

**Research Paper**

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***“They’re your responsibility, you should have thought of that before you committed the crime”*: How women with caring responsibilities experience the criminal court system**

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## Chapter 1: Introduction

Nearly twenty years since Baroness Corston’s seismic review of vulnerable women in the criminal justice system,<sup>1</sup> there has been a growing recognition of the devastating impact that custodial sentences disproportionately have on women and their children. The shift in discourse is welcome progress, though there has been less focus on the distinct challenges women face earlier in their criminal justice journey – particularly in the court system.<sup>2</sup> This gap is evident in the Government’s 2018 Female Offender Strategy, which seeks “to create a justice system that responds to the particular needs of female offenders at all points of the system”,<sup>3</sup> and yet is silent on how this ambition will be met in the courts. Where court reform is mentioned, it is conceptualised only as a vehicle for sentencing outcomes.<sup>4</sup>

Yet how an individual is treated by the court process, before a sentence is passed, can have a significant impact on their life, and how they perceive the legitimacy of the criminal justice system as a whole. Strong evidence indicates that this can profoundly affect future compliance with the law.<sup>5</sup> Therefore, the justice system has much to gain from engaging positively with women at an early stage.

Judicial guidance provides a benchmark for how the court system should be responding to caring responsibilities. The Equal Treatment Bench Book acknowledges that having dependent children may make sitting hours difficult and concludes that the interests of justice are unlikely to be served by a

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<sup>1</sup> Baroness Corston, (2006). *The Corston Report*.

<https://webarchive.nationalarchives.gov.uk/ukgwa/20130128112038/http://www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf>

<sup>2</sup> HM Courts and Tribunal Service, (2023). *HMCTS management information - August 2023*.

<https://www.gov.uk/government/statistical-data-sets/hmcts-management-information-august-2023>

<sup>3</sup> Ministry of Justice, (2018). *Female Offender Strategy*.

<https://assets.publishing.service.gov.uk/media/5b3349c4e5274a55d7a54abe/female-offender-strategy.pdf>

<sup>4</sup> Ibid

<sup>5</sup> See: Tyler, T. (1990). *Why people obey the law*. New Haven, CT: Yale University Press; Lind, E.A., Kulik, C.T.; Ambrose, M. & de Vera Park, M.V. (1993). ‘Individual and corporate dispute resolution: Using procedural justice as a decision heuristic’. *Administrative Science Quarterly*, 38, 224–251.; Korsgaard, A. & Roberson, L. (1995). *Procedural justice in performance evaluation: The role of instrumental and non-instrumental voice in performance appraisal discussions*. *Journal of Management*, 21, 657–669.; Price, K. et al. (2004). ‘The effects of voice-based participation across multiple and interrelated stages of decision-making’, *Academy of Management Proceedings*, 64, 1–6.

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witness or party being late or distracted because of worries over childcare. Consequently, the guidance calls for caring responsibilities to be “accommodated as far as reasonably possible”.<sup>6</sup>

However, as the Equal Treatment Bench Book states, fair treatment does not mean treating everyone in the same way, but involves treating people equally in comparable situations.<sup>7</sup> Certainly, if this standard on responding to caring responsibilities, set out in the guidance, is not met in our courts, it is likely to have a disproportionate impact on women.<sup>8</sup> In an estimated 90% of UK families, the primary carer is a woman.<sup>9</sup> Women are also more frequently ‘sandwich’ carers, caring for young children and elderly parents simultaneously.<sup>10</sup>

This project aims to provide empirical evidence on how far the standard set in the judicial guidance is being met, and understand how women in England and Wales with caring responsibilities experience the court process. Through qualitative interviews with 12 women, it amplifies the voices of those with lived experience on this under-examined, but significant, part of the criminal justice system. In doing so, this report is an important start to the conversation about the shape of reform needed for the women, and their children, who come through our courts.

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<sup>6</sup> Judicial College (2021), *Equal Treatment Bench Book*. <https://www.judiciary.uk/wp-content/uploads/2021/02/Equal-Treatment-Bench-Book-February-2021-1.pdf>

<sup>7</sup> Ibid

<sup>8</sup> The Fawcett Society, (2015). *The cost of caring*. <https://www.fawcettsociety.org.uk/blog/cost-of-caring>

<sup>9</sup> Ibid

<sup>10</sup> Carers UK, *International Women’s Day 2024: 10 facts about women who are unpaid carers*. <https://www.carersuk.org/press-releases/international-women-s-day-2024-10-facts-about-women-who-are-unpaid-carers/>

## Chapter 2: Literature Review

### 2.1 A consensus on reducing maternal imprisonment

Awareness about the importance of responding to the specific needs of women in the criminal justice system has been growing. Two landmark Government reviews have called for better consideration of the children impacted by their mother’s involvement in justice processes. The 2006 Corston Report made a series of recommendations to reduce the number of women sentenced to custody, highlighting the large proportion who are the primary carer of young children.<sup>11</sup> In 2017, the second of the Farmer reviews called for these efforts to be stepped up, which Lord Farmer believed could be done by better data collection on women’s dependants, running “like a golden thread” throughout their engagement with the system.<sup>12</sup>

Nearly twenty years on from Baroness Corston’s seismic report, the research base supporting her findings has grown. These studies show that that women constitute only 5% of the prison population in England and Wales, yet disproportionately shoulder the responsibility of primary caregiving for their families, which causes specific hardships.<sup>13</sup> Kincaid et al’s 2019 report showed that maternal imprisonment more frequently leads to family break-down and children entering the care system.<sup>14</sup> Baldwin and Epstein’s 2017 survey of mothers serving a short-term prison sentence found that poverty and homelessness, often experienced upon leaving prison, acts as a barrier to the return of children to their care.<sup>15</sup>

<sup>11</sup> Baroness Corston, (2007). *The Corston Report*.

<https://webarchive.nationalarchives.gov.uk/ukgwa/20130128112038/http://www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf>

<sup>12</sup> Lord Farmer, (2019). *The importance of strengthening female offenders' family and other relationships to prevent reoffending and reduce intergenerational crime*. <https://assets.publishing.service.gov.uk/media/5d078d37e5274a0b879394c7/farmer-review-women.PDF>

<sup>13</sup> House of Commons Justice Select Committee, (2023) *House of Commons Committee Report: Women in Prison*. <https://publications.parliament.uk/pa/cm5803/cmselect/cmjust/265/report.html>

<sup>14</sup> Sarah Kincaid, Manon Roberts and Eddie Kane, (2019). *Children of Prisoners Fixing a broken system*. [1361-Crest-Children-of-Prisoners-report4.indd \(wixstatic.com\)](https://www.wixstatic.com/1361-Crest-Children-of-Prisoners-report4.indd)

<sup>15</sup> Lucy Baldwin and Rona Epstein, (2017). *Short but not sweet: A study of the impact of short custodial sentences on mothers & their children*. <https://dora.dmu.ac.uk/bitstream/handle/2086/14301/Final%20Research%20Report%20LB%20RE%202017%20.pdf?sequence=3>

Many of these studies have also shone a light on the impact of this separation on the women and their children. Baldwin and Epstein’s survey documented the extreme anguish and distress experienced by many of the mothers, even when suitable childcare arrangements were made.<sup>16</sup> Kincaid et al recognised the imprisonment of a parent as an Adverse Childhood Experience, which negatively impacts long term health and wellbeing.<sup>17</sup> This report also highlighted how the small number of female prisons makes maintaining relationships with children during their sentence harder for women, as they are often held long distances from their home.<sup>18</sup> While our understanding of the consequences of maternal imprisonment has been growing, several studies have highlighted the dearth of comprehensive data on the number of mothers in custody.<sup>19</sup>

Policymakers in England and Wales have also acknowledged the need to reduce maternal imprisonment. The Ministry of Justice’s Female Offender Strategy in 2018 outlined a number of steps that would enable more women to serve their sentence in the community.<sup>20</sup> Additionally, being a sole or primary carer for dependent relatives is now a mitigating factor in the Sentencing Guidelines Overarching Principles, “for offenders on the cusp of custody.”<sup>21</sup> In April 2024, the Sentencing Council stated its intention to go further, and separate ‘Pregnancy, childbirth and post-natal care’ as a dedicated mitigating factor.<sup>22</sup>

## 2.2 Barriers mothers in the justice system face before sentencing

There has been much less research on the experiences of mothers in the justice system before sentencing, appearing predominantly in a small number of grey literature reports produced by third sector organisations. The Prison Advice and Care Trust is one such organisation, which in 2016, described the consequences of parental criminal justice involvement as ‘direct and devastating’ on

<sup>16</sup> Ibid

<sup>17</sup> Sarah Kincaid, Manon Roberts and Professor Eddie Kane, (2019). *Children of Prisoners Fixing a broken system* [1361-Crest-Children-of-Prisoners-report4.indd \(wixstatic.com\)](#)

<sup>18</sup> Ibid

<sup>19</sup> Lucy Baldwin, (2015). *Mothering justice: Working with mothers in criminal and social justice settings*; Liz Hales, (2021). *Management of pregnant women and primary carers of young children through the criminal justice system in England and Wales*. <https://publications.coventry.ac.uk/index.php/cli/article/view/786/887>

<sup>20</sup> Ministry of Justice, (2018). *Female Offender Strategy*. <https://www.gov.uk/government/publications/female-offender-strategy>; Ministry of Justice, (2023). *Female Offender Strategy Delivery Plan 2022 to 2025*. <https://www.gov.uk/government/publications/female-offender-strategy-delivery-plan-2022-to-2025>

<sup>21</sup> The Sentencing Council, *General guidelines: overarching principles*: <https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/general-guideline-overarching-principles/>

<sup>22</sup> The Sentencing Council, (2024). *Sentencing Pregnant Women and New Mothers*. <https://www.sentencingcouncil.org.uk/news/item/sentencing-pregnant-women-and-new-mothers/#:~:text=If%20considering%20a%20custodial%20or,until%20one%20can%20be%20provided.>

children, and found awareness and training on this to be low amongst justice agencies and schools.<sup>23</sup> Two articles focused on the entry point to the justice system, and the consequences of police action on women and their children. In 2012, Hales and Gelsthorpe exposed how mothers were being separated from their baby during an arrest, including those who were breastfeeding. They also observed that the often surprise nature of the arrest, and insufficient time to arrange alternative childcare, resulted in high numbers of children being taken into care.<sup>24</sup> In 2016, Tilley-Rilley interviewed children who had witnessed a police raid of their home, and found high levels of trauma and strong negative perceptions towards the police.<sup>25</sup>

A 2021 report by Clinks and Birth Companions attested to the impact that engaging with court orders can have on women’s antenatal and postnatal care needs. The report surveyed voluntary sector organisations and specialist safeguarding midwives and found that bail restrictions and licence conditions were preventing pregnant women and new mothers from attending healthcare appointments located in restricted locations. The restrictions were also found to be impeding women’s ability to plan for the birth, as they were unsure whether they would stay in the community.<sup>26</sup> The authors concluded that probation services failed to take sufficient account of the needs of this group.<sup>27</sup> Birth Companions’ report in 2023 maintained that there continues to be a lack of recognition of, and responsiveness to, motherhood in community sentence requirements and probation supervision.<sup>28</sup> Advance, Birth Companions and Clinks reiterate the recommendations made by Gelsthorpe et al. in 2007 for justice agencies to provide practical help with transport and childcare.<sup>29</sup>

There is a striking gap in the literature on the experiences of mothers in the courts system. The need for court hearings and trials to respond to childcare needs is briefly mentioned in a survey conducted by Revolving Doors in 2020. Several defendants reported being in court for longer than expected, and

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<sup>23</sup> Prison Advice and Care Trust, (2016). *Hear Our Voice: Recommendations for action to safeguard children affected by the arrest and imprisonment of family members*. [https://www.prisonadvice.org.uk/media/hu5d1cu0/hov\\_report\\_2018.pdf](https://www.prisonadvice.org.uk/media/hu5d1cu0/hov_report_2018.pdf)

<sup>24</sup> Liz Hales and Lorraine Gelsthorpe, (2012). *The Criminalisation of Migrant Women*. <https://citeseerx.ist.psu.edu/>

<sup>25</sup> Tilley-Riley, (2016). *Collateral damage: an inquiry into the impact of police home raids on the children and siblings of offenders in England*. <https://www.nicco.org.uk/userfiles/downloads/845%20-%20Collateral%20Damage.pdf>

<sup>26</sup> Clinks, Birth Companions, (2021). *A window of opportunity: Understanding the needs and experiences of pregnant women and new mothers in contact with the criminal justice system in the community in England*. <https://www.clinks.org/sites/default/files/2021-05/.pdf>

<sup>27</sup> Ibid

<sup>28</sup> Birth Companions, (2023). *Spotlight: Dual contact Understanding the needs and experiences of women in contact with the criminal justice and children’s social care systems during pregnancy and early motherhood*. [https://hubble-live-assets.s3.eu-west-1.amazonaws.com/birth-companions/file\\_asset/file/973/Birth\\_Companions\\_Spotlight\\_on\\_Dual\\_Contact\\_FINAL.pdf](https://hubble-live-assets.s3.eu-west-1.amazonaws.com/birth-companions/file_asset/file/973/Birth_Companions_Spotlight_on_Dual_Contact_FINAL.pdf)

<sup>29</sup> Lorraine Gelsthorpe, Gilly Sharpe, Jenny Roberts, (2007). *Provision for women offenders in the community*. [https://www.researchgate.net/profile/Lorraine-Gelsthorpe/publication/242406567\\_Provision\\_for\\_Women\\_Offenders\\_in\\_the\\_Community/links/54a154110cf256bf8baf6798/P/rovision-for-Women-Offenders-in-the-Community.pdf](https://www.researchgate.net/profile/Lorraine-Gelsthorpe/publication/242406567_Provision_for_Women_Offenders_in_the_Community/links/54a154110cf256bf8baf6798/P/rovision-for-Women-Offenders-in-the-Community.pdf)



spending a significant amount of time on the day trying to resolve problems with childcare, rather than focusing on their case. They described this as stressful and distracting.<sup>30</sup> My research seeks to fill this gap, and improve our understanding of how the courts respond to women’s childcare needs before a sentencing decision is made.



<sup>30</sup> Revolving Doors, (2020). *Understanding and improving defendant engagement*. <https://revolving-doors.org.uk/wp-content/uploads/2022/07/Understanding-and-improving-defendant-engagement.pdf>

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## Chapter 3: Research Methodology

### 3.1 Research questions

My research sought to understand how women with caring responsibilities experience attending criminal courts in England and Wales, and the extent to which their needs are accommodated “as far as reasonably possible”, as required by the Equal Treatment Bench Book.<sup>31</sup> This project was directed by the following research questions:

1. How are caring responsibilities normally managed alongside other activities and demands?
2. What barriers do caring responsibilities add to women’s attendance and engagement with the court process?
3. What gaps in support are there for women with caring responsibilities attending and engaging with the court process?
4. What practical changes can women with caring responsibilities identify that would have improved their experience of court?

### 3.2 Research method

I employed a research design which consisted solely of qualitative interviews. As Robson and McCartan state, the qualitative approach allows the design of studies to be framed by assumptions, but is flexible to evolving ideas, and crucially, participant views.<sup>32</sup> As a professional working in criminal justice policy, I came to this research with strong assumptions about how the needs of women in the justice system are often not met, which leads to disproportionate harms. Moreover, I have insight into the experiences of women in the court system, as I work for an organisation which runs a court-based advice service. While my prior understanding provided the impetus for this project, my research seeks to gain insight into this phenomenon from the perspective of women with lived experience.

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<sup>31</sup> Judicial College (2021), *Equal Treatment Bench Book*. <https://www.judiciary.uk/wp-content/uploads/2021/02/Equal-Treatment-Bench-Book-February-2021-1.pdf>

<sup>32</sup> Robson and McCartan, (2011), *Real World Research*.

### 3.3 Recruitment

I took a purposive sampling approach to recruiting interviewees. Etikan et al explain that this method involves selecting interviewees by virtue of their experience, and ability to communicate this in a reflective manner.<sup>33</sup> In line with this approach, I identified a specific cohort (see below for sample criteria) who were willing to provide information of engaging with criminal court alongside caring responsibilities – to build “information-rich cases”.<sup>34</sup>

Robson and McCartan note that the findings from purposive sampling can speak to occurrences in other similar settings.<sup>35</sup> Accordingly, this recruitment tool allows insight to be drawn into the occurrences of criminal courts across England and Wales and broadens the scope of my research findings.

My sample was restricted to interviewees who met five criteria:

- Aged over 18
- Identified as a woman
- Had attended a criminal court in England and Wales in the last five years
- Had caring responsibilities at the time of attending court
- Whose involvement with the justice system had concluded

I decided to broaden my sample criteria to include women who had attended court as either a defendant or as a witness, as the Equal Treatment Bench Book rightly notes that the interests of justice are unlikely to be served if either witness or defendant is unable to fully engage with the court process because of worries over childcare. I also saw value in leaving space in the research to compare if there was differential treatment of the two groups. However, it is likely they will have differing experiences and processes to engage with, therefore, I have explicitly stated in my findings which group I am referring to.

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<sup>33</sup> Ilker Etikan, Sulaiman Abubakar Musa, Rukayya Sunusi Alkassim, (2016). ‘Comparison of Convenience Sampling and Purposive Sampling’. *American Journal of Theoretical and Applied Statistics*, 5:1.

