



Ministry
of Justice

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Rt Hon Harriet Harman MP

Chair, Joint Committee on Human Rights
Committee Office
House of Commons
London
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Dear Harriet,

COVID-19 AND THE RIGHT TO FAMILY LIFE OF CHILDREN WHOSE MOTHERS ARE IN PRISON

I would like to thank the Committee for their most recent report on the right to family life for children whose mothers are in prison.

We welcome its findings and have provided our response to your recommendations in a Memorandum attached to this letter, as well as sharing with you some steps we have taken since its publication to support the women in our care.

The Government understands the importance of upholding the Article 8 rights of prisoners and their families and we continue to recognise the value of prisoner's family and significant other relationships in improving prisoner's health and wellbeing. Throughout this period, we have remained committed to supporting all mothers in custody and ensuring they have access to family contact during this difficult period, as well progressing with the recommendations made in Lord Farmer's Review for Women.

We know that an important part of this process is understanding the caring responsibilities of these women, and I share the Committee's interest in having greater access to data on the number of mothers in prison and the number of dependent children in the community. We are looking into how best to collect and publish this information in order to improve our policy and practice for all primary carers in prison.

I appreciate that the interruption in communication caused by the Covid-19 measures has, as with the wider population, resulted in hardship to prisoners and their children. However, I believe that the decision to put these restrictions in place was appropriate and necessary. We put in place several new provisions to enable family contact to continue and individual establishments have also been working hard to keep families informed of decisions around visits and ways to keep in contact.

Since publication of your report, we have begun to reintroduce social visits in some women's prisons on a safe and socially distanced basis, following the lifting of restrictions put in place at the start of the pandemic. In addition to this we have prioritised the Women's Estate when installing video calling technology.

Yours sincerely

LUCY FRAZER QC MP

Human Rights and the Government's Response to COVID-19: children whose mothers are in prison

Memorandum for the Joint Committee on Human Rights

Visits and the right to family life

The current lack of meaningful contact between mothers in prison and their dependent children due to the suspension of visits to prison risks breaching both groups' right to private and family life. The Government must not impose blanket restrictions on visiting rights. In order to comply with Article 8 ECHR, they must ensure that any restriction on visiting rights is necessary and proportionate in each individual case. Children must be allowed to visit their mothers in prison on a socially distanced basis, where it is safe for them to do so. (Paragraph 11)

1. Throughout the pandemic our response has followed the advice from Public Health England and Wales and reflected our commitment to protect the public, protect our staff, save lives and protect the NHS. At a time of crisis, we had to balance the rights that women in our care have with the need to preserve life, consistent with the measures being introduced in wider society.
2. In March, that advice suggested that without urgent action, the infection curve would occur faster in prisons than in the general population, lead to thousands of prisoners becoming infected and overwhelming local NHS services. It also suggested that between 2,500 and 3,500 prisoners could die.
3. As well as temporarily suspending visits, which increase the risk of the virus entering prisons, we have also worked to reduce the number of prisoners on remand, created extra cells, limited prisoner movements and jails have implemented 'compartmentalisation', meaning staff have isolated those prisoners with symptoms, shielded the vulnerable and quarantined new arrivals. These measures have helped to contain the spread of the virus and have potentially helped to save thousands of prisoners' lives.
4. Social visits, including those from children, are now being gradually restored across the women's estate, following the lifting of restrictions put in place at the beginning of the pandemic, on a safe and socially distanced basis.
5. At present, up to 2 children can visit family members in prisons accompanied by a single adult. We have made advice and support information on current social visits arrangements available to families of those in prison at:
<https://www.gov.uk/guidance/coronavirus-covid-19-and-prisons#prison-social-visits-in-england-and-wales>.
6. In addition to socially distanced visits, we have installed video calling technology in all women's prisons to enable greater access to family contact. ⁵¹ of our 6 MBUs have remained open throughout the pandemic and applications are still being considered. Bedtime stories remain in place, as do other local initiatives.

¹ HMP/YOI Askham Grange MBU has been closed since the end of March to ensure compliance with social distancing.

Early and temporary release

The Government must immediately and as announced temporarily release from prison all remaining pregnant women and those in Mother and Baby Units, and all mothers with dependent children and who are within two months of their release date who have been appropriately risk assessed, to ensure those mothers can be with their children while opportunity for physical contact is limited during these unprecedented times. The Government should consider extending its current policy to temporarily release prisoners who are pregnant or in Mother and Baby Units to all mothers of dependent children where the mothers have been individually risk-assessed as posing no, or low, risk to public safety. (Paragraph 19)

7. Our priority is to protect the public, and keep staff and those in our care safe, while maintaining confidence in the justice system.
8. Our response to the pandemic has been based throughout on public health advice. One part of this response was to pro-actively consider for compassionate temporary release certain vulnerable groups, including pregnant women, those on Mother and Baby Units, and those with particular medical conditions. These groups were chosen because of the direct and indirect consequences of the pandemic on their health.
9. The number of women and children on Mother and Baby Units (MