Sentencing Gender?

Investigating the Presence of Sentencing Gender Disparities in the Crown Court

Abstract

We explore the presence of gender sentencing disparities using large samples of assault, burglary and drugs offences from the Crown Court Sentencing Survey. We find significantly harsher sentences imposed on male offenders even after controlling for most case characteristics, including mitigating factors such as 'caring responsibilities'. Specifically, the odds ratios of receiving a custodial sentence for offences of assault, burglary and drugs committed by a man as opposed to a woman are 2.84, 1.89 and 2.72. To put it in context, with the exception of offences 'with intent to commit serious harm', the gender effect was stronger than any other 'harm and culpability' factor for offences of assault. These disparities do not seem to stem primarily from differential interpretations of offender dangerousness. It is possible that they might be due to lower rates of reoffending amongst female offenders, or to the higher punitive effect of custodial sentences on women. What seems clear is that sentencing is not gender neutral. If gender-specific sentencing guidelines are to be developed in the future it would be important that the noted disparities are taken in consideration.

Keywords

Sentencing; gender; disparities; Crown Court; survey data; consistencies.

Acknowledgement

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1. Introduction

The need for a differential sentencing scheme for female offenders has been brought to the forefront of the national debate recently following the publication of a series of influential reports. Building on previous inquiries (see Corston, 2007) 'The All Party Parliamentary Group on Women in the Penal System' ("APPG") (2018) has put forward compelling evidence on the comparatively more harmful impact of custody on women, the societal impact of incarcerating women, or the difficulty to justify the use of a custody on women from a public protection perspective. For example, women are more likely to self-harm while in custody and more likely to suffer from anxiety and depression, women are more likely to desist from offending earlier than male offenders, women who offend are often the primary and sole carers of dependent relatives, and only three per cent of the female prison population are assessed as representing a high or very high risk of harm to other people (House of Commons Justice Committee, 2013 and Feilzer and Williams, 2015). The Ministry of Justice (2018) has also recently published their Female Offender Strategy, a plan aimed at reducing the female prison population - in particular the use of short custodial sentences for female offenders - announcing specific actions focused on pre and post sentence stages in the criminal justice process. For example, the facilitation of more detailed pre-sentence reports, or the reopening of residential women's centres. Arguments for a system focussed upon women's centres as opposed to one centred around imprisonment have been repeatedly made (see Hogarth, 2017). In the foreword to the paper, the Secretary of State for Justice states that the aim is to see *"fewer women in prison for short sentences […] through shifting our focus from custody to the community"* (Ministry of Justice, 2018, p. 4). This continues the trend of successive governments identifying a desire to reduce the use of imprisonment in respect of women (Hedderman and Gunby, 2013). Against the background of an unusual consensus on the need for change, the rate of imprisonment of women increased in the early part of the decade despite no appreciable increase in offending by women (Minson, 2015).

We welcome the enhanced scrutiny of the pernicious effects caused by the overreliance on custodial sentences, however we are also critical of some of the evidence that has been put forward in support of the case for reform as it seems unbalanced. Many of the issues noted in relation to female offenders apply equally well to male offenders. For example, arguments highlighting the ineffectiveness of short sentences at reducing reoffending, or women's centres offering better value for money than custody could also be made in relation to male offenders. The fact that most of the figures presented in the Ministry of Justice and the APPG reports are limited to data concerning women, omitting comparisons with male offenders, does not help to present the case as transparently as possible either. For example, the APPG (2018, p.1) indicates that *"[…] the number of community orders given to women was down by nine per cent in the first quarter of 2018 compared with the same period in 2017"*. Using the pivot tables published alongside the Criminal Justice Statistics[1], we find that the number of community sentences given to women over the same period fell by 7%, but the trend was similar for men with a reduction of 5%. More importantly, these reports have failed to acknowledge the multiple empirical studies indicating that female offenders already receive more lenient sentences than male offenders convicted of the same offence. In not addressing this evidence most of these reports implicitly invoke the wrong but widespread premise that sentencing is gender neutral.

In a review of the evidence on gender bias in sentencing, Steffensmeir et al. (1993, p. 411) indicated that *"a fairly persistent finding has been that adult female defendants are treated more leniently than adult male defendants"*. The same findings have been corroborated by several influential studies that followed on this topic (Daly and Bordt, 1995; Doerner and Demuth, 2010; 2014; Flood-Page and Mackie, 1998; Franklin and Fearn, 2008; Dowds and Hedderman, 1997; Speed and Burrows, 2006; Spohn and Spears, 1997; and Steffensmeier and Demuth, 2006). Most of these studies stem from the US, and some of those exploring the jurisdiction of England and Wales are dated, which might explain why government and advocacy groups have not really engaged with this body of research. However, there are recent studies from England and Wales that should have been acknowledged. For example, it is strange how findings from Hopkins et al. (2016), a quantitative study undertaken by the Ministry of Justice using its own data, were not mentioned. Particularly, given the magnitude of their findings: the authors showed an 88% increase in the odds of imprisonment for male offenders charged with the same offence.

Perhaps, the evidence accrued by the quantitative literature on this topic was not considered given the limitations of this form of research. It is well known that identifying discrimination in sentencing empirically

[1] Available here, https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-march-2018

is a challenging research question requiring access to potentially all the legally relevant case characteristics (Anderson et al., 1999; Baumer, 2013; Brantingham, 1985; Hofer, Blackwell and Ruback, 1999; Pina-Sánchez and Linacre, 2013, 2014; Waldfogel, 1998). Otherwise, we cannot rule out that any observed disparities might be due to relevant differences between cases and not to discriminatory practices. This is a clear issue in Hopkins et al. (2016), who could only control for the offence type and the number of previous convictions, but failed to consider any other relevant aggravating or mitigating factors. This lack of adequate controls prevents robust 'like with like' comparisons. The need to control for the full list of aggravating and mitigating factors featuring in each case is even more important in any attempt to ascertain gender discrimination than it is for the more common studies exploring racial discrimination. This is because of the disproportionate presence of certain factors such as 'caring for dependents' or 'mental health problems' in female compared to male offenders (Ministry of Justice, 2018). Therefore, it is likely that many of the noted gender disparities in the literature reflect relevant legal differences between male and female offenders, and as such, they are entirely legitimate disparities as opposed to evidence of discrimination.