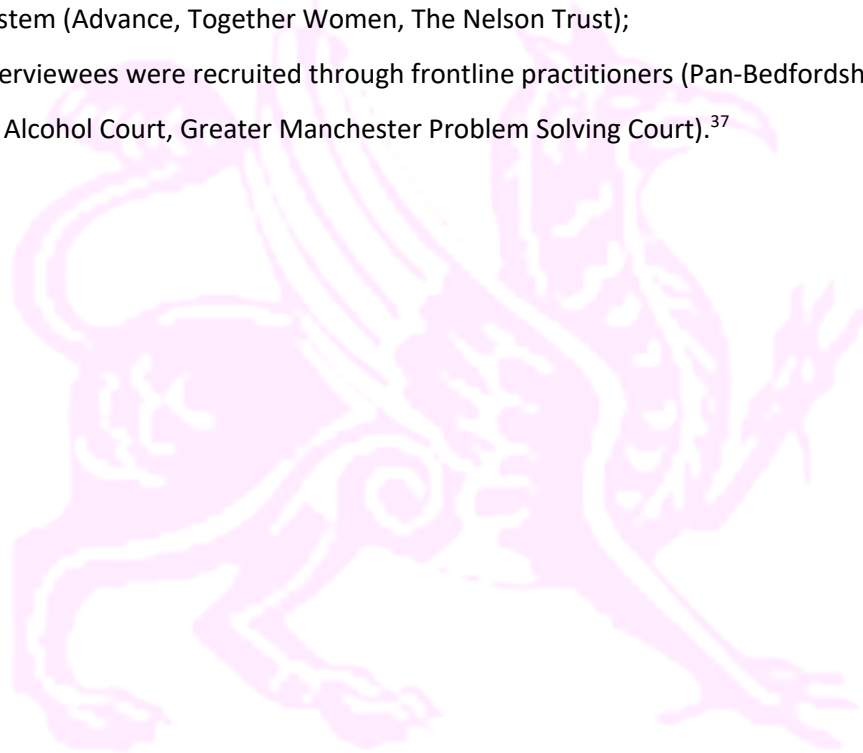
<sup>34</sup> Ibid

<sup>35</sup> Robson and McCartan, (2011). *Real World Research*.

Moreover, I included within the scope of “caring responsibilities” the care of elderly, disabled or sick dependants, as women disproportionately take on this responsibility,<sup>36</sup> and the implications for engaging with court are likely to be similar to managing childcare.

The women in my sample were recruited by contacting voluntary sector organisations and frontline practitioners. Interviewees were offered a £40 shopping voucher to be interviewed. Through this approach:

- Two interviewees were recruited through an at-court advice service (CASSPLUS);
- Three interviewees were recruited via third sector organisations supporting women in the justice system (Advance, Together Women, The Nelson Trust);
- Seven interviewees were recruited through frontline practitioners (Pan-Bedfordshire Family Drug and Alcohol Court, Greater Manchester Problem Solving Court).<sup>37</sup>



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<sup>36</sup> Carers UK, *International Women’s Day 2024: 10 facts about women who are unpaid carers*. <https://www.carersuk.org/press-releases/international-women-s-day-2024-10-facts-about-women-who-are-unpaid-carers/>

<sup>37</sup> While these interviewees were referred by practitioners involved in the running of these alternative court programmes, they each met the third criterion, and had engaged with standard criminal court proceedings. Our discussion focused exclusively on this experience.

### 3.4 Sample characteristics

Interviewee number	Defendant/witness	Region	Dependants	Carer status <sup>38</sup>
Interviewee 1	Witness	Devon and Cornwall	One primary school age child	Single parent
Interviewee 2	Defendant	Bedfordshire	Two primary school age children	Single parent
Interviewee 3	Defendant	Devon and Cornwall	Two vulnerable teenagers <sup>39</sup>	Single parent
Interviewee 4	Defendant	Bedfordshire	One primary school age child	Shared custody with mother
Interviewee 5	Defendant	Avon and Somerset	Two children under five	Shared custody with ex-partner
Interviewee 6	Defendant	East Riding of Yorkshire	Baby under the age of one	Single parent
Interviewee 7	Defendant	Greater Manchester	Two children under 11	Primary carer
Interviewee 8	Defendant	Greater Manchester	Two primary school age children	Primary carer
Interviewee 9	Defendant	Greater Manchester	Three primary school age children and disabled step-mother	Primary carer
Interviewee 10	Defendant	Greater Manchester	Disabled adult child	Carer
Interviewee 11	Witness	London	Three children, one of primary school age	Single parent
Interviewee 12	Defendant	Greater Manchester	Three children, one of primary school age	Single parent

<sup>38</sup> The high prevalence of interviewees who were a single parent reflects the national statistics on single parent families, which make up around a quarter of families with dependent children in the UK, which, importantly for the focus of this research, are overwhelmingly headed by women (90%). See: Gingerbread, *Single parents facts and figures*. <https://www.gingerbread.org.uk/our-work/single-parents-facts-and-figures/#:~:text=Single%20parents%20today&text=There%20are%20around%201.8%20million,single%20parents%20are%20women%20>

<sup>39</sup> Interviewee 3 used the term “vulnerable” to describe her children, as their father had recently passed away.

### 3.5 Interview approach

In total, I conducted a one-off interview with 12 interviewees between August and October 2023. The interviews were conducted online, using Microsoft Teams or WhatsApp video call. This allowed me to broaden the geographic scope of the interviewee sample. Additionally, as my research seeks to understand the constraints associated with caring responsibilities, an online interview gave greater flexibility for their participation alongside these demands.

I conducted the interviews using a semi-structured approach, as Robson and McCartan recommend this method for collecting in-depth data on subjective topics, notably emotions and experiences.<sup>40</sup> I created a checklist of topics to guide the conversation, informed by my research questions and the literature, and allowed for unplanned follow-up questions.

### 3.6 Ethical considerations

I took a number of steps to ensure that the interviewees were informed of the study’s purpose and felt in control of their participation. I arranged a pre-interview call to explain the project and give the interviewees space to ask questions. I also sent the interview questions in advance so they felt prepared about what would be discussed.

At the start of each interview, I restated the purpose of the study, and confirmed that their identity would be anonymised, and their data stored securely in a password encrypted folder only I had access to. I also clarified that they could withdraw their participation until the report was published and receiving the voucher was not dependent on this. Interviewees gave their informed consent to participate verbally, given the online nature of the interview.

I sought to mitigate risks that the interviewees may experience distress during the interview by clarifying that the interview could be paused, rescheduled or end at any time. I also familiarised myself with both verbal and non-verbal cues of distress before beginning fieldwork.

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<sup>40</sup> Robson and McCartan, (2011). *Real World Research*.

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Ethical approval for this research was obtained from the University of Cambridge Institute for Criminology Ethics Committee.

### 3.7 Analysis approach

I audio-recorded the interviews and transcribed the recordings. I analysed the transcripts using inductive thematic analysis, which allows for the findings to directly arise from the analysis of the raw data, rather than a theoretical perspective.<sup>41</sup> This was driven by the objective of my research, to understand a specific kind of court experience, which can only be answered through the participant’s personal experience.<sup>42</sup> I created an initial coding framework, informed by the research literature and my research questions, and systematically identified and organised patterns of meaning across my data set, to make sense of the collective experience of the interviewees. The inductive approach enabled me to expand the codes as new themes arose from the data, that I deemed relevant to my research questions.<sup>43</sup>

### 3.8 Limitations

The sample size is sufficient to draw indicative conclusions from my inquiry, though its small-scale nature prevents broader conclusions to be made about this phenomenon in every court that is within scope. Similarly, the geographic scope is wide, but not systematic, which means the findings are not able to compare practice occurring in specific courts or regions.

I deemed it necessary to exclude interviewees whose case was still live in the court system, due to ethical concerns around the risks of disclosing evidence. This limited my sample size and meant that some interviews were recalling experiences that had occurred months or years ago (though within the 5-year limit). This reduces the cogency of my findings to a degree.

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<sup>41</sup> David R. Thomas, (2006). ‘A General Inductive Approach for Analyzing Qualitative Evaluation Data’. *American Evaluation Association*. 27:2.

<sup>42</sup> Virginia Braun and Victoria Clarke, (2006). *Thematic analysis: A practical guide*.

<sup>43</sup> Anthony Tuckett, (2005). ‘Applying Thematic Analysis Theory to Practice: a researcher’s experience’. *Contemporary Nurse*. 19(1-2, pp.75-87.

## Chapter 4: Findings

### 4.1 The experience of attending court

The interview findings indicate that the court system fails to consider the impact that caring responsibilities can have on the ability of the women to engage with the process, which is compounded by the absence of childcare facilities. The two case studies below demonstrate some of the issues caused by this lack of responsiveness and provision.

#### 4.1.1 Lack of consideration for caring responsibilities

There was a consensus amongst all of the women who had attended court as a defendant that the court system did not recognise the impact that caring responsibilities could have on their ability to attend their hearings. This was felt to be particularly striking at the very start of their journey through court – when they were first summonsed. The women were not asked if they had children or any dependants in their care, and were told that they had to attend or would face arrest.

*“At no point was I asked if being a carer would affect my attending, I was just told these are the dates that you need to attend, end of story”* - interviewee 10, carer of disabled adult daughter.

Several of the women felt that this lack of consideration for caring responsibilities persisted throughout the court process.

*“I certainly didn’t ever feel like [the court said] oh look she’s got small children, let’s get her in quicker, I didn’t notice that for anyone, someone with disabilities, it was just how your name appears on the list, that’s when you go in, and that’s it, that’s not changing.”* - interviewee 4, mother of primary school age child.

The two women who had attended court as a witness described a similar approach to the arrangements for them to give evidence during a trial. Both women said that the court did not ask if they had caring



responsibilities. While they were both shown more consideration over their availability, this was limited to whether they had booked any holidays abroad.

*“They only ask you when if you're on holiday or away, if you're not in the country, they don't actually ask about work or childcare” - interviewee 1, mother of primary school age child.*

### **Case study A: Failure to account for children from arrest to sentencing**

When interviewee 5 was arrested, the police did not ask her if she had children in her care. She asked to contact the father of her two young children, with whom she had a joint custody arrangement. Her request was refused, and she was told they would be fine as someone else was looking after them. She was denied bail and was only able to communicate this to her family through her solicitor.

Her sentencing hearing was adjourned seven times, and she was held on remand for a year. She begged to speak to her children during this period, including each time she appeared at court, but was continually told it wasn't possible yet. She believes she was treated this way, despite this being her first offence because she was arrested and jointly tried with her co-defendant, who was a prolific offender.

The lack of contact with her children took a serious toll on her mental health and affected her behaviour. She became involved in fights and refused to follow orders from the prison guards. Her sudden absence affected her children and made it harder for them to understand why she had vanished overnight.

The first time that she was able to make a phone call to her children was one month into her sentence, 12 months after her arrest. She described feeling broken by the experience.

#### **4.1.2 Lack of facilities for children**

Ministry of Justice guidance states that children are allowed into the court waiting room, but not the courtroom itself.<sup>44</sup> Several of the women spoke about the lack of facilities for children at the court building. This was particularly raised by women with very young children, who had not yet started school. Interviewee 11 asked the Witness Service if there was a crèche where she could leave her children while she gave evidence and was told that this type of service did not exist.

<sup>44</sup> Ministry of Justice, *Before court: Going to a Criminal Court as a Defendant*.

<https://assets.publishing.service.gov.uk/media/5df76685ed915d093a15d219/before-court-criminal-court-defendant-eng.pdf>

*“I remember asking the Witness Care Unit, you know do they have like a crèche service for children and she was laughing at me, she was saying ohh it's a court, it's not a crèche service” -*

interviewee 11, mother of three children, one of primary school age.

The waiting room in the court building was also described by many as an intimidating and cold environment, which did not feel appropriate for children. Interviewee 4 said that there was nothing to entertain children while they waited, which she contrasted to the toys and books in the waiting rooms of doctors and dental surgeries. The lack of facilities and child-friendly spaces factored into some of the women’s decision not to take their children with them to court. As a result, this limited the options they had over their care arrangements as they engaged with the court process.

*“The waiting rooms could definitely be more child friendly 100%. And they're not. Sometimes you can't even get a coffee in some of them” -* interviewee 2, mother of two primary school age children.

Moreover, there was an inconsistent understanding amongst the interviewees around the court’s policy on bringing children into the building. Some believed that very young children were permitted to enter the waiting room, but not older children. Others believed that there were restrictions on children of any age entering, especially into the courtroom itself. Again, this impacted some of the women’s options around childcare.

### **Case study B: Lack of provision for attending court from a Mother and Baby Unit**

While interviewee 6 was serving a custodial sentence, she was required to attend court to be sentenced for a different offence. At the time she had a young baby, and a place on the prison’s Mother and Baby Unit. She was transported to and from court in a cage in the back of a prison van, with her baby on her lap.

She was held with her baby in a cell below the court room while she waited. The cell was cold, and she did not have access to things for her baby, such as nappies and wipes.

She was called into the court room, and asked the guards to hold her baby until she returned. She thought that if she had taken her baby into the dock the judge would have shouted at her. She believed that the guards did this as a favour, despite the fact that it contravened court safeguarding policy, as they knew each other from previous times she had been to court.

#### **4.1.3 Practical challenges**

Several of the interviewees also encountered practical and logistical challenges, which made physically attending their hearing difficult. Many were associated with the court system’s approach to listing cases. This section outlines these challenges in turn.

##### **A - Date of hearing**

The court’s rigid imposition of the hearing date was frequently identified as one source of conflict between attending court and making childcare arrangements. The interviewees who attended court as a defendant were informed of the date of their initial hearing on arrest or by letter. They described feeling frustrated at the lack of choice over the date, or even any consultation on their availability. This was a particular issue for women with school age children whom had a hearing scheduled during the school holidays. For instance, interviewee 8 worried about being left with insufficient annual leave to take care of her children during the school summer break, as a result of using it to attend court. Similarly, those who had a future hearing scheduled from the courtroom reported that the date was often agreed without any concern shown for their ability to attend. Interviewee 2 had felt incredulous when the availability of everyone in the court room was consulted to set the date of her next hearing, except her own.

*“[The court staff] didn’t even ask me if the court date was fine, they asked everybody else that’s involved, literally, so, lawyers can you make it, can you make it, all the rest of you, can the whole world make it, nobody asked me if I could make it. It was like, okay so this is your court date, this is what time you need to be here, we’ll see you then.”* - interviewee 2, mother of two primary school age children.

The two witnesses shared similar concerns about being able to attend court on the dates that had been set for the respective trials, as they were both single parents with children in primary school who required their care.

*“Well it was good that it was a school day. I mean, if it was in a school holiday then I’d be really struggling”* - interviewee 1, mother of primary school age child.

### **B - Time of hearing**

Many of the interviewees who attended court as a defendant also felt that childcare issues emerged as a result of the court’s approach to scheduling the time of their hearing. As is required of every court attendee, the women were not given an exact time that their hearing would start in advance and were instructed to arrive at court at the beginning of either a morning or an afternoon session, during which they could be called into the courtroom at any time. Several women said that this system added a layer of complication to making alternative care arrangements for their children. For some, it meant finding someone who could look after their children for long periods of time in case they had to wait in court for several hours. This was also experienced by the two witnesses, who were told to be available, and wait at court until they were needed to give evidence. The uncertainty increased the levels of stress and worry already present for many of the women as a result of being summonsed to court.

*“I feel like when I asked that question, like what about the children? Like who’s gonna take care of them? And you’re expecting me to come from eight in the morning to five or six? Who’s going to be taking care of the kids?”* – interviewee 11, mother of three children, one of primary school age.

*“I was nervous because I didn’t know how long it was gonna take. Would I be back in time to collect [my son] from school. If not, who could I ask? Cos then I have all this worry about”* - Interviewee 1, mother of primary school age child.

Interviewee 10, who cared for her adult daughter, also found the scheduling of her court hearing presented distinct challenges when it came to her caring responsibilities. Her uncertainty over how long

she would need to stay at court created a dilemma. She felt she could either take her daughter with her to court but worried that this would subject her to a long wait in a stressful and unpleasant environment. Alternatively, she could leave her daughter to wait at home by herself, potentially for several hours, during which time she might become anxious and distressed. Without knowing exactly when her hearing would start and end, she felt ill-equipped to decide the best course of action for her daughter.

*“It was just how long I was waiting, which then obviously affected my judgment as to whether my daughter could come with me [...] you know, it might have helped her. It's just...it's just way too long. [...] if someone's a carer, I do feel that their time's, not more important than maybe other people, but it certainly needs scheduling a bit better”* - interviewee 10, carer of disabled adult daughter.

### **C - Delayed hearings**

While many of the interviewees felt that the planned scheduling of their hearing or trial made making childcare arrangements harder, some were also affected by inadvertent disruption to the court schedule, which compounded their difficulties. A few of the women had experienced long delays, which meant they had to wait at court for several hours past the window of the time they had initially been told to expect. These delays were disruptive to the childcare arrangements that had been put in place. For some of the women, such as interviewee 12, it resulted in trying to contact those who were looking after their children from the court waiting room, to ask them to look after them for a longer time than originally had been agreed, at short notice. The interviewee said this added to the stress they already felt as a result of having to go to court.

