Royal College of Midwives' submission to the 'Children whose mothers are in prison' Inquiry, Joint Committee on Human Rights
October 2018

The Royal College of Midwives (RCM) is the trade union and professional organisation that represents almost all of practising midwives in the UK. The RCM provides excellence in professional leadership, education, representation and influence for and on behalf of midwives. We actively support and campaign for improvements to maternity services, including for women in prison.

Executive summary

- The prison service must begin collecting data on the numbers of perinatal women serving custodial sentences and track their outcomes and that of their babies.
- A Policy Framework for Perinatal Women is needed to ensure staff know what is expected of them and to ensure safe, appropriate care at all times for perinatal women – the risks to women and newborns are too high without this, and risk breaches of Articles 1 and 3.
- The rights of newborns must be considered in decisions to give custodial sentences to perinatal women and access to mother and baby units (MBUs) within prisons. There are serious, long-term physical and mental health consequences from experiences in utero and the early weeks. These babies' rights to have access to healthcare and to be protected from harm should be acknowledged within a human rights framework

Perinatal women in prison

Few official figures are gathered or published on the number of perinatal women in prison. However, it is estimated that around 600 women receive antenatal care in prison and 100 women give birth in custody every year in England. Data is poor on the outcomes for these women and their babies and we would urge the Committee to recommend the prison service to begin to gather data on these women urgently. In partnership with Birth Companions,[1] the RCM has recently given evidence on prison healthcare to the Health and Social Care Committee to call for more a specific perinatal Prison Services Order (PSO) to ensure that maternal and newborn health is not compromised by imprisonment.

Health impacts from custodial sentences

Without a detailed policy framework for perinatal women to help prisons implement and adhere to rigorous standards of care, women and babies are at risk of poor health and social outcomes. On the question of "Whether human rights considerations are adequately articulated in current sentencing guidelines and practice?" we believe the health implications for newborns from imprisonment are not sufficiently understood by the judiciary or the prison service. While the unborn baby has no right to life under Article 2 of the Human Rights Act (HRA), it is impossible to separate the health and wellbeing of the unborn baby from its mother. The health and wellbeing of a newborn baby is

[1] www.birthcompanions.org.uk

strongly affected by its experiences in utero and the health and wellbeing of its mother/caregivers in the first days and years. This idea is the impetus behind the First 1,000 days strategy, which is championed by the APPG First 1000 Days and is supported by the RCM. It is also a feature of Public Health England's new Gender Specific Standards to Improve Health and Well Being for Women in Prison.[2]

There is debate amongst those working in the criminal justice sector over whether pregnant women and new mothers should be in prison at all, and we look forward to the Committee exploring the issue of custodial sentencing in this Inquiry. However, the RCM believes that while it is still practice in the UK to imprison pregnant women and new mothers, we must ensure the highest standards of healthcare as for any women in the community. The Committee's concern over negative impacts on children from parental imprisonment must extend to the conditions that pregnant women and new mothers are held in prisons.

The Albertson Commission on Women offenders in Scotland in 2012 found "[pregnant] women [in prison] are more likely to book late for antenatal care, receive minimal antenatal education, not receive adequate food and nutrition during pregnancy and postpartum, be without the support of a family member during labour and birth, have a premature or small-for-dates baby, decide to formula feed, and be separated from their baby soon after birth". It notes that "these factors combined may have a substantive impact on women's own physical and mental health, the nutrition, health and development of their babies, and on the appropriate development of attachment, parenting skills, and stable family relationships following release" (Commission on Women Offenders, 2012).[3] We believe that these effects from being in prison during pregnancy – especially lack of attachment and bonding – deprive children from a stable start in life. There is a good argument to be made that custodial sentences are not appropriate for perinatal women, however MBUs are better for women than an ordinary prison wing because they can keep women and babies together.

Midwifery and human rights

In 2014 we produced midwifery guide to human rights in partnership with the British Institute of Human Rights and Birthrights.[4] This outlines the relevant parts of the HRA to pregnant women and new mothers, and provides scenarios of situations where healthcare organisations and their practitioners should use human rights to uphold good standards of maternity care. The Guide is focussed on rights of mothers rather than children, but because of the inextricable link between babies in utero, newborns and mothers, we think consideration of pregnant women and new mothers in prison is relevant for this Inquiry. As such, we would like to draw the Committee's attention to Article 8 (Right to Family Life) and issues of the separation of mother and newborn, the provision of mother and baby units, breastfeeding, and births experienced in prison.

The health implications of separating mothers from their newborns

[2] Public Health England (2018). Gender Specific Standards to Improve Health and Well Being for Women in Prison. https://www.gov.uk/government/publications/women-in-prison-standards-to-improve-health-and-wellbeing

[3] Commission on Women Offenders (2012)' Commission on Women Offenders: Final Report', Edinburgh: Scottish Government. https://www.gov.scot/Topics/archive/reviews/commissiononwomenoffenders

[4] British Institute of Human Rights (2015). Midwifery and Human Rights: A Practitioners Guide. https://www.bihr.org.uk/midwiferyhumanrights

Research into maternal death in the UK finds that separating women are especially at risk of self-harm and suicidal ideation (Knight, 2016).[5] Public Health England recognises that "women [in prison] separated from their children have worse mental health than women who are not separated. A growing literature highlights that separation is also exceptionally difficult for women and can affect their mental health and wellbeing in prison" (PHE, 2018[6]; Gregoire, 2010[7]; Birmingham, 2006[8]).

One of the most significant environmental factors influencing early brain development is the parent-infant relationship (see Schore, 2005;[9] Gerhardt, 2014[10]). Early separation can have an impact on the infant's biological responses to stress, their learning behaviours and their social skills with some evidence suggesting that this may partly explain biological and behavioural problems in adulthood (Dageville et al., 2011).[11] Children who encounter adversity and stress in infancy have significantly increased risk of adverse mental and physical health outcomes later in life, including depression, anxiety, behavioural disorders, substance misuse and cancer. Children of prisoners have three times the risk of delinquent/antisocial behaviour compared to their peers (Galloway et al., 2014).[12]

Mother and baby units (MBUs)

There are six mother and baby units (MBUs) in England and Wales[13] with a total capacity of 64 babies, and babies can stay on MBUs until they are 18 months old. We know in 2015, 100 babies spent time on an MBU, but ongoing data collection is poor. There is no automatic transition of new mothers from the usual prison setting to MBUs after birth; women must make an application and only approximately 50% of women will gain a place with their baby with the remaining 50% separated from their babies shortly after birth (Birth Companions, 2016).[14] Appeals against a decision are possible but not every woman is aware of the MBU application and appeal process. They are often left for months without knowing whether a place is available for them or not while their applications are assessed, leaving them distraught. We do know MBUs are underutilised and the decisions to not grant women access to them deserve greater scrutiny, as the health impact of separating mothers from their children is so grave, as described above.

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[5] Knight M, Nair M, Tuffnell D *et al* on behalf of MBRRACE-UK (2016). Saving Lives, Improving Mothers' Care - Surveillance of maternal deaths in the UK 2012-14 and lessons learned to inform maternity care from the UK and Ireland Confidential Enquiries into Maternal Deaths and Morbidity 2009-14. Oxford: National Perinatal Epidemiology Unit, University of Oxford. https://www.npeu.ox.ac.uk/downloads/files/mbrrace-uk/reports/MBRRACE-UK%20Maternal%20Report%202016%20-%20website.pdf

[6] Public Health England (2018) Gender Specific Standards to Improve Health and Wellbeing for Women in Prison in England. https://www.gov.uk/government/publications/women-in-prison-standards-to-improve-health-and-wellbeing, quoting Byrne, M. W., Goshin, L. S., & Joestl, S. S. (2010). Intergenerational transmission of attachment for infants raised in a prison nursery. *Attachment and Human Development*, 12, 375–393.