In order to overcome such methodological limitations and conduct robust sentencing analyses on the impact of its guidelines, the Sentencing Council for England and Wales commissioned a sentencing survey, which captures in unprecedented detail the characteristics of individual cases processed in the Crown Court. Lightowlers (2018) has been able to exploit the potential of this sentencing dataset to explore gender disparities in a novel way. She analysed the effect of the aggravating factor of assault offences committed 'under the influence of alcohol or drugs' across male and female offenders. She found that although female offenders receive a more lenient treatment on average, this effect is smaller when the intoxication features as case characteristics. In essence, this aggravating factor is applied more severely on female offenders, yet, even when intoxication features as a case characteristic, the final sentence is still more lenient for female offenders than for their male counterparts. These results have, however, been interpreted as supportive of the 'doubly deviant hypothesis', that is, as evidence of female offenders being treated more harshly. For ease of interpretation, we have taken the results for the main gender effect presented in Lightowlers (2018) and transformed it so it reflects the odds ratio of receiving a custodial sentence for male and female offenders. The result is 2.1. That is, the odds of a male offender going to prison having committed the same offence, and featuring the same case characteristics, including guilty plea, previous convictions, and personal mitigating factors such as caring for dependants, are 2.1 times higher than for a female offender.

It is important to underline that the observed disparities could still be justified based on utilitarian principles, such as public protection and the higher rates of rehabilitation observed for female offenders (National Offender Management Service, 2015), and from a retributive point of view, the higher harm experienced by women in prison Ministry of Justice (2018). However, given the non-trivial magnitude of these gender disparities, it is surprising to note that recent reports promoting a move towards a more lenient approach in sentencing female offenders have not acknowledged them more clearly. We believe this is problematic as it does not recognise the true state of affairs in sentencing practice in England and Wales. Those who advocate more formalised gender disparities to reflect these differences must be clear as to how such disparities should manifest. Broad statements of principle or intent are insufficient. Clarity as to the basis for, and extent of, legitimate disparity is needed; we can all agree that somewhere there is a threshold which should not be exceeded: a point after which gender disparities become unjustifiable. To locate that threshold we then need to ask ourselves 'how much is too much?' Yet, to engage with that question properly we first need to establish the true state of gender disparity in sentencing and the way in which that differs by offence-type. From there, we would have a clear evidence base for informed policy discussion. That is the goal of this paper.

We develop the analyses presented in Lightowlers (2018) in various ways. We provide new estimates of the extent of gender disparities in sentencing in the Crown Court using different offence types, investigate potential causal mechanisms driving them by exploring whether case characteristics are applied differently based on the gender of the offender, and contextualise these disparities by comparing them to the effect of legitimate factors listed in the sentencing guidelines. Lightowlers' (2018) study concerned assault offences, a genus of criminal offending which lends itself particularly well to the notion of there being masculine and feminine offences and the concept of double punishment for females who commit 'masculine' crime. We extend analyses to other high-volume offences such as burglary and drugs, for which offender dangerousness and public protection is less of a concern than for assault offences. Encompassing further offences increases the generalisability of our findings, while assessing the extent of gender disparities after

ruling out dangerousness as a justification enhances their validity. Lastly, comparing the size of the gender effect to the effect attributed to other case characteristics will allow us to put the former in context, which will contribute to lay out the evidence upon which further debate on the need to reform sentencing should be based.

2. Identifying Disparities in England and Wales

Before disparities can be identified, it is crucial that we first examine the operation of the sentencing scheme in England and Wales. It is well-known that the system is a form of limiting retributivism, with the sentence primarily driven by retributive considerations of harm and culpability (CJA 2003 s.143). This exercise produces a range of proportionate sentences, rather than a single, correct, sentence, as the concept of a deserved sentence is inherently imprecise. Within this range, a court must consider various other factors, both consequentialist and retributive, to determine the eventual sentence (CJA 2003 s.142).

Immediately the potential for disparity *within* the proportionate range is obvious. Accordingly, to take a simple example, imagine the proportionate range is 6-12 months, set by considerations of harm and culpability (s.143). A decision to prioritise public protection or deterrence may result in a sentence towards the top of that range, whereas a decision to prioritise a rehabilitation may result in a sentence towards the bottom of that range. Here, we see the risk of disparity, where two offences of comparable severity result in wildly different sentences based on legitimate considerations. Thus, it is possible that observed disparities in the literature are legitimate, say if they are driven by unequal perceptions of risk or dangerousness, or prospects of rehabilitation. Differences in sentencing which correlate with gender may be entirely legitimate if they can be justified by legally relevant characteristics: an offender who is more prone to rehabilitation may justify a sentence towards the lower end of the permissible range; if female offenders are disproportionately likely to share that characteristic, that – we suggest – is a legitimate disparity.

Disparities could of course be illegitimate, however. For instance, a lenient sentence imposed simply by reference to the offender's gender is illegitimate if it cannot be justified within the sentencing scheme briefly described above. Additionally, where a sentence falls outside of the permissible range, then that is prima facie evidence of disparity. Of course, there can be no conclusive statement of what the permissible range is for any particular offence and this adds to the complexity of the exercise of identifying disparities and examining whether they are properly considered to be illegitimate.

Hitherto, literature considering disparity in England and Wales has taken insufficient account of this key flexible aspect of the current sentencing scheme. With the general view that a differential sentencing system is needed to more appropriately deal with relevant differences presented by female and male offenders. Findings from our study could be used to quantify – even if approximately – the degree of flexibility allowed by the current sentencing scheme.

