to be disadvantaged by reason of their status as women if they have recently given birth, are breastfeeding or caring for children. Women who are breastfeeding (see 6.1.3 earlier) will need to have a suitable place to feed and adequate breaks to do so. We should, in exercising our case management functions, have proper regard to this in deciding sitting hours and even, as appropriate, location.

Similarly, women and men who have dependent children may have child care responsibilities which make conventional sitting hours difficult or impossible for them. Such responsibilities should be accommodated as far as possible. It is unlikely to help in the achievement of justice if a witness or party is late or distracted by reason of concern over child care. With sensible listing and case management such responsibilities should be readily accommodated.

Modes of address

Given the history of ‘marriage’ in the subordination of women it should come as no surprise that many women find it offensive to be referred to by reference to their marital status or their husband’s name. On the other hand, for many women marriage is an important part of their identity and they wish to be referred to by their marital status and by their married name where they have one.

A woman’s marital status will usually be quite irrelevant to the issues before us. However, courtesy is an important way of ensuring that participants in the justice process feel fairly treated and it is important therefore to check with any witness how they wish to be addressed. We should not assume that a married or unmarried woman would prefer to be called Mrs or Miss – many may prefer the neutral ‘Ms’. Accordingly, in asking a woman how she wishes to be addressed, it is best simply to ask that question rather than the more intrusive (and irrelevant) ‘Are you married?’

Language

In the use of language, we can unconsciously convey assumptions about gender roles which might be offensive or disconcerting to participants who do not match those roles (e.g. ‘postman’; ‘chairman’ rather than ‘postal worker’ or ‘chair person’). Insofar as possible therefore we should take care to use gender neutral language: ‘they’ (rather than ‘he’ or ‘she’); ‘them’ (rather than ‘him’ or ‘her’).

Protecting women

As has been described above, there are tools available at common law, in statute, in the Civil Procedure Rules, tribunal rules and as enshrined in Convention rights to ensure women can feel safe in participating in the justice process and are protected against unjustified intrusive questioning. We should use these tools as appropriate, bearing in mind that Article 6 of the Convention requires – as a component of the broader concept of a fair trial – that each party must be afforded a reasonable opportunity to present their case under conditions which do not place them at a substantial disadvantage *vis à vis* their opponent (see *De Haes and Gisjels v Belgium* 1998 25 EHHR 1, paragraph 53).

Chapter 6.2

Gender reassignment

Key points

- Transsexual and transvestite people are not merely an extension of, or dimension of, the gay and lesbian sub-culture.
- There are basic differences within and between the transsexual and transvestite experiences.
- In cases where disclosure of birth gender is not essential this should be omitted – it should be possible in such cases to accept the person's apparent identity for nearly all court and tribunal purposes.
- Most transsexual and transvestite people will do everything possible to avoid contact with the criminal justice system, including making reports to the police or pressing charges.

6.2.1 Introduction

Transsexual and transvestite people are not merely an extension of, or dimension of, the gay and lesbian sub-culture. It is misguided and potentially misleading to make any assumptions as to the sexual orientation of transvestites or transsexuals, which can vary across the whole spectrum of sexuality. Transsexual and transvestite people may, of course, be lesbian or gay or heterosexual. Moreover, the mainstream gay and lesbian scene may, on occasion, be unwelcoming to transsexuals and transvestites. Additionally, it is worth noting that there are basic differences within and between the transsexual and transvestite experiences.

6.2.2 Cross-dressing

It is unlikely that a transvestite who cross-dresses in private and sometimes in public, will cross-dress in court. However, this may not always be the case and a desire or need to cross-dress may still be a relevant and important issue, for example in divorce or family proceedings, or as the background to an offence of violence against that person. For many transvestites, cross-dressing is not a fetish, but an inescapable emotional need, which, particularly in public places, generates risk of conflict or ridicule.