[7] Gregoire, A., Dolan, R., Birmingham, L., Mullee, M., & Coulson, D. (2010). The mental health and treatment needs of imprisoned mothers of young children. *Journal of Forensic Psychiatry & Psychology,* 21, 378–392.

[8] Birmingham, L., Coulson, D., Mullee, M., Kamal, M., & Gregoire, A. (2006). The mental health of women in prison mother and baby units. *Journal of Forensic Psychiatry and Psychology,* 17, 393–404.

[9] Schore, AN. (2005). Attachment, affect regulation, and the developing right brain: Linking developmental neuroscience to pediatrics. *Pediatrics in Review*, 26 (6). http://allanschore.com/pdf/__SchorePediatricsInReview.pdf

[10] Gerhardt, S. (2014). Why Love Matters: How affection shapes a baby's brain. Routledge, London.

[11] Dageville C, Casagrande F, De Smet S, Boutte P (2011) The mother-infant encounter at birth must be protected. *Archives de Pediatrie: organe Officiel de la Societe Francaise de Pediatrie* 18(9): 994-1000

[12] Galloway S., Haynes A. and Cuthbert C. (2014) 'An Unfair sentence: All Babies Count. Spotlight on the Criminal Justice System', NSPCC and Barnados, London.

[13] Bronzefield, Eastwood Park, Styal, New Hall, Peterborough and Askham Grange.

[14] Birth Companions (2016). Birth Charter for women in prisons in England and Wales. https://www.birthcompanions.org.uk/Birth-Charter

Research from O'Keefe and Dixon[15] recognises that MBUs can form protective, relatively stable environments in which mothers can bond with their babies. A growing body of evidence suggests that MBU residents are less likely to reoffend than the general female prison population. By keeping mothers and babies together, MBUs enable newborns' brain development to progress the way those babies on the outside do and prevent further distress and mental ill-health amongst mothers. Some women, due to long sentences or for child protection reasons, may reasonably not gain a place on a MBU with their baby. However, we know there is good practice in prisons where women in this situation are able to have regular visits with their baby, although this may also depend on the willingness of the babies' carer to travel to the prison (Abbott, 2016).[16]

Article 8 of the HRA pertains to physical and mental wellbeing, having choice and control over what is happening, and being involved in decisions.[17] As a qualified right, Article 8 may be restricted, but the lottery of having access to a MBU risks a breach of that right, for the newborn and for the mother.

Recent research from Abbott[18] found that often women in English prisons are not informed about whether or not have gained a place on an MBU until very late on into the pregnancy and sometimes not until going into labour, or even after giving birth. This is especially distressing for mothers whose applications for a place are denied. Research shows that stress in pregnancy (especially in the third trimester) can cause high cortisol levels and therefore behavioural conditions that last throughout childhood. Women experiencing separation and uncertainty around MBUs are especially vulnerable, as the Inquest into the suicide of Michelle Barnes in Low Newton Prison in 2015 found; Barnes was told she was unlikely to be able to secure a place at an MBU.[19]

Abbott's research finds:

> Women would commonly express their worries about separating from their babies, whether this became the reality or not. Common expressions were: *"fear"*; *"stress"* and a *"need to know what is going on"*. The unpredictability around sentence status and where they would be allocated to was the main stressor for these women. Whilst instability around sentencing and prison allocation is a common prison experience generally, it was undoubtedly one of the most stressful parts of being a pregnant woman in prison: *"If he is adopted I don't know what I'll f--king do"; "it's the biggest fear in your mind"; "it's heart-breaking"; "I need to know"; "I'll go back on drugs"; "I've had my children taken before…it ripped me to pieces"*. […] Many women described being in a constant indeterminate state: *"it's just like a waiting game"; "what if they take my baby off me"; "not being able to go shopping for my own baby clothes and getting her stuff ready"; "I don't know, and I don't know when I'm going to find out, I don't know what's happening"*.