3. Analytical Strategy

The analysis is based on the Crown Court Sentencing Survey (CCSS), a survey commissioned by the Sentencing Council from 2011 to 2015 to monitor the effect of the (then) newly introduced guidelines. This is a remarkable dataset combining high levels of breadth and depth. It records most of the cases processed in the Crown Court for the five years of its existence in unprecedented detail. The CCSS therefore enables more accurate and informative empirical research on sentencing than has previously been possible. This claim is supported by the remarkable body of research in the Crown Court that has been amassed over the last five years (see for example Belton, 2018; Fleetwood et al., 2015; Irwin Rogers and Perry, 2015; Lightowlers, 2018; Lightowlers and Pina-Sánchez, 2017; Maslen, 2015; Maslen and Roberts, 2013; Pina-Sánchez, 2015; Pina-Sánchez and Grech, 2017; Pina-Sánchez and Linacre, 2013, 2014; Pina-Sánchez et al., 2017, 2018; Roberts, 2013; Roberts and Bradford, 2015; Roberts and Pina-Sánchez, 2014; Roberts et al., 2018). The level of detail with which the characteristics occurring in individual cases are recorded in the CCSS sets it apart from other large datasets that have been used to investigate sentencing disparities. In addition to capturing the specific offence type, guilty plea and previous convictions, the CCSS also records a long list of aggravating and mitigating factors, including personal mitigating factors such as 'caring for dependents' or 'mental health problems'. As such, this dataset is uniquely positioned to investigate gender disparities in sentencing.

Gelsthorpe and Sharpe (2015) show how gender disparities are not uniform across offence types, underscoring the need to: i) analyse offence types separately, and ii) expand the analysis to include as many offence-types as possible. Unfortunately, the full level of detail in the description of individual cases was only available for different group of offences after a guideline structuring their sentencing process was introduced. This meant that offences for which a guideline was introduced close to the end of the CCSS, or after that time, could not be fully exploited. In addition, sexual offences were not considered because of the much more complex gender dimension to offences of this nature, which we felt could confuse the study.

As a result, our analysis explores assault, burglary, and drug offences. For each of these groups of offences we focus on the most common offences within them. These are: domestic burglary, non-domestic burglary, aggravated burglary, and other burglary for the burglary sample; possession with intent to supply, bringing in/taking out, production/cultivation, and supply for the drugs sample; and GBH with intent, GBH, ABH, affray, and common assault for the assault sample. This gave us, 19,993 case of burglary sentenced in the Crown Court from the 1st of January 2012 to the 31st of March 2015, and 16,973 cases of drug offences from the 1st of April 2012 to the 31st of March 2015. For the analysis of assault offences we decided to focus on cases processed in 2011. This was to allow us to assess disparities in the length of immediate custodial sentences, a variable that was only available in its original continuous scale in the first release of the CCSS published by the Sentencing Council. This limits the sample to 4,523 cases of assault sentenced from the 13th of June 2011 to the 31st of December 2011, out of which 2,195 were sentenced to custody. The number of female offenders captured in each of those samples is 907 for burglary (4.5% of the total sample size), 1,236 for drugs (7.3% of the total), and 432 for assault (9.6% of the total). The rest of factors used in our analysis are listed in Appendix I, together with descriptive statistics indicating their prevalence.

In spite of its remarkable detail and coverage, the CCSS is also prone to problems of unnecessarily censored variables and missing cases. For example, key variables like the length of custodial sentences, offender's age or their number of previous convictions are expressed in bands rather than providing the exact value. The problems of missing data stem from additional issues with the format used in the questionnaire and from a problem of non-response. The average response rate in 2011 was an acceptable 61%, however, this varied widely across Crown Court locations, ranging from 95% to 20% (Sentencing Council, 2012)[2]. It is possible that judges who disregarded the data collection requirements of the Council's research team were also less compliant with the guidelines issued by the same institution, if that was the case, and given the *a priori* gender-neutral nature of the guidelines, this data could be taken to provide conservative estimates of gender disparities.

To estimate the size of gender disparities, assess their legitimacy, and explore its causes, our analysis is structured in two key stages. First, we present differences in the use of custodial rates[3] by gender using descriptive statistics. Second, to assess whether these disparities reflect differences in the offences committed by male and female offenders, or any other personal relevant circumstances, such as 'caring for dependents', we model the probability of receiving a custodial sentence using the full range of case characteristics recorded in the CCSS[4].

4. Results

The differences in the probability of receiving a custodial sentence by offence group and gender are shown in Table 1, together with the ratio of the odds for male and female offenders for each offence group. These odds ratios can be used to represent the size of gender disparities and to compare for which type of offences they are stronger. They show how much more likely it is for a male offender to receive a custodial sentence than female offender. We can see that the strongest disparities are found amongst offences of assault, where male offenders are 2.84 times more likely to receive a custodial sentence than female offenders. Yet,

[2] Response rates in subsequent years remained relatively stable, at 58%, 60%, and 64%, for 2012, 2013, and 2014, respectively (Sentencing Council, 2014, 2015).

[3] The terms 'custodial' or 'custody' are used here to refer to 'immediate custodial sentences'.

[4] Specifically, the probability of custody is modelled using logistic regression; for sentence length a linear model is used after log transforming the dependent variable to normalise its otherwise right-skewed distribution.

disparities for burglary and drug offences do not lag far behind, both of them showing male offenders being twice as likely to receive an immediate custodial sentence.