*“I said to the solicitor, how long is it gonna be? She said ‘Well, I don't know because I mean, I'm in here with you and I've got a youth case next door, so I'm like in between the two’. I said OK, when I went off and had a second ciggie, I'm asking her, look my kid is with the school. It's one o'clock now, I need to leave you in the next hour and a half. But I went in after that, I ended up downstairs and I cussed the hell out of my solicitor. She phoned the school and she explained to [the head teacher] that they'd locked me downstairs, and I'm not gonna get out by four or five o'clock”* – interviewee 12, mother of three children, one of primary school age.

The delay to interviewee 3's hearing had serious implications for her case. After waiting for hours to be called into court, she was told that it would not start until much later in the day. She decided to leave the court, as she needed to collect her children from school. She knew that this risked a warrant being issued for her arrest, but felt she had no other option. Fortunately, interviewee 3 had been in contact

with a court-based advice service who were able to rearrange her hearing date on her behalf without incurring further sanctions.

*“They were really short staffed or something. I had to pick my kids up. My kids were coming home from school that was it. And so my court time was something like 11 o’clock in the morning, but at half past two I still didn’t have it, and so they said oh I’d be heard in the afternoon or something after that time, so I left”* – interviewee 3, mother of two vulnerable teenagers.

#### **D - Rescheduled hearings**

Another way some of the women encountered disruption at court was the rescheduling of their court hearing or trial to a different date. One interviewee was told that a lack of jurors, another that a lack of court staff, had prevented their hearing from going ahead on the original date. The interviewees found this to be extremely disruptive to the arrangements they had made for their children to be looked after by friends, family or after-school clubs. They had to be changed, often with very little notice. For some of the women, this occurred multiple times, which led to a constant cycle of rearranging their children’s care.

*“I’d taken time off work and I have to arrange for somebody to come and stay or to collect him from school. Come back here and stay with him until I arrive back...but again I had to cancel that three times, on the day or the day before that it actually happened”* - interviewee 1, mother of primary school age child.

They described how this upheaval, again, brought additional stresses to their engagement with court processes. The women who had suffered multiple rescheduling recounted the anxiety they had felt due to the uncertainty about whether their hearing would actually go ahead on each new date.

*“It’s more the stress, like I said just not knowing what’s gonna happen. And then if you think oh it’s coming up on Monday whatever and you start, you start sort out the arrangements stuff and then they change it and then you’ve got to re-sort it all out again and you know it just like just messes it all”* – interviewee 6, mother of a young baby.

#### **E - Court location**

The court location also made attending court more difficult for some interviewees; particularly those who lived in rural areas, where public transport was poor, and those who could not drive. A long journey to court and back meant finding someone able to take care of their children for an even longer period of

time, and for some, it constrained their ability to collect their children on time from school. It was described as feeling like one more logistical thing to worry about, which added to the mental toll of going to court.

*“I live in quite a rural area, there’s small towns, you get arrested in one place, and you’ve got to get to... it’s about an hour and a half on various buses but even as a drive it’s like half hour, forty-minute drive. You know getting out and what are you going to do with the children in that time, because you can’t take them into court”* – interviewee 2, mother of two primary school-age children.

#### **F - Absence of challenges**

While most of the interviewees had encountered these logistical challenges, this was not experienced universally. Three of the women reflected on their experience of attending court, and arranging care for their children, as largely free of issues. Some of the women who had been to court on multiple occasions said that certain hearings had been less challenging to attend than others. Yet this occurred more to luck, and circumstances playing out in a particular way, than accommodation from the court system. For instance, their children were of school age and their hearing had been scheduled during school time, or their hearing went ahead on the original date and within the timeframe they had been told to expect.

*“Luckily it was a school day and I had a friend that has kids in the same school if it ran over the school time”* - interviewee 6, mother of two primary school age children.

In some cases, the absence of challenges around arranging childcare was related to circumstances changing in advance of the hearing, which removed obstacles that would have constrained their ability to attend court. For instance, interviewee 1, who attended court as a witness, was able to make the school pick-up because the defendant changed his plea at the last moment, which suspended the trial.

*“I got there before the end of the school day because he changed his plea, so I was very lucky again”* - interviewee 1, mother of primary school age child.

In two instances, the women had experienced some of the logistical challenges previously listed but changing circumstances had made these slightly easier to deal with. This was the case with interviewee



10, who had moved within a five-minute walk to the court where her hearing was taking place. As a result, she was away from her adult daughter for a shorter time. This is another example of attendance at court being facilitated by circumstance, and not through accommodations made by the court system.

#### 4.1.4 Lack of support from the court system

In addition to feeling that the court schedule was not adaptable to childcare needs, many of the women said there was insufficient support, and they were made to feel stigmatised for being a mother involved with the criminal justice system.

##### A - Lack of support for childcare issues

Some women said they had not known whom to contact at court for help when challenges arose which impacted their ability to make their hearing. A few of the women spoke about how the formalities of the court created a barrier to asking for help. They described the attire and jargon of the clerks, magistrates and judges as intimidating, which made it hard for them to raise awareness of their problems.

*“It’s very much a feeling of being spoken at. Being spoken down to, being kind of dictated, I never, felt much like a person, while you know sitting, court rooms are a scary place, and you’ve got all these professionals, and you’ve got people speaking their legal lingo that I don’t understand” -*  
interviewee 2, mother of two primary school age children.

A few of the interviewees had felt able to raise their concerns about who would take care of their children while they attended their hearing to various people within the justice system. Some spoke with the police officer at their arrest, others had questioned the magistrate or judge while in the courtroom. Each of these encounters were described as lacking in both compassion and a willingness to help them resolve the issues that they faced. Interviewee 12 described how she was made to feel embarrassed when she asked court staff about how she could make it in time to pick up her son from school.

*“I said can you make a date like early in the morning and then I can go from school straight to court and that way it’s giving me at least 4-5 hours. I get to court from nine, I know court doesn’t start until half nine, ten, but it’ll at least give me something until two half 2 to try and sort something out. So he looked at me like I was a fucking crazy person” –* interviewee 12, mother of three children, one of primary school age.



Nine out of the ten defendants had legal representation at the majority of their hearings. A couple of the women spoke to their solicitor about the problems they were experiencing arranging childcare, and reported that they received the same message: how the women made it to court for the time they had been told was out of their solicitor’s scope. They would just have to make it work or face the consequences – a warrant being issued for their arrest.

*“If you call your solicitor and say I’ve got no childcare or I can’t get there, the main sort of response is, um you really need to get there, because otherwise you’re breaching bail, they’ll reissue a warrant, then you’re going to get arrested and you’re going to get caught, and then what are you going to do then” - interviewee 2, mother of two primary school age children.*

It was widely felt that the lack of responsiveness to issues around childcare was part of a wider problem with the court process, which did not provide any advice or support to cope with the stresses of going through the justice system. Two of the women said that they had been shown more compassion and concern for their wellbeing from other people attending court, than by the court service.

*“Court’s the worst because it gives you so much anxiety. You think you’re going to lose everything. And they’re all just looking at you. The only people that ask if you you’re okay or why you’re here for are the people who’ve committed the crimes themselves” – interviewee 12, mother of three children, one of primary school age.*

### **B - Stigma of attending court**

The stigma associated with being a mother in contact with the justice system is well evidenced<sup>45</sup> and was a prominent theme in many of the interviews with women who attended court as a defendant. I frequently heard that behind the lack of accommodation, or support from the court, was the belief that they were deserving of their problems. Several women described how interactions with the police, their solicitor, court staff, magistrates and judges, had made them feel that if they had been better mothers, they would not have committed the crime and been at court in the first place. The attitude they described is particularly concerning given it characterises conversations that happened before the hearing outcome was decided and contravenes the right to be presumed innocent until proven guilty.<sup>46</sup>

<sup>45</sup> Advance, (2020). *A Place to go like this*. [Advance-A-place-to-go-like-this-Full-Report-and-Appendix-Web-1.pdf](https://advancecharity.org.uk) ([advancecharity.org.uk](https://advancecharity.org.uk)); Sarah Beresford, (2018). *What about me? The impact on children when mothers are involved in the criminal justice system* <https://prisonreformtrust.org.uk/wp-content/uploads/2018/02/what-about-me.pdf>; Shona Minson, (2019). ‘Direct harms and social consequences: An analysis of the impact of maternal imprisonment on dependent children in England and Wales’. *Criminology & Criminal Justice*, 19(5), 519-536. <https://doi.org/10.1177/1748895818794790>

<sup>46</sup> The Human Rights Act 1998 art. 6(2).

Many of the women who felt that they were being judged in this way spoke about the negative impact it had on their mental health and sense of self-worth.