6.2.3 The process of gender reassignment

The process of gender reassignment is extremely complex, requiring great personal determination, with emotional and psychological factors playing a large role. Not all transsexual people undergo physical surgery, but for those that do, the surgical stage is just part of a longer and larger sequence of events and processes that are intended to help the physical identity match the person's inner sense of gender identity. These events and processes are likely to involve great strain, and bring the transsexual person into situations of unwanted tension.

6.2.4 The Gender Recognition Act 2004

The Gender Recognition Act 2004 creates a framework for the legal recognition of transsexual people in their reassigned sex. The enactment of the Gender Recognition Act 2004 followed case law in the ECJ, the ECtHR and domestically which held that a failure to recognise transsexual people in their reassigned sex could breach their Convention rights and violate EC law.

The Gender Recognition Act 2004 permits a person of either gender to make an application for a 'Gender Recognition Certificate' on the basis of living in the other gender or having changed gender under the law of a country or territory outside the U.K. The Act makes provision for a 'Gender Recognition Panel' to determine such an application. The Panel must grant the application if satisfied that the applicant has or has had gender dysphoria, has lived in the acquired gender throughout the period of 2 years ending with the date on which the application is made, intends to continue to live in the acquired gender until death and complies with certain evidential requirements. The granting of a Gender Recognition Certificate does not depend upon a transsexual person first having surgery.

However, not all transsexual people will apply for a Gender Recognition Certificate. This is for many reasons, including that entitlement to a certificate, in the case of a married person, will depend upon them first divorcing their spouse. Many transsexual people will not want to divorce because of the negative impact this may have on their spouses or for other reasons. The fact that a person does not have a Gender Recognition Certificate should not be assumed to mean that they are not properly transsexual and entitled to respect and legal protection as appropriate in their reassigned sex.

A reassigned person who has been issued with a full Certificate by the Panel is entitled to marry in his or her acquired gender.

6.2.5 Legal requirements conflicting with individual interests

When courts and tribunals come into contact with transsexual or transvestite people, the requirements of the law may conflict with the needs and interests of the person involved. In the case of a transsexual, disclosure of birth gender may be essential. However, this will be rare and there will be very many cases where such disclosure is not necessary. It will usually be possible to accept a person's apparent identity for court and tribunal purposes, without further inquiry which may be intrusive and offensive.

6.2.6 Guidelines

The Association of Chief Police Officers (ACPO) recognises that dealing with transsexual and transvestite people can raise difficult and sensitive issues. It has therefore adopted guidelines, which it has circulated to all forces in England and Wales. These guidelines may be usefully adapted to provide sound advice to all involved in the administration of justice. The main points are:

- Everyone must be treated fairly and with respect for their personal dignity.
- Where there is a question relating to a person's gender, the person should be asked what gender they consider themselves to be, and what gender they would prefer to be treated as. In this respect, wherever possible, a person should be treated, identified and addressed in accordance with their wishes. (Thus a transsexual offender may be more appropriately searched by an officer of opposite gender to that shown on the transsexual's birth certificate.)
- Transsexual people should not be accommodated or dealt with in a manner that is fundamentally inconsistent with their chosen gender identity.
- No-one should be put in a situation where they may face hostility or ridicule.

6.2.7 Difficulties and social stigma

Transsexuality is an internationally recognised condition, and not a form of sexual or political rebellion. Over the last 30–40 years, more than 5,000 people in Britain have successfully transitioned between the genders and most of them have blended invisibly into ordinary society. However, there remain considerable legal difficulties or 'damaging bureaucratic obstinacy' which finds reflection in the law that such people face during and after their transition.⁶³

There is still a significant social stigma associated with non-conventional gender behaviour or cross-gender identity and this still leads to social isolation for many

transsexual people. Social stigma takes many forms, from experiencing personal violence in the home and in public arenas, to job or home loss, financial difficulties, loss of contact with families and communities, and to having great difficulties in personal relationships. In addition, a limited availability of gender reassignment services can further disadvantage transsexual people.⁶⁴

Recent research demonstrates that most transsexual and transgender people will do everything possible to avoid contact with the criminal justice system and some experience indicates that, even when victims of serious crime, transsexual and transgender people will avoid making a report, and if that is unavoidable will prefer not to have charges pressed. The combination of disclosure of status in court and social reaction often create larger problems for the person involved than the initial crime.