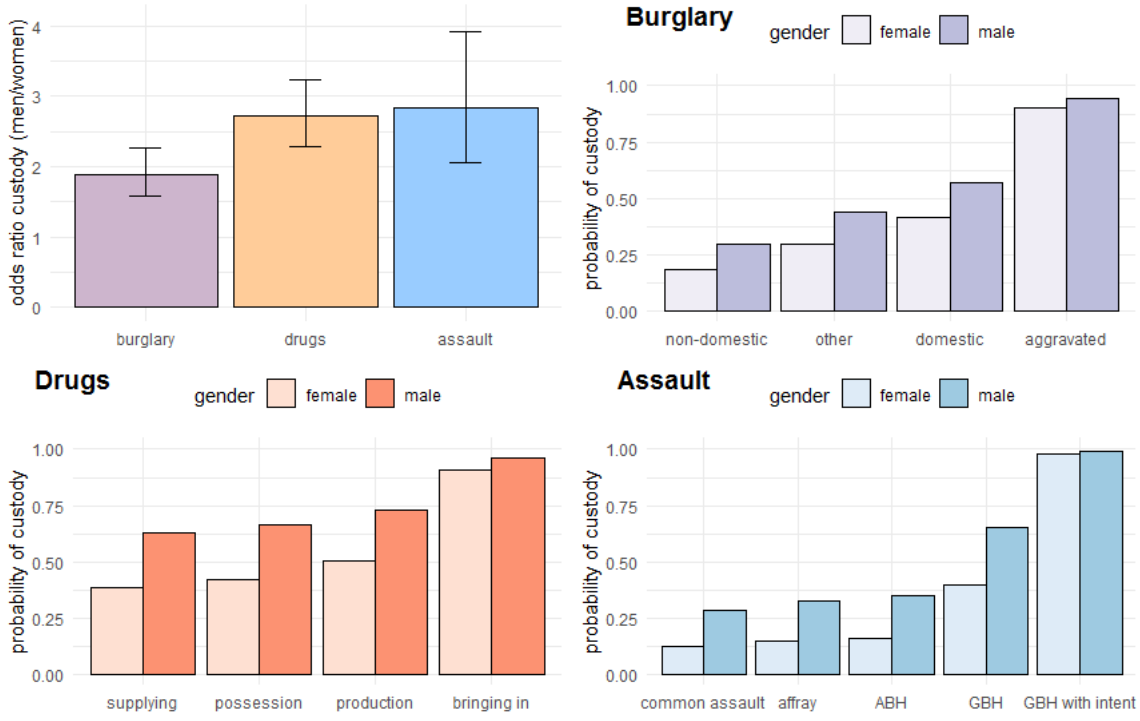
Table 1. Probabilities and odds of receiving a custodial sentence by offence group and gender

Offence group	Probability women	Probability men	Odds ratio
Burglary	0.570	0.760	2.38
Drugs	0.342	0.568	2.52
Assault	0.266	0.508	2.85

These figures, however, cannot be understood as evidence of unwarranted disparities since it is possible that the observed differences are due to legally relevant differences between male and female offenders and the type of offences they commit. We can determine whether that is the case more accurately using results from our statistical models, which isolate the gender effect after controlling for guilty plea, previous convictions and a wide range of harm, culpability, aggravating and mitigating factors. The full results are reported in Appendix II.

Based on the gender effect estimated in these models we can now establish that, for offences of assault, male offenders are 2.84 times more likely to receive a custodial sentence than female offenders. This is the gender effect estimated when the same offence is committed, featuring the same harm, culpability, aggravating and mitigating factors, whether a guilty plea was entered at first opportunity, and having - approximately - the same number of previous convictions. For offences of burglary and drugs the odds ratios were 1.89, and 2.72 for drugs. These odds ratios[5] are shown in the top-left barplot in Figure 1. To understand these odds ratios in the context of the relative severity of different offence types, we have also included in Figure 1 the probabilities of receiving a custodial sentence for different 'reference cases' (i.e. specific casea for which the probability of receiving a custodial sentence can be estimated). The reference cases for burglary and assault reflect an offence committed by an 18 to 25 years old person with no previous convictions, featuring no harm and culpability factors, aggravating or mitigating factors, or guilty plea entered at first opportunity. The reference cases for drug offences share the same characteristics except for the fact that the offender is now deemed to have played a 'leading role' in an offence involving cannabis.

Figure 1. Odd-ratios (top-left graph) and probabilities of receiving a custodial sentence



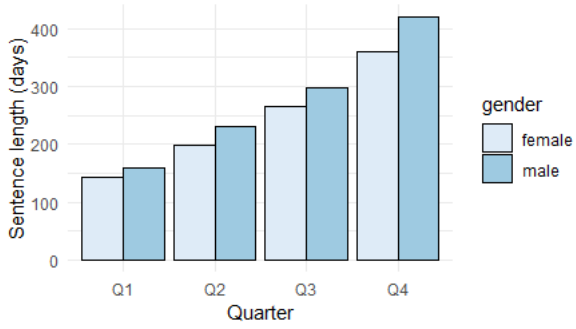
[5] The 'whiskers' in the plot represent 95% confidence intervals, which determine that the gender effects are statistically significant.

4.1. Disparities in Custodial Sentence Length

We can also assess whether similar gender disparities apply with regards to the length of custodial sentences. To do so we use data recording the length of custodial sentences imposed to cases of assault in 2011. We find that male offenders receive 14.7% longer sentences than female offenders under the same circumstances. This result is statistically significant, but much smaller than the disparities detected with regards to decisions of imposing custodial sentences.

Further analyses were conducted to assess whether disparities in sentence length were concentrated in short custodial sentences[6], where most female offenders sentenced to custody are concentrated. However, we found that gender disparities in sentence length are relatively stable, they tend to be around 15% longer for male offenders, regardless of whether we look at short or long sentences. This is shown in Figure 2, where we show the average sentence length imposed to cases of assault representative of those receiving short, medium-short, medium-long, and long sentences.

Figure 2. Gender disparities across the distribution (divided in quarters) of custodial sentence lengths imposed to offences of assault.



4.2. Differential Application of Guideline Factors

In the last part of our analysis we explore whether different case characteristics are equally applied to male and female offenders. Specifically, we explore, one by one, each of the harm, culpability, aggravating and mitigating factors featuring in the drugs and burglary guidelines. We found that for the most part, the sample size used did not allow to determine the differential application of guideline factors[7]. Only eleven of the 39 factors explored for drug offences could be reliably explored, while for burglary offences it was just five out of 42. However, although the number of guideline factors that could be explored was limited, we found that most of them appeared to be applied similarly across male and female offenders. We only found two exceptions where that was not the case 'mistaken belief regarding type of drug' and 'offender's vulnerability exploited', but even here the higher odds of custody observed for male offenders (shown in Figure 1) remain relatively unaltered. That is, the unequal application of these two factors does not explain the average differential treatment that we observe for male and female drug offenders. In summary, the evidence suggesting that gender disparities stem from the unequal application of particular case characteristics is scarce, which suggests that gender disparities take the form of uniform reductions offered to female offenders.

5. Discussion

Using samples of common offences sentenced in the Crown Court we have established that a male offender is roughly twice as likely to receive a custodial sentence as a female offender who has committed the same offence. This is the case for each of the offence types we explored: burglary, drugs and assault. The widest disparities are observed for assault offences, typically considered to be a 'male' offence, which appears to

[6] To do so we used quantile regression (see Britt, 2009).