The quotes from this ethnographic research show how women in this situation often experience great distress because of this uncertainly and lack of control over decisions about them. This has

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[15] C. O'Keefe, L. Dixon (2016). Enhancing Care for Childbearing Women and Their Babies in Prison. Hallam Centre for Community Justice, Sheffield. https://www.barrowcadbury.org.uk/wp-content/uploads/2015/12/FINAL-MBU-report-7th-December-2015.pdf

[16] Abbott L (2016). Becoming a mother in prison. *Practising Midwife* 19(9):8-11.

[17] British Institute of Human Rights (2015). Midwifery and Human Rights: A Practitioners Guide. https://www.bihr.org.uk/midwiferyhumanrights

[18] Abbott L. J. (2018). The Incarcerated Pregnancy: An Ethnographic Study of Perinatal Women in English Prisons. University of Hertfordshire.

[19] https://www.theguardian.com/uk-news/2016/oct/21/inquest-into-death-of-prisoner-days-after-giving-birth-finds-very-serious-matters

obvious impacts on the developing baby's brain. We believe there is a human rights argument to make in the decision-making around access to MBUs, as well as the access itself. We would like the Committee to argue for more transparency and consideration of distress in the decision-making around MBUs. We would like to see data collected on applications, reasons for acceptance/refusal and appeals and the times taken for each stage. Without this, we cannot begin to fully understand what is really happening when 50% of women are denied access to an MBU and their health and that of their babies is put at risk.

Separation and breastfeeding

Separation also makes breastfeeding less likely, as not all prisons have the facilities to allow for expressing, and the safe storage of milk. The benefits of breastfeeding for the long-term health and well-being of mother and baby are abundant.[20] Research from Abbott and Scott[21] explored the experiences of 28 pregnant women and new mothers in prison in England in regards to breastfeeding. They found "perinatal women in prison are less able to make this choice [to breastfeed] due to systems of power and control, enforced within the prison estate, which too frequently render these new mothers powerless." Women in the study who were separated from their babies expressed feelings of loss and conflict, as breastfeeding was either impossible, or would be terminated early by enforced separation, meaning some women were fearful of beginning to feed and create a bond, only to have it broken.

> 'One woman who consented to interview had been separated from her three-week-old baby following being sentenced to prison for 18 months for a nonviolent crime. Pat was a single mother and had been breastfeeding her baby. *'They sent me to prison knowing that I had a three week- old baby. I was breastfeeding, so I feel very upset that they took the right away from me that I couldn't continue to breastfeed; because I went to* [prison A] *and then I was separated for two months from him, so I saw him twice within those two months on a visit for an hour.'…* Pat waited for two months to have her baby reunited with her due to the paperwork and permissions required: *'I feel very upset about that, because I feel like even animals are treated better because they don't get separated from their mum until six weeks. I'm a human and he'd got three weeks from me, so I feel it needs to be looked at in terms of, if you are going to send mothers to prison make sure before you send them that the paperwork is in place that their babies are going with them straightaway.'* Pat was reunited with her baby on a MBU after two months but was unable to re-establish breastfeeding and had not been able to express breastmilk in prison.'[22]

Conversely, women able to stay with their babies immediately on an MBU were empowered by the supportive environment of a MBU, coupled with the sustenance of pregnancy and early parenting groups which increased their determination to breastfeed their babies, and their success in doing so. Birth Companions audited the results of breastfeeding initiation and continuation when they were

[20] For a snapshot of the literature on the benefits of breastfeeding for women and babies, visit the Unicef Baby Friendly Initiative website: https://www.unicef.org.uk/babyfriendly/news-and-research/baby-friendly-research/. PHE recommends exclusive breastfeeding for around the first 6 months. Breastfeeding boosts a baby's ability to fight illness and infection, and babies who are not breastfed are more likely to get diarrhoea and chest infections. Breastfeeding also lowers a mother's risk of breast cancer and may reduce the risk of ovarian cancer.