6.2.8 Problems relating to imprisonment

Imprisonment for transsexual and transgender people presents a particular set of problems. Before genital reconstructive surgery or a Gender Recognition Certificate (see below), they will almost certainly be kept in a prison for people from their natal sex grouping. In that environment it may well be almost impossible for them to continue or to commence living in their chosen gender role and, if they do, their transsexual or transgender status will always be known by both prison staff and other inmates.⁶⁵ This makes them vulnerable to bullying, sexual assault and violence. Further, if prisoners have started hormone therapy it may well be stopped in the short term, at least whilst consideration is given to its continuance, and for some this can cause particularly upsetting problems, for example baldness in male to female transsexual women, and menstruation in female to male transsexual men. If hormone therapy is to be continued, research has shown that many institutions only permit the continuation of therapy at a 'level' setting. In other words, even if outside of prison the hormonal therapy of an individual would normally be adjusted to a higher level after some period, within a custodial setting it will only be allowed at those levels prescribed prior to arrival within prison.

The provision of surgical procedures will rarely be considered by gender identity clinicians unless the 'real-life test' has been undertaken for at least 12 months. Imprisonment will certainly delay any plans for such interventions and if a long sentence has been received it may well lead to the end of any such hope on the part of the prisoner.

There are other issues arising out the imprisonment of transsexual and transgender people including appropriate and safe housing in prison, the need of the prisoner to feel secure and safe in their appropriate gender role, and the reintroduction of the prisoner into society on their release, which can be particularly difficult for transsexual and transgender people, who may well have little social support outside prison.

Notes

- ¹ [1909] AC 147 (HL) cited by Rabinder Singh QC in his inaugural lecture as visiting professor of law at the London School of Economics: 'Equality – the neglected virtue' (26 November 2003).
- ² *Ibid.*, p.160.
- ³ *Facts about Women and Men in Great Britain*, EOC (2003).
- ⁴ *Ibid.*
- ⁵ *Achieving Equality at Work*, p.101, IER (2003). Note that these figures might be skewed as much by racism in the labour market as by other factors.
- ⁶ *Facts about Women and Men in Great Britain*, EOC (2003).
- ⁷ www.eoc.org.uk/EOCeng/EOCcs/PolicyAndCampaigns/sex_stereotyping
- ⁸ *Ibid.*
- ⁹ *Achieving Equality at Work*, IER (2003).
- ¹⁰ *Ibid.* See *Equal Opportunities Review*.
- ¹¹ *Ibid.*
- ¹² *Ibid.* See Briefing on Women's Incomes over their Lifetime.
- ¹³ *Women and Men in Britain: Pay and Income*, EOC (2003).
- ¹⁴ *Ethnic Minorities in Britain : Diversity and Disadvantage*, Modood, Berthoud and Others, PSI (1997).
- ¹⁵ *Ethnic Minorities in the Labour Market, Final Report*, March 2003, Cabinet Office Strategy Unit.
- ¹⁶ *Black Women in the Labour Market*, EOC (1994).
- ¹⁷ *Discrimination Law*, Sandra Fredman (2002).
- ¹⁸ *No more jobs for the boys and jobs for the girls: why the EOC has launched the general form investigation*, EOC (2003). Briefing Paper explaining the EOC's decision to launch a general formal investigation into this matter.
- ¹⁹ *Ibid.*
- ²⁰ See note 9.
- ²¹ *Employers' Labour Use Strategies* (1991), Hunter and McInnes, London: HMSO.
- ²² *Age as an Equality Issue, Legal and Policy Perspectives*, Eds Sandra Fredman and Sarah Spencer (2003), Hart, pp. 30–31.
- ²³ Addressed to employers, although this would apply equally in other fields of activity.