[7] Specifically, the low prevalence of most of the factors explored lead to problems of multicollinearity.

refute the double deviance hypothesis (Lloyd, 1995). Gender disparities were also detected in the duration of custodial sentences, with male offenders receiving 14% longer sentences for assault offences.

These disparities were established after considering an extensive list of relevant case characteristics, including all of the personal mitigating factors listed in the sentencing guidelines. However, this list is not exhaustive, as it is virtually impossible to control for all legitimate factors taken into account when passing a sentence. Hence, we cannot categorically conclude that the observed disparities are unjustified, or provide definitive evidence of a differential sentencing scheme applied to male and female offenders. The observed disparities might stem from three key purposes of sentencing only partially accounted for in our analysis: risk, rehabilitation and retribution.

An offender regarded by a court as posing a risk to the public will be more likely to receive a custodial sentence. Hence, the observed gender disparities might be justified on the basis that male offenders tend to be seen as more violent and therefore present a greater risk of harm to the public (Kruttschnitt, 1994), or by the fact that previous convictions in male offenders are of a more serious nature than those seen in female offenders (Horn and Evans, 2000) We could not access a measure of offender risk to test this hypothesis, yet some of our findings downplay its importance. Risk of harm to the public is a factor that one would more naturally expect to play a role in the determination of sentence for offences involving the direct infliction of physical or mental harm. If so, we should have expected to see a greater degree of gender disparity for the group of burglary and assault offences than for drug offences. However, we found disparities for drug offences being almost identical to assault offences and about twice stronger than for burglary offences.

Rehabilitative considerations could also explain some of the observed disparities since female offenders are less likely to reoffend than their male counter-parts (National Offender Management Service, 2015). In our analyses we have used factors that are commonly associated with an offender's rehabilitative predisposition, such as 'display of genuine remorse', 'good character', and 'determination to address a problem of addiction'. However, we could not account for some of the crucial information featuring in pre-sentence reports, in particular the anticipated response to rehabilitative work.

Lastly, from a retributive perspective, the observed disparities might be justified on the basis of the higher harm experienced by women in and after custody. While in prison women are nearly twice as likely as men to be identified as suffering from depression (Player, 2014) and five times more likely to self-harm (Corston, 2007; MoJ, 2018). This is likely exacerbated by the existence of fewer female prisons makes it more likely for female offenders to be housed further away from home, which renders visits more difficult, making it harder to maintain ties and facilitate resettlement into community. Half of all women receive no visits compared to a quarter of men, and most women have neither a home or a job upon release (Player, 2014). Lastly, a more merciful approach that takes into account the generally more troubled past of female offenders could also be legitimately invoked as part of retributive considerations. For example, approximately 70% of women coming into custody require clinical detoxification compared to 50% of men. (Corston, 2007), while twice as many women in prison report having experienced emotional, physical or sexual abuse as a child compared to men (Minson, 2015).

In summary, we believe that the estimated gender disparities can be justified in terms of the higher harm produced to women, and, more partially, for reasons of offender rehabilitation and dangerousness. As such, our findings should not be interpreted as evidence of discrimination against male offenders. Having said that, if we take into consideration the non-negligible extent of the disparities detected, our findings should also refute the widely held belief of sentencing in England and Wales being gender neutral. The current sentencing scheme affords a certain degree of flexibility, which seems to be used, to a certain extent, to prevent female offenders from enduring the suffering associated with live in prison. Therefore, the question to be debated should not be whether female offenders ought to receive a more lenient treatment – it seems they already do -, but how much so.In informing that decision results from the type of models presented here could be quite informative.

5.1. Comparing gender to legally relevant factors

To contextualise the magnitude of the gender effect we can compare it with the effect of key case characteristics reflecting harm and culpability, categorised as Step One factors[8] in the sentencing guidelines. In relation to burglary offences, we detected an odds ratio for the gender effect of 1.89. To put that in context, being male exerts a stronger effect in the probability of receiving a custodial sentence for burglary than a 'significant degree of loss' (with an odds ratio of 1.77), the 'deliberate targeting of a property' (1.73) or 'significant planning' (1.74). Similarly, being male has a greater impact on the determination of whether to impose a custodial sentence than all other retributively significant factors listed in the guideline save for the presence of a 'significant injury or trauma' (2.83) and burglaries committed in the 'context of public disorder'[9] (10.61). In relation to assault, the effect of being a male offender is far more pronounced, at 2.84. Set in context, the only Step One factor to have a greater impact is the 'intention to cause serious harm', which stands at 4.87. Being male appears to be more impactful than all other Step One factors. Finally, in relation to drugs, the 'male effect' was estimated at 2.72. A similar effect to the scale of the drugs operation being considered 'large' (2.92), 'high purity' of the drugs (3.23) and the 'presence of a weapon' (3.19).

5.2. Further work

We believe the findings presented here offer an interesting addition to the debate on gender disparities in sentencing. However, further research efforts should be invested to take this work forward and tackle the many important questions that remain unanswered. For example, we found that few case characteristics were applied differently based on the gender of the offender, but the number of factors that we were able to examine was strongly limited. Understanding whether - and if so, which – specific sentencing factors are responsible for the observed gender disparities will allow us to shed more light on the causal mechanisms behind the observed gender disparities, but to do so we need to use larger datasets so the interaction effect of relatively uncommon case characteristics can be properly estimated. It is also imperative to move analyses beyond the Crown Court, where most of the recent research in England and Wales has focused, and explore the presence of disparities in the magistrates' court, where most of the sentencing takes place. Such research could be undertaken if the latest dataset created by the Sentencing Council to assess the impact of their theft guidelines (Sentencing Council, 2019) is published. Finally, no examination of the underlying mechanisms behind the observed sentencing disparities will be complete without considering offender's ethnicity. As it is the case for male offenders, BAME female offenders are overrepresented in the CJS (MoJ, 2018), it would then be important to assess whether female offenders of BAME background are treated equally to white female offenders. Much could be deduced about the origin of the observed gender disparities from such analysis. However, and in spite of the clear mandate stated in the Lammy Review (2017), the necessary secondary data to examine the intersectionality of gender and ethnicity is yet not available to non-government researchers.