[21] Laura Abbott and Tricia Scott (2017). *Women's experiences of breastfeeding in prison*. MIDIRS Midwifery Digest, 27 (2). http://researchprofiles.herts.ac.uk/portal/en/publications/womens-experiences-of-breastfeeding-in-prison(1a3ce3d0-b893-47f3-8437-5f809faa7047).html

[22] Laura Abbott and Tricia Scott (2017). *Women's experiences of breastfeeding in prison*. MIDIRS Midwifery Digest, 27 (2). http://researchprofiles.herts.ac.uk/portal/en/publications/womens-experiences-of-breastfeeding-in-prison(1a3ce3d0-b893-47f3-8437-5f809faa7047).html

supporting women in HMP Holloway before the closure of the prison in 2016. These weekly support groups and robust peer and volunteer support resulted in an increased prevalence in the initiation and prevalence of breastfeeding (Abbott and Scott, 2017)[23].

Births and the postnatal period in prison

We would also like to alert the Committee to dangerous practices in prisons where women are denied access to qualified maternity practitioners when in labour. This risks the health of mother and newborn, and risks a breach of Article 1: 'Women should never be denied access to maternity services. You should be aware of potential impediments to accessing care and what this may mean for women's right to life' (British Institute of Human Rights, 2015[24]). If a woman is denied access to maternity care which results in harm, we argue this could be a breach of Article 3.

In October 2017 Birth Companions wrote to the HMPPS Women's Team regarding a number of concerning incidents where women in custody gave birth in inappropriate settings, including in prison cells. It is a very rare occurrence for women in the community to give birth before arrival in a healthcare setting, or before their midwife arrives at their home. In their letter to the HMPPS Women's Team, Birth Companions outlined some of the stresses they see within the prison system that could be contributing to these incidents. Sometimes women do not call officers despite being in labour. This can be because they are due to separate from their babies and are fearful of what will happen next; officers have less time to build relationships with women, thus making some women less likely to request assistance; women may be unable to articulate their needs because of learning difficulties; low staffing levels mean there are fewer staff to respond to women, particularly at night time; lack of antenatal education means some women, particularly with their first pregnancy, may not know what to expect in labour and not know when to call for help.

There are a number of risks associated with births in prison. Perinatal women in prison have higher-risk pregnancies than the general population, and their deprivation/low socio-economic status is associated with an increased risk of premature labour, babies with low birth weight, bleeding during labour, post-partum bleeding, placental abruption, hypertensive disorders, obstructed labour and problems with the umbilical cord. These are all conditions that can lead to maternal/infant death or injury if immediate expert intervention is not available during childbirth.

Abbott's research (2018)[25] has found healthcare staff and officers may currently be making decisions for which they are unqualified, putting women, babies and themselves at risk. Only a trained and registered person (midwife or doctor) can legally make a decision as to whether a woman is in labour or not (Nursing and Midwifery Order 2001 Article 45). Contravention can be prosecuted. Births within prisons are rare, but do happen, and it is unlikely that these births are happening in a way where the women's healthcare has been tailored to her needs, as all women are entitled to (National Maternity Review, 2016)[26]. Outside of the limited times, midwives visit most prisons, it is unqualified prison officers or Prison Healthcare staff making decisions about whether pregnant women are in labour or need to go to hospital, for example when women are bleeding or their

[23] Laura Abbott and Tricia Scott (2017). *Women's experiences of breastfeeding in prison*. MIDIRS Midwifery Digest, 27 (2). http://researchprofiles.herts.ac.uk/portal/en/publications/womens-experiences-of-breastfeeding-in-prison(1a3ce3d0-b893-47f3-8437-5f809faa7047).html

[24] British Institute of Human Rights (2015). Midwifery and Human Rights: A Practitioners Guide. https://www.bihr.org.uk/midwiferyhumanrights

[25] Abbott L. J. (2018). The Incarcerated Pregnancy: An Ethnographic Study of Perinatal Women in English Prisons. University of Hertfordshire.