*“Generally, you know you kinda felt that it’s looked down on, like if I say tomorrow, is there any chance that I could you know, be quick with this because of duh duh duh, if you say that as you’re going in, or to anyone that I’ve got children, they kind of go, oh, have you now. It’s kind of that hmm, you know, great mummy. Oh great mum you are, you’re in court, it just felt like very, yeah kind of a little bit, bit of a stigma to it. Being a mother” – interviewee 2, mother of two primary school age children.*

Some of the women stated that they felt less able to raise the issue of childcare the next time that it arose, as a consequence of perceiving this stigma. Some said that they did not feel able to speak about their children at all and focused on getting in and out of court as quickly as possible. As a result, they described feeling like they had to shoulder the burden by themselves. Interviewee 2 shared how she had once spent the day at court frantically leaving the waiting room multiple times to check on her children, who were waiting for her in the carpark with a friend. Yet she said that she did not want to admit to anyone at court what was happening, as she feared being condemned as a bad mother and that social services would become involved.

*“You just want to get in, get it done, get out quickly and hope they don’t find out. There is also that other fear that if social services are involved, if I go in and tell them about the children, or I talk about difficulties with the children, is that going to bring social services in” – interviewee 2, mother of two primary school age children.*

### **C - Support provided by the court**

While many of the women I interviewed found the court to be unresponsive, judgemental and ultimately unhelpful in resolving the issues they encountered around childcare, a small number had more positive experiences. Interviewee 7 contacted her solicitor on the morning of her hearing when she needed to stay at home and look after her unwell son; the solicitor was able to rearrange her court hearing without any issues. Similarly, interviewee 2 remembered that, on one occasion a judge had instructed a probation officer to conduct a pre-sentence report at her home to avoid making her children go with her to do this at court.

*“The judge insisted that probation come to my home, and do the pre-sentence report in my home. So that was a nice thing. He was like we can’t facilitate that, and he was like why not, why can’t you, you go and have the conversation with her at home, in her living room, there’s no reason why you can’t do that, I want you to do that, and they did that, so that I didn’t have to drag the children over to court” – interviewee 2, mother of two primary school age children.*

Moreover, interviewee 2 had attended court multiple times for a number of different offences, and felt that the level of support, or willingness to accommodate her needs around childcare, was often dependent on the individual judge overseeing each case. She believed that some were more willing than others to adjust the court process in a way that made it easier for her to attend and engage with court orders, such as court-mandated drug tests.

*“The solicitor will say, you know, like arranging future dates, and stuff, miss here has got childcare issues to do, and the judges, obviously you get different judge each hearing. It’s not uniform the whole way across, you might get a judge that goes okay we can accommodate that, or sometimes you’ll get a judge that will go oh, or you might get a judge that will go, okay not my problem” – interviewee 2, mother of two primary school age children.*

The two women who attended court as a witness said that they had received some support while giving evidence, respectively by the Witness Care Unit and the investigating police officer. They both appreciated being kept updated when the dates of the trial changed, as well as the help that they received with the logistics of attending court, for example where to find parking.

#### **4.1.5 Impact on mental health**

Many of the interviewees experienced poor mental health in the build-up to their court date, a period they described as stressful and anxiety-inducing. The women who had been prosecuted for more serious offences, and were facing the possibility of receiving a custodial sentence, found this stress to be particularly acute. This is a common experience for defendants facing this possibility. Yet my interviews found that for women with caring responsibilities, the anxiety around losing their freedom was marked by something even more painful – the prospect of being separated from their children. Those who did not have family members able to take on the full-time care of their children in that eventuality often felt fearful about them being taken into care.

*“It was a very worrying time because...I didn't know what was gonna happen and what was gonna happen if the worst comes to the worst regarding my children because, [...], I've not got very many family members around me”* - interviewee 8, mother of two primary school age children.

Several women said that this fear was compounded by feelings of guilt, stemming from their perception that their situation had put the care of their children at risk. Interviewee 8 spoke about how she did not feel able to eat or leave the house in the weeks before her court date, as she was too consumed with worry about the outcome of her hearing and being separated from her children. She also described the daily challenge she faced trying to hide these fears from her children and maintain the perception of a normal routine for them.

*“You know, trying to stay focused, trying to stay positive. It's not as bad as what it seems you know, you're probably gonna get probation and all the rest of it, but in your head it's a million times worse”* - interviewee 8, mother of two primary school age children.

The apprehension felt by interviewee 6 before her appearance at court was heightened by the fact that she had already lost the care of her two eldest children. She described the trauma and emotional torture that she felt in response to being summonsed to her sentencing hearing, which could have led to a prison sentence and losing the care for her baby.

*“On the morning that I had to leave her 'cause I thought I was going back to prison umm I couldn't sleep the night before. And then when I got in the taxi to go to court it, it was horrible. I just couldn't stop crying”* - interviewee 6, mother of a young baby.

Several women also said that their anxiety was worsened by knowing that if they did receive a custodial sentence, they would be taken straight to prison from the court. They spoke about the anguish they felt leaving their children on the morning of their court date, unsure if they would be back home that day. They felt deeply concerned about the prospect of not being able to return home to prepare their children, or even be the one to tell them what was happening, and the impact that this would have on them. Yet, they also did not want to warn their children in advance, and worry them unnecessarily, in case they received a non-custodial sentence. Interviewee 10 was one of the women who had been in this position. She was a carer for her adult daughter who struggled with her mental health, and described feeling extremely anxious about how her daughter would respond if she did not return that

day from court. Before her hearing, she suffered from intrusive thoughts about her daughter harming herself and not being there to support her.

*“I was quite hopeful I wouldn't end up in prison, but I was, I was very worried about what my daughter's reaction would be if I did, because I would be able to do nothing at all about it. Like she's been sectioned in the past. So, and we live on the 8th floor as far as I was...you know, you get these calamitous catastrophes going on in your head, and all I could think was if I'm not home, because I told her I'd be home no later than half one, if I'm not home by half one, she's just gonna throw herself off the balcony” - interviewee 10, carer of disabled adult daughter.*

## 4.2 What is the impact of this experience of court?

This section examines some of the impacts of engaging with a stigmatising process that does not recognise the difficulties presented by caring responsibilities, and responds with threats of the consequences of absconding from court.

### 4.2.1 Impact on engagement with proceedings

For many of the women, the consequence of encountering these difficult situations in relation to childcare impacted their ability to concentrate and engage with the court proceedings. They described how their children’s wellbeing consumed their thoughts, which meant they struggled to take in and understand fully what was happening during their hearing. Interviewee 6 felt that she was answering questions from the court without detail or much thought, as she wanted the proceedings to end as quickly as possible. She said that her priority was leaving the dock, and returning to her baby, who was waiting in cells below, as soon as she could.

*“I didn't concentrate at all. All I kept thinking is she's gonna need feeding in a minute, she's gonna need feeding in a minute. And I just didn't really take it in. I weren't really bothered, I just wanted to get back down to the cell and get going especially that she was there. All I could think about was her, I didn't really pay attention” – interviewee 6, mother of a young baby.*

*“I've also got half my head out in the car park because I know that's where the children are, and what the hell is going on out there, and how much carnage are they causing. It's very distracting” – interviewee 2, mother of two primary school age children.*

There are serious implications when it comes to the fairness of the justice process for the women who were concerned about the welfare of their children, and their right to meaningfully participate in court proceedings;<sup>47</sup> a cornerstone of a procedurally fair court hearing.<sup>48</sup>

#### 4.2.2 Attendance dependant on support network

For many of the interviewees, their networks of family and friends provided an essential source of support for the care of their dependants while they needed to get to court. This section outlines some of the barriers the women faced getting this support in place each time.

##### A- Relying on family and friends

A common theme throughout the interviews: The ability of the interviewees to engage with the court process hinged on the support of friends or family who were able to step in and take care of their children. For some of the women, these arrangements were easy to make and enabled them to engage with the court process without any difficulties. I heard how friends, older children or parents, who either lived with them or nearby, looked after younger children, or picked up older children from school, and waited with them until they could return from court. This support network meant that the women did not have to worry about their children while they journeyed to and from court; they were with people they trusted, who would look after them for as long as it was needed.

*“My friend came over and stayed in my house the night before. Yeah, she did, my friend came and stayed over mine the night before. So when I woke up in the morning, I could go to court while the children was still at home”* – interviewee 7, mother of two children under 11.

They each spoke about how without this support, attending court would have been much more challenging. Two of the woman said that they would not have been able to afford a childminder or pay for an after-school club. We can draw from this that their ability to present themselves each time they were summonsed to court was dependant on the proximity of friends or family, who were in a position to periodically take on the care of their children.

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<sup>47</sup> Article 6 of the European Convention of Human Rights.

<sup>48</sup> Jessica Jacobson, Jenny Talbot. (2009). *Vulnerable Defendants in the Criminal Courts: a review of provision for adults and children*. [https://prisonreformtrust.org.uk/wp-content/uploads/old\\_files/Documents/vulnerable%20defendants%20in%20the%20criminal%20courts.pdf](https://prisonreformtrust.org.uk/wp-content/uploads/old_files/Documents/vulnerable%20defendants%20in%20the%20criminal%20courts.pdf)



*“It’s been very difficult to find someone, first of all, financially, I’m not very well off. So to find a childminder is like not something that I could afford, so I’ve had to find someone within my family”*  
– interviewee 11, mother of three children, one of primary school age.

### **B - Impact on friends and family**

While this vital support network existed for most of the women whom I interviewed, the complications and stress associated with the approach to listing court hearings, discussed in section 1, often filtered down onto the shoulders of the friends and family who were taking care of their children.

*“You’re sitting in the waiting room, you get there for 10 o’clock, that’s the only time that you’re given, 10 o’clock, especially if the children are in the car park with someone else, whether it’s your mum, whether it’s your friend, whoever it is, they’re sat in the car park, and you can be there all day, there’s no time limit on it”* – interviewee 2, mother of two primary school age children.

Interviewee 11, who was one of the women attending court as a witness, reported a similar experience. The court advised her sister to take an entire week of leave from her job to look after interviewee 11’s three children, as they could not give a specific time, or even date, when she would be needed to give evidence. It is worth noting that interviewee 11 was denied her request to give evidence via a video link, but even if this had been granted, she still would have been required to do this from the court building.

*“I’ve had to find someone who within my family, they’re all working, all my sisters are working. One of them is a teacher, and it’s very difficult to [...] get my sisters to take time off work. One of my sisters, she had to take a whole week off work to take care of my youngest daughter and also to be at home when my other two kids come back from school because by the time I returned from court it was like 6, 6/7 and obviously the children come home by 3:30/4 and so yeah, I had to make sure somebody was in the house and with us for about a week. And yeah, it was very difficult”* – interviewee 11, mother of three children, one of primary school age.

Interviewee 11’s experience underlines how the court’s approach to scheduling, compounded by its lack of responsiveness to childcare responsibilities, means that the women and those on whom they rely for support, must bear significant disruption to their life and other responsibilities. The commonality of this experience expressed by women who had engaged with the process as a defendant, or as a witness is

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striking, given the care which the system is supposed to afford witnesses and victims of crime.<sup>49</sup>

#### 4.2.3 Barriers to accessing support

While nearly every woman did have a support network of some type, several spoke about encountering barriers to getting this support in place each time they had to go to court.

##### A - Children’s additional needs

One factor that added another layer of complexity to leaving their children in the care of someone else was identified by the women whose children had additional needs. Two women spoke about how their children’s mental health problems, particularly around anxiety, limited the pool of people that they felt comfortable being left with for long periods of time. Interviewee 1’s son did not feel comfortable leaving the security of his own home, so she needed to rely on someone who was willing to wait at her house until she returned from court. Her son also required more complex and specialist care as a result of a physical health condition. She spoke about how this added further strain to the task of finding someone to care for him while she was at court.

*“Because of the bowel condition you need to...you need to do his bowel straight from school, so it’s quite difficult to get somebody to do that. To get somebody very skilled”* – interviewee 1, mother of primary school age child

##### B - Challenges affecting friends and family

In some cases, the people in the women’s support networks had their own personal challenges, which made taking on others’ childcare difficult. Two women said that they depended on elderly parents, with low mobility, which made physically caring for their young children demanding. Yet they had no alternative than to leave their children, a small baby in interviewee 6’s case, with their parents so they could present themselves at court. While the women immensely valued this support, they worried about the pressures it put on their parents and their health. Others felt similarly about relying on friends who had a health condition or a disability, but again, felt they had limited options if they were to adhere to the court’s instructions around attendance.

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<sup>49</sup> See: Ministry of Justice, (2020). *Code of Practice for Victims of Crime in England and Wales (Victims' Code)*. <https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime/code-of-practice-for-victims-of-crime-in-england-and-wales-victims-code>



*“It's a lot of stress on her innit. It's a lot of pressure on her and she's...it's already difficult with her being disabled, let alone having to look after her... the baby as well” – interviewee 6, mother of a young baby.*

### **C - Stigma of being a mother in the justice system**

As previously discussed, many of the women whom I interviewed perceived the system as passing judgement not just on their crime, but also on their abilities as a parent. Fearing this judgement also from the people in their life became, for some, a barrier to accessing familial support during the court process. Two women said that they did not feel able to tell their family about their court hearing at all, because they felt ashamed about having committed an offence, and could not bear the prospect of being chastised or judged. Interviewee 3, who had left court before her hearing began to collect her children from school, shared how she had withheld information about her court case from her family for this reason. This shame was a factor that limited her alternative childcare options, which was the primary driver in her decision to leave court that day.

*“I might not want to tell people, I mean I was in the bloomin paper, but still I might not want to tell people. So it has to be confidential. And you can't take, rack up with your kids with you. So well what are people supposed to do. Yeah like I certainly didn't tell me dad when I was going to court because I couldn't. So I wouldn't have been able to ask him” – interviewee 3, mother of two vulnerable teenagers*

My interviews found that it was not just the women who had attended court as a defendant who encountered this barrier to asking for help with their childcare. Interviewee 1 attended court as a witness in the trial of the father of her child. She faced having to explain the situation around the case to whomever would be able to look after her son while she was needed at court. She described feeling anxious about this prospect, and having to prepare the person for the possibility that the police would need to be called if a court order preventing contact with his father was breached in her absence.

*“It's very hard because I'd also have to explain again, especially today about the case, if he turns up I'd have to tell them they'd need to call 999, have to show them a picture of him and also his father now and say if they turn up you phone 999. So it's getting somebody to do that would actually be brave enough to sit here. And I say, brave enough. Because when you say it, I suppose it sounds a bit more worrying to people that don't know him... He wasn't allowed to contact me and the restraining order was in place. So I still wasn't sure about what his family were gonna do*

*and how I would have to explain to anybody else that could collect him” – interviewee 1, mother of primary school age child*

#### **D - Lack of support network**

While some form of support network existed for most of the interviewees, this was not universal. Some were small, and consisted of one or two people where they felt their relationship was strong enough to rely on them in this way. Two of the women had moved away from their family to a different part of the country and did not know anyone in their new area whom they could ask to help.

*“I’m a single parent and now I’m sitting here thinking I know I’ve done me crime, but now I’ve gotta think and stressing out finding someone to look after me kid” - interviewee 12, mother of three children, one of primary school age.*

Interviewee 6 had been brought up in care, which meant she did not have many family members on whom she could rely on for support.

*“I had a struggle to get anyone to look after her anyways because I was brought up in care so I don't really have family and like I said, there's only really my mam” – interviewee 6, mother of a young baby.*

Nine of the women were single parents, or the primary carer of their child, and yet did not feel that the court was responsive to their situation. As a result, they faced greater challenges deciding who they could leave their children with, before their case was heard at court.

#### **4.2.4 Impact on children**

Several of the women recounted one or two instances, when the lack of accommodation from the court service, and the fear of being arrested, meant they faced insurmountable challenges to finding childcare. Some women were forced to leave their children with people who were inappropriately placed to care them. Teachers, elderly and disabled parents, and even prison guards, had to step in, and take responsibility for their children as best as they could, until they could return from court.

*“He [the headteacher] took him shopping and ended up taking him to Maccies for something to do for me. And then literally come and met me at the train station at Piccadilly picked me up and took me over in his car. Dropped me and [my son] home to his sisters, but I feel like there’s more support of random strangers, than an authority that gets paid” – interviewee 12, mother of three children, one of primary school age.*

Two women had faced the dilemma of leaving their children alone to look after themselves or taking them to court. Interviewee 10 had decided against taking her adult daughter with her to court, who struggled with her mental health. She returned home at the end of the day to find her daughter in a state of distress. Interviewee 2 had faced a similar decision when her mother had not been able to take leave from work on the date of her court hearing. Her children waited for her in the carpark for several hours and became bored and agitated. In both cases, the women knew that their decision would negatively impact their children’s wellbeing, but the rigidity of the court process, combined with the lack of familial or system support, meant this was the only action they felt able to take if they did not want to abscond from court.

*“So sometimes they’d break for lunch, and you got to back up and go I’m still not in yet, and the children getting arsy and ratty in the car and everyone’s having a meltdown, and you’ve got to go back in” – interviewee 2, mother of two primary school age children.*

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## Chapter 5: Conclusions & Recommendations

### 5.1 Conclusions

The experiences of the women interviewed for this research indicate that their caring responsibilities are recognised in theory within the Equal Treatment Bench Book, but are far from being “accommodated as far as reasonably possible”<sup>50</sup> in practice. Their testimonies show that a process that is hard for most people to engage with - getting to a court far from home, waiting there for hours, and being subjected to delays and rescheduling – can result in significant hardships if you are a woman with caring responsibilities. These hardships are greater if your child requires additional support, you have limited family networks, or you belong to one of the 1.8 million single parent families in the UK.<sup>51</sup>

Yet the court system fails to adapt to the caring needs of women, and instead, judges them for being a mother in the system. The absence of support, combined with the fear of repercussions for missing court, severely limits their options. This not only impacts the wellbeing of the women, but also affects their children. Despite the small sample, I heard about multiple instances of women facing impossible decisions around the care of their children. This led to children waiting in cars or going shopping with teachers after school, vulnerable adults left alone and babies cared for by guards in court cells.