6. Conclusion

We have shown how, even after taking into account most of the relevant factors listed in the sentencing guidelines, male offenders are roughly twice as likely to be sentenced to custody than female offenders having committed the same crime. We have noted multiple legally relevant reasons that might explain such disparities. Therefore, our results should not be interpreted as evidence of unwarranted sentencing disparities. However, we would also like to emphasise how these findings illustrate how, unlike what could be assumed from the gender neutral sentencing guidelines, the sentencing practice does indeed take into consideration offenders' gender. This is an important detail that should be acknowledged in the ongoing debate around the treatment of male and female offenders by the Criminal Justice system. In particular, we believe these results to be of paramount importance with regards to the eventual design of differentiated sentencing guidelines for female offenders.

[8] The estimated effects of these factors are reported in Appendix II in its original scale, namely the log-odds of receiving a custodial sentence length. To facilitate comparisons we use odds ratios when referred to such effects here.

[9] This is attributable to the widespread disorder seen in England and Wales in 2011, which saw abnormally lengthy sentences imposed for offences of burglary, see *R. v Blackshaw and Others* [2011] EWCA Crim 2312, Lightowlers and Quirk (2015), and Pina-Sánchez et al. (2017).

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Appendix I. Descriptive Statistics of the Variables Used

Table A1.1. All Cases of Burglary

	Mean
Dependent Variable	
Custody	0.751
Offender Characteristics	
Male	0.955
Age: 25 to 34	0.365
Age: 35 to 44	0.213
Age: 45 to 54	0.061
Age: over 54	0.008
Reference category: 18 to 24	0.353
Specific Type of Offence	
Domestic burglary	0.746
Non-domestic burglary	0.202
Other burglary	0.024
Reference category: Aggravated burglary	0.027
Step One Factors	
Significant degree of loss	0.237
Vandalism of property	0.123
Victim on premises	0.325
Significant injury/trauma	0.090
Violence particularly involving a weapon	0.051
Context of public disorder	0.012
No injury/trauma	0.128
No violence, no weapon	0.169
Nothing stolen or low value	0.177
Limited damage/disturbance	0.157
Deliberately targeted	0.257
Significant planning	0.202
Equipped for burglary	0.179
Weapon present on entry	0.038
Member of gang	0.273
Offender exploited by others	0.023
Offence committed on impulse	0.101
Mental disorder	0.028
Step Two Factors	
Previous convictions: 1 to 3	0.259
Previous convictions: 4 to 9	0.216
Previous convictions: 10 or more	0.248
Reference category: none	0.277
Offence committed on bail	0.061
Child at home	0.051
Committed at night	0.267
Abuse of power	0.029
Gratuitous degradation	0.007
Steps taken to prevent reporting	0.005
Victim compelled to leave home	0.009
Community impact	0.020
Under the influence of alcohol/drugs	0.156
Failure to comply with court orders	0.111
On licence	0.109
TIC's	0.067
Subordinate role in a gang	0.053
Injuries caused recklessly	0.002
Made voluntary reparation	0.009
No previous relevant convictions	0.083
Genuine remorse	0.204
Good character	0.036
Determination to address addiction	0.090
Serious medical condition	0.013
Lack of maturity	0.067
Lapse of time	0.009
Primary carer for dependant relatives	0.016
Step Four Factors	
Guilty plea entered at first opportunity	0.549
Total sample size: 19,993	

Table A1.2. All Cases of Drugs

	Mean
Dependent Variable	
Custody	0.551
Offender Characteristics	
Male	0.927
Age: 25 to 34	0.363
Age: 35 to 44	0.189
Age: 45 to 54	0.102
Age: over 54	0.028
Reference category: 18 to 24	0.319
Specific Type of Offence	
Possession with intent to supply	0.494
Production/cultivation	0.278
Supplying	0.193
Reference category: Bringing in / taking out	0.035
Drug Class	
Class C	0.015
Cocaine	0.247
Heroine	0.150
Other class A	0.030
Other class B	0.060
Reference category: Cannabis	0.498
Culpability	
Lesser role	0.314
Significant role	0.659
Reference category: Leading role	0.027
Step Two Factors	
Previous convictions: 1-3	0.265
Previous convictions: 4-9	0.067
Previous convictions: 10 or more	0.028
Reference category: none	0.639
Permitted under 18 to deliver	0.002
On bail	0.030
Sophisticated concealment	0.029
Exposure of others to danger	0.004
Presence of weapon	0.009
High purity	0.114
Failure to comply with court orders	0.038
On licence	0.027
Targeting premises of vulnerable people	0.001
Large scale	0.061
Presence of others	0.026
Unlawful access to utility supply	0.043
Level of profit	0.098
Premises adapted to facilitate drug activity	0.055
Location of premises	0.015
Length of time premises used	0.018
Nature of likely supply	0.036
Possession in school	0.002
Possession in prison	0.005
Volume of activity permitted	0.013
Community impact	0.015
Lack of sophistication of concealment	0.118
Involvement due to coercion	0.096
Mistaken belief type of drug	0.005
Isolated incident	0.101
Low purity	0.036
No previous relevant convictions	0.356
Offender's vulnerability exploited	0.080
Genuine remorse	0.277
Good character	0.167
Determination to address addiction	0.143
Serious medical condition	0.041
Lack of maturity	0.092
Mental disorder	0.021
Primary carer for dependent relatives	0.056
Addicted to the same drug	0.186
Using cannabis to help with medical condition	0.021
Step Four Factors	
Guilty plea entered at first opportunity	0.624
Total sample size: 16,973	

Table A1.3. All Cases of Assault

	Mean (std dev)
Dependent Variables	
Sentence length	730.1 (743.3)
Custody	0.485
Offender Characteristics	
Male	0.904
Age	28.9 (9.8)
Offence Type	
GBH with intent	0.087
GBH	0.212
Affray	0.191
Common assault	0.078
Reference category: ABH	0.433
Step One Factors	
Deliberate harm	0.044
Hostility disability	0.002
Intent. serious harm	0.032
Leading role gang	0.056
Hostility age/gender	0.006
Premeditation	0.083
Racially motivated	0.009
Hostility orientation	0.003
Targeting vulnerable	0.065
Use of weapon	0.346
Serious injury	0.249
Sustained assault	0.206
Vulnerable victim	0.110
Lack premeditation	0.246
Mental disorder	0.024
Provocation	0.086
Self-defence	0.055
Subordinate role	0.044
Injury less serious	0.260
Step Two Factors	
Previous convictions: 1-3	0.096
Previous convictions: 4-9	0.062
Reference category: none	0.842
Abuse of trust	0.018
Against public	0.047
On bail	0.026
Dispose of evidence	0.007
Victim forced leave	0.012
Community impact	0.005
Failure warnings	0.013
Failure court orders	0.052
Gratuitous degradation	0.019
Location	0.259
Whilst on licence	0.018
Ongoing effect	0.139
Presence of others	0.165
Previous violence	0.065
Timing of offence	0.102
Under drugs/alcohol	0.285
Determination to address addiction	0.077
Lack of maturity	0.092
Good character	0.167
Isolated incident	0.158
Lapse of time	0.029
Serious medical condition	0.026
Mental disability	0.034
No previous relevant convictions	0.266
Primary carer for dependant relatives	0.035
Genuine remorse	0.338
Single blow	0.190
Step Four Factors	
Guilty plea at first opportunity	0.313
Total sample size: 4,523	

Appendix II. Results from the Regression Models

Table A2.1 Model for Burglary Offences (coefficients in bold are statistically significant)

Logit model (receiving a custodial sentence)	
Variable	Coef. (Std. Error)
Offender Characteristics	
Male	**0.637** (0.093)
Age: 25 to 34	**0.426** (0.051)
Age: 35 to 44	**0.311** (0.061)
Age: 45 to 54	0.034 (0.090)
Age: over 54	0.340 (0.239)
Offence Type (ref.: Aggravated burglary)	
Domestic burglary	**-2.533** (0.359)
Non-domestic burglary	**-3.679** (0.362)
Other burglary	**-3.030** (0.376)
Step One Factors	
Significant degree of loss	**0.570** (0.058)
Vandalism of property	**0.520** (0.074)
Victim on premises	**0.729** (0.055)
Significant injury/trauma	**1.042** (0.117)
Violence particularly involving a weapon	**0.521** (0.155)
Context of public disorder	**2.362** (0.221)
No injury/trauma	**-0.352** (0.080)
No violence, no weapon	0.109 (0.076)
Nothing stolen or low value	**-0.575** (0.054)
Limited damage/disturbance	**-0.147** (0.062)
Deliberately targeted	**0.550** (0.056)
Significant planning	**0.552** (0.067)
Equipped for burglary	0.126 (0.063)
Weapon present on entry	**0.590** (0.181)
Member of gang	**0.267** (0.055)
Offender exploited by others	**-0.632** (0.137)
Offence committed on impulse	**-0.639** (0.065)
Mental disorder	**-1.058** (0.112)
Step Two Factors	
Previous convictions: 1-3	**0.582** (0.057)
Previous convictions: 4-9	**1.106** (0.065)
Previous convictions: 10 or more	**1.300** (0.067)
Offence committed on bail	**0.581** (0.100)
Child at home	**0.482** (0.134)
Committed at night	**0.244** (0.055)
Abuse of power	-0.081 (0.122)
Gratuitous degradation	0.447 (0.404)
Steps taken to prevent reporting	**1.394** (0.575)
Victim compelled to leave home	-0.113 (0.280)
Community impact	**0.434** (0.185)
Under the influence of alcohol/drugs	0.048 (0.063)
Failure to comply with court orders	**0.911** (0.081)
On licence	**1.306** (0.104)
TIC's	**1.127** (0.113)
Subordinate role in a gang	**-0.802** (0.092)
Injuries caused recklessly	**-1.088** (0.545)
Made voluntary reparation	**-0.880** (0.200)
No previous relevant convictions	**-0.901** (0.080)
Genuine remorse	**-0.458** (0.054)
Good character	**-0.611** (0.109)
Determination to address addiction	**-1.650** (0.067)
Serious medical condition	**-0.962** (0.166)
Lack of maturity	**-0.362** (0.083)
Lapse of time	**-0.761** (0.191)
Primary carer for dependant relatives	**-0.967** (0.150)
Step Four Factors	
Guilty plea entered at first opportunity	0.062 (0.042)
Intercept	**2.204** (0.377)
Sample size: sentences	19,993

Table A2.2 Model for Drug Offences (coefficients in bold are statistically significant)