[26] National Maternity Review (2016). *Better Births: a five year forward view for maternity care*. https://www.england.nhs.uk/wp-content/uploads/2016/02/national-maternity-review-report.pdf

waters have broken. Lack of access to appropriate advice mean nurses or officers can make poor decisions. They also may be reluctant to organise transferring a woman to hospital if they unsure of her condition, particularly given cost implications. Further, dignity is risked when women are not given appropriate provisions after giving birth:

> 'At worst, institutional thoughtlessness, rather than simply being carelessness, led to potentially life-endangering situations, such as women not receiving vital medication or being inappropriately assessed in labour by nursing staff. Women returning to prison following birth were often unable to access provisions such as breast pads, thus visibly exposing lactation stains on their clothing - an embodied pain, especially following separation from the baby. These kinds of suffering are unimaginable and border on the breach of human rights (Van Gundy & Baumann-Grau, 2016)[27]: they suggest an institutional thoughtlessness causing suffering through indignity, unique to the pregnant woman in prison.
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> Post-natal care provision in prison demonstrated a lack of staff awareness of the individual needs of women who needed support with breast feeding or essentials such as breast pads: "I had to put tissue in my bra"; "it seems to be really so complicated for them"; "breast pads aren't something that you can put on prescription"… The appropriate provision of entitlements for women were not confined to simply being in prison. Sammy described how the court 'forgot' she was pregnant, and she was therefore transported in a standard prisoner security vehicle.' (Abbott, 2018[28])

If perinatal women are held on many different wings in the main prisons, rather than on the MBU or on one wing, staff have less opportunity to build their experience and expertise in caring for pregnant and postnatal women. Lack of training means some staff are not aware of risks, protocols and procedures around responding to calls for assistance and the basic needs of postnatal women. We would like the Committee to consider the rights of the newborn in calling for prison staff to be trained to support perinatal women appropriately, taking into account their dignity and their rights to access healthcare.

Conclusion

The absence of data on outcomes for pregnant prisoners means that it is difficult to assess if the prison service and the NHS are upholding their duty to provide equity of care, so data collection on perinatal women in prison needs is an absolute imperative. Decision-making around MBUs needs to be subject to rigorous oversight because the health risks to mothers and babies upon separation are so high. We have drawn attention to the problems of prison staff making clinical decisions without the right training, risking maternal and newborn health. In order to make maternity care much safer for women, children, and prison staff, a dedicated Policy Framework for Perinatal Women is needed to ensure staff know what is expected of them and to ensure safe, appropriate care at all times. Moreover, all women have the right to choose where to give birth and to have that experience personalised; every pregnant woman in prison should have a birth plan and a plan for what should happen in an emergency just like women in the community.[29] We welcome the opening up of the discussion of children's rights and mothers imprisonment through the Human Rights Act.

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[27] Alana Van Gundy, Amy Baumann-Grau (2016). Women, Incarceration, and Human Rights Violations: Feminist Criminology and Corrections. Routledge: New York.

[28] Abbott L. J. (2018). The Incarcerated Pregnancy: An Ethnographic Study of Perinatal Women in English Prisons. University of Hertfordshire.

[29] National Maternity Review (2016). *Better Births: a five year forward view for maternity care*. https://www.england.nhs.uk/wp-content/uploads/2016/02/national-maternity-review-report.pdf

We hope this submission will be useful to the Committee in making robust recommendations that safeguard both maternal and newborn health.

Royal College of Midwives, October 2018, with contributions from Dr Laura Abbott and Birth Companions.