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- ²⁴ Equal Opportunities Commission News Release: *EOC stresses employers legal responsibilities towards breastfeeding women*, 16 May 2003.
- ²⁵ *Pregnant and Productive*, EOC (2003).
- ²⁶ *Full Omnibus Survey Results: Pregnant and Productive*, EOC (2003).
- ²⁷ *Analysis of Tribunal Cases*, EOC (2003).
- ²⁸ www.eoc.org.uk/cseng/advice/service_delivery.asp
- ²⁹ *Talking Equality*, Melanie Howard and Sue Tibballs, EOC (2003).
- ³⁰ *Safety and Justice*, Home Office (2003).
- ³¹ *British Crime Survey*, Home Office (2002).
- ³² *The Date Account*, Professor Elizabeth A. Stanko (2000).
- ³³ *British Crime Survey*, Home Office (2002).
- ³⁴ *British Crime Survey*, Home Office (2002).
- ³⁵ *Safety and Justice*, Home Office (2003).
- ³⁶ *Domestic Violence : An Ordinary Crime*, JSB (2003).
- ³⁷ *Ibid.*
- ³⁸ *Ibid.*
- ³⁹ *Rape and Sexual Assault of Women*, Home Office British Crime Survey Findings 159 (2002).
- ⁴⁰ *Wife Rape, Marriage and Law: Survey Report, Key Findings and Recommendations*, Kate Painter (1991).
- ⁴¹ *Justice for All*, Home Office, July 2002.
- ⁴² *Interim Report on Victims and Witnesses' Commission on Women and the Criminal Justice System*, Fawcett Society (2003).
- ⁴³ *Ibid.*
- ⁴⁴ *Carnal Knowledge: Rape on Trial*, Sue Lees (1996).
- ⁴⁵ *A Research Review on the Reporting, Investigation and Prosecution of Rape Cases*, Liz Kelly, April 2002.
- ⁴⁶ Fawcett Society, see note 42.
- ⁴⁷ *Rowland v Brock* [2002] 4 All ER 370, Newman J.
- ⁴⁸ *Ibid.*
- ⁴⁹ *Interim Report on Women and Offending, The Commission on Women and the Criminal Justice System*, Fawcett Society (2003).
- ⁵⁰ *Ibid.*
- ⁵¹ *When Victims Become Offenders: In Search of Policy and Practice Coherence*, Judith Rumgay (2003).

⁵² Statistics on Women in the Criminal Justice System, Home Office (2002).

⁵³ Ibid.

⁵⁴ 'Feminist Perspectives on Gender and Crime: Making Women Count', Loraine Gelsthorpe, *Criminal Justice Matters*, No 53 Autumn 2003.

⁵⁵ *Understanding the Sentencing of Women*, Eds C Hedderman and L Gelsthorpe, Home Office (1997).

⁵⁶ *Do Women Paint Fences Too? Women's Experience of Community Service*, Howard League for Penal Reform (1999).

⁵⁷ *Interim Report on Women and Offending, The Commission on Women and the Criminal Justice System*, Fawcett Society (2003).

⁵⁸ *Mainstreaming Gender and Women's Mental Health*, Department of Health (2003).

⁵⁹ *Interim Report on Women and Offending, The Commission on Women and the Criminal Justice System*, Fawcett Society (1993).

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

⁶³ See the 'Press for Change' website www.pfc.org.uk/index

⁶⁴ *Pilot Study of Provision For Transsexual and Transgender People in The Criminal Justice System, and the Information Needs of their Probation Officers*, Stephen Whittle and Paula Stephens, Ibid.

⁶⁵ Ibid.