Logit model (receiving a custodial sentence)	
Variable	Coef. (Std. Error)
Offender Characteristics	
Male	**1.002** (0.089)
Age: 25 to 34	**0.138** (0.055)
Age: 35 to 44	**0.162** (0.067)
Age: 45 to 54	0.099 (0.082)
Age: over 54	0.093 (0.139)
Offence Type (ref.: Bringing in/taking out)	
Possession with intent to supply	**-2.594** (0.180)
Production/cultivation	**-2.265** (0.183)
Supplying	**-2.737** (0.185)
Drug Class (ref.: Cannabis)	
Class C	**-0.520** (0.178)
Cocaine	**3.092** (0.071)
Heroine	**3.340** (0.085)
Other class A	**2.014** (0.126)
Other class B	**0.414** (0.088)
Culpability (re.: Leading role)	
Lesser role	**-2.424** (0.176)
Significant role	**-1.260** (0.171)
Step Two Factors	
Previous convictions: 1-3	**0.540** (0.059)
Previous convictions: 4-9	**0.877** (0.097)
Previous convictions: 10 or more	**0.970** (0.146)
Permitted under 18 to deliver	1.163 (0.763)
On bail	**1.166** (0.149)
Sophisticated concealment	**0.586** (0.152)
Exposure of others to danger	0.043 (0.341)
Presence of weapon	**1.161** (0.280)
High purity	**1.172** (0.082)
Failure to comply with court orders	**1.157** (0.130)
On licence	**1.628** (0.193)
Targeting premises of vulnerable people	0.699 (0.725)
Large scale	**1.071** (0.106)
Presence of others	**0.392** (0.139)
Unlawful access to utility supply	**0.554** (0.112)
Level of profit	**0.997** (0.085)
Premises adapted to facilitate drug activity	**0.340** (0.102)
Location of premises	**0.501** (0.197)
Length of time premises used	**1.053** (0.195)
Nature of likely supply	**0.486** (0.133)
Possession in school	**0.925** (0.446)
Possession in prison	**2.291** (0.350)
Volume of activity permitted	**1.120** (0.233)
Community impact	**0.728** (0.204)
Lack of sophistication of concealment	**-0.683** (0.072)
Involvement due to coercion	0.012 (0.077)
Mistaken belief type of drug	-0.026 (0.295)
Isolated incident	**-0.847** (0.078)
Low purity	0.140 (0.117)
No previous relevant convictions	**-0.128** (0.056)
Offender's vulnerability exploited	**0.454** (0.085)
Genuine remorse	**-0.504** (0.054)
Good character	**-0.255** (0.064)
Determination to address addiction	**-1.533** (0.069)
Serious medical condition	**-0.851** (0.119)
Lack of maturity	**-0.354** (0.082)
Mental disorder	**-1.209** (0.162)
Primary carer for dependent relatives	**-0.770** (0.100)
Addicted to the same drug	**-0.483** (0.058)
Using cannabis to help with medical condition	**-1.398** (0.194)
Step Four Factors	
Guilty plea entered at first opportunity	**-0.190** (0.044)
Intercept	**2.269** (0.264)
Sample Size: sentences	16,973

Table A2.3 Models for Assault Offences (coefficients in bold are statistically significant)

	Logit Custody	Log Sentence Length
Variable	Coef. (Std. Error)	Coef. (Std. Error)
Offender Characteristics		
Male	**1.045** (0.164)	**0.137** (0.048)
Age	-0.008 (0.004)	**0.005** (0.001)
Offence Type (ref.: ABH)		
GBH with intent	**5.455** (0.433)	**1.698** (0.032)
GBH	**1.258** (0.115)	**0.579** (0.028)
Affray	-0.092 (0.119)	-0.016 (0.036)
Common assault	-0.297 (0.165)	**-1.268** (0.050)
Step One Factors		
Deliberate harm	**0.528** (0.237)	**0.135** (0.042)
Hostility disability	-0.681 (0.951)	**0.535** (0.200)
Intent. serious harm	**1.584** (0.366)	**0.124** (0.046)
Leading role gang	0.238 (0.203)	0.021 (0.040)
Hostility age/gender	-0.061 (0.566)	0.080 (0.115)
Premeditation	**0.648** (0.174)	**0.128** (0.032)
Racially motivated	0.703 (0.452)	**0.340** (0.099)
Hostility orientation	-0.915 (0.823)	0.069 (0.204)
Targeting vulnerable	**0.770** (0.200)	0.038 (0.038)
Use of weapon	**0.801** (0.096)	**0.123** (0.023)
Serious injury	**0.876** (0.111)	**0.176** (0.025)
Sustained assault	**0.928** (0.119)	**0.114** (0.026)
Vulnerable victim	**0.440** (0.148)	**0.154** (0.003)
Lack premeditation	**-0.569** (0.107)	**-0.143** (0.030)
Mental disorder	-0.025 (0.342)	0.016 (0.094)
Provocation	**-0.660** (0.171)	**-0.218** (0.052)
Self-defence	-0.331 (0.199)	**-0.153** (0.060)
Subordinate role	-0.324 (0.220)	**-0.123** (0.058)
Injury less serious	-0.116 (0.107)	**-0.147** (0.029)
Step Two Factors		
Previous convictions: 1-3	**0.881** (0.153)	**0.080** (0.031)
Previous convictions: 4-9	**1.079** (0.197)	**0.145** (0.036)
Abuse of trust	0.134 (0.350)	-0.028 (0.070)
Against public	**0.801** (0.197)	0.006 (0.046)
On bail	**1.098** (0.320)	0.041 (0.050)
Dispose of evidence	-0.208 (0.758)	**0.290** (0.091)
Victim forced leave	0.391 (0.390)	0.044 (0.081)
Community impact	0.589 (0.632)	-0.047 (0.129)
Failure warnings	0.569 (0.390)	-0.014 (0.073)
Failure court orders	**1.231** (0.223)	0.033 (0.038)
Gratuitous degradation	0.182 (0.372)	0.096 (0.062)
Location	**0.257** (0.115)	0.033 (0.027)
Whilst on licence	**1.454** (0.445)	0.071 (0.060)
Ongoing effect	**0.643** (0.142)	**0.060** (0.028)
Presence of others	**0.300** (0.121)	0.005 (0.028)
Previous violence	**0.554** (0.183)	0.048 (0.035)
Timing of offence	0.232 (0.164)	-0.037 (0.035)
Under drugs/alcohol	**0.221** (0.101)	-0.020 (0.024)
Determination to address addiction	**-1.376** (0.187)	0.011 (0.053)
Lack of maturity	**-0.472** (0.163)	**-0.112** (0.042)
Good character	**-0.926** (0.145)	-0.054 (0.044)
Isolated incident	**-0.842** (0.143)	0.021 (0.043)
Lapse of time	**-0.840** (0.288)	-0.170 (0.094
Serious medical condition	**-1.168** (0.345)	0.036 (0.107)
Mental disability	**-0.774** (0.294)	-0.047 (0.079)
No previous relevant convict	**-0.753** (0.116)	**-0.094** (0.033)
Primary carer for dependant relatives	**-1.064** (0.275)	0.013 (0.082)
Genuine remorse	**-0.332** (0.103)	-0.050 (0.027)
Single blow	-0.126 (0.119)	**-0.123** (0.031)
Step Four Factors		
Guilty plea at first opportunity	0.050 (0.093)	**-0.060** (0.020)
Intercept	**-1.681** (0.234)	**5.415** (0.068)
Random Effects		
Var. court random intercepts	**0.114**	**0.010**
Sample size: courts	75	74
Sample size: sentences	4,523	2,195