It is in no-one’s interest, and counter-productive to the justice system, if a woman struggles to attend or maintain focus during court proceedings due to issues with the care of their child. This also holds true for witnesses. The parallels in how the system responds to the caring needs of women, whether they are a witness or a defendant, points to a systemic problem within our courts. This brings into question the fairness of the system if you are a woman with caring responsibilities.

The findings of this research suggest that more is needed than better implementation of the Equal Treatment Bench Book to address these issues. Intervention is needed well before facing a magistrate or a judge. The experiences of the women who were supported to overcome the difficulties they

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<sup>50</sup> Judicial College, (2021). *Equal Treatment Bench Book*. <https://www.judiciary.uk/wp-content/uploads/2021/02/Equal-Treatment-Bench-Book-February-2021-1.pdf>

<sup>51</sup> Gingerbread, *Single parents facts and figures*. <https://www.gingerbread.org.uk/our-work/single-parents-facts-and-figures/#:~:text=Single%20parents%20today&text=There%20are%20around%201.8%20million,single%20parents%20are%20wo men%20>

encountered shows that a better way is possible. We should take learning from this and mainstream it through the system from the first point of contact to the last.

## 5.2 Recommendations

### Every police force should:

- Ask every person on arrest whether there is anyone depending on them for care, and make them aware of their rights for the justice process to be made compatible with their caring responsibilities;
- Require officers to engage in anti-stigma and unconscious bias training, which addresses attitudes towards women in contact with the justice system; and
- Make every effort to divert women away from court and make use of out of court resolutions.

### The HM Courts and Tribunal Service should:

- Include the following information on every summons to court:
  - I. a copy of the Ministry of Justice leaflet “Before Court: Going to a Criminal Court as a Defendant”,<sup>52</sup> with the section providing advice on bringing children to court highlighted;
  - II. a reminder to call the helpline number on the summons sheet if difficulties with caring responsibilities arise, including what to do if this occurs on the day of the hearing; and
  - III. a contact number of a women’s centre or at-court advice service (where provision exists).
- Work with the judicial office to:
  - I. ensure that court listing arrangements are sufficiently responsive to issues regarding caring responsibilities;
  - II. provide a 72-hour minimum warning before rescheduling a caregiver’s hearing;
  - III. schedule the hearing or trial of a caregiver, which does not involve witnesses, in a court that is closest to their home;
  - IV. schedule witnesses with caring responsibilities to give evidence at a specific date and time during a trial; and

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<sup>52</sup> See: Ministry of Justice, *Before court: Going to a Criminal Court as a Defendant*.

<https://assets.publishing.service.gov.uk/media/5df76685ed915d093a15d219/before-court-criminal-court-defendant-eng.pdf>

- V. enable defendants to attend their hearing, and witnesses to give evidence, virtually using video links.<sup>53</sup>
- Create child-friendly areas in court waiting rooms, and provide books and toys, such as those available in doctor’s surgeries; and
  - Pilot and evaluate a scheme where court hearings and trials are scheduled to begin at a specific time.

**The Ministry of Justice should:**

- Provide payment to primary caregivers to cover the costs of childcare, (e.g. child minders, after school clubs or nurseries). A similar fund currently exists in the family court system;
- Create guidance on best practice for justice agencies to respond to the needs of caregivers;
- Work with the judicial office to facilitate better, and more consistent, implementation of the Equal Treatment Bench Book in the courts;
- Consider implementing Child Impact Assessments to ensure that the needs of children are identified and addressed when a mother is in contact with the criminal justice system;<sup>54</sup>
- Review the post-sentencing arrangements for people with caring responsibilities, who have received a custodial sentence, to contact their family; and
- Roll out at-court advice services to every court in in England and Wales.<sup>55</sup>

**Courts should:**

- Make all efforts to request probation practitioners to enact court orders, e.g. drug testing or pre-sentence reports, at the care-givers’ home.

**The prison service should:**

- Ensure that remote hearings are the default for women who need to attend court while on a Mother and Baby Unit (as stated in the Female Offender Strategy 2018).<sup>56</sup>

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<sup>53</sup> The Police, Crime Sentencing and Court Act awarded the courts the power to order attendance by video link, “if they are “satisfied that it is in the interests of justice”. This research has shown that it is in the interest of justice to respond to both defendants and witnesses’ needs around caring responsibilities. See: Ministry of Justice, (2022). *Audio and video live links: Police, Crime, Sentencing and Courts Act 2022 factsheet*. <https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-factsheets/>.

<sup>54</sup> Prison Reform Trust, *Child Impact Assessment toolkit* <https://prisonreformtrust.org.uk/child-impact-assessment-toolkit/>

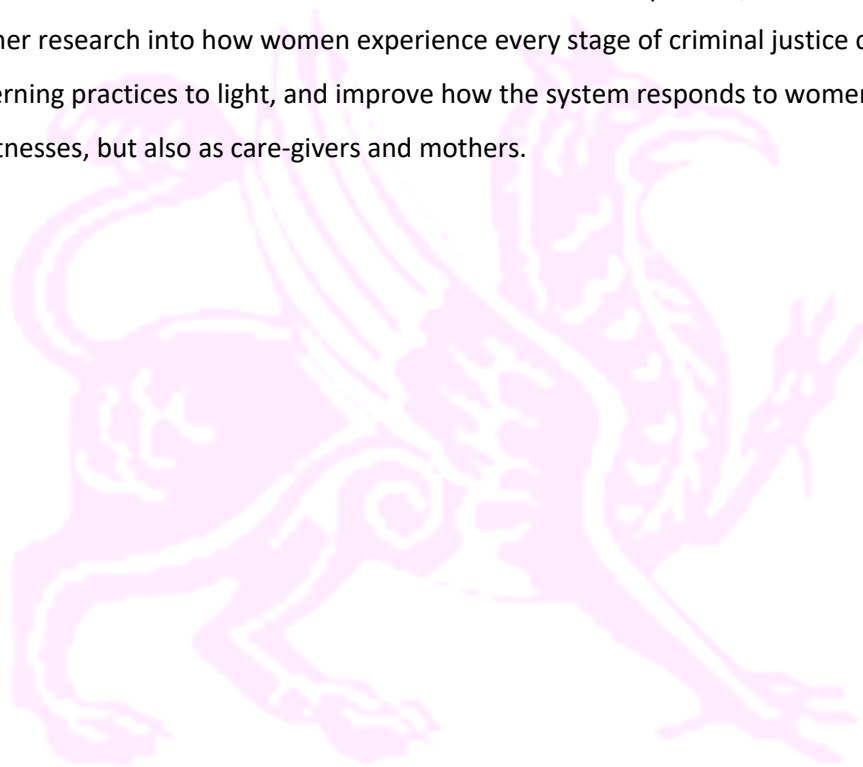
<sup>55</sup> See: Centre for Justice Innovation, (2023). *Community Advice Toolkit: A guide for setting up your own service*. [https://justiceinnovation.org/sites/default/files/media/document/2023/cji\\_community-advice-toolkit.pdf](https://justiceinnovation.org/sites/default/files/media/document/2023/cji_community-advice-toolkit.pdf)

<sup>56</sup> Ministry of Justice, (2018). *Female Offender Strategy*.

<https://assets.publishing.service.gov.uk/media/5b3349c4e5274a55d7a54abe/female-offender-strategy.pdf>; The Police, Crime Sentencing and Court Act awarded the courts the power to order attendance by video link. See: Ministry of Justice, (2022).

### 5.3 Further research

An important theme that emerged from the interview findings was that women experienced similar issues at the point of arrest. While beyond the scope of this research, this highlights the need for further research that includes the experiences of women at a different stage of the criminal justice process. Four of the interviewees had experienced poor treatment by the police on arrest and while they were held on police custody. None of the women were asked if they had children, or if they needed to put any care arrangements in place. They were only permitted to speak to their solicitor, and were prohibited from contacting their children. While this research focuses on the court process, these findings highlight the need for further research into how women experience every stage of criminal justice contact, to bring these concerning practices to light, and improve how the system responds to women not just as defendants or witnesses, but also as care-givers and mothers.



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*Audio and video live links: Police, Crime, Sentencing and Courts Act 2022 factsheet.*

<https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-factsheets/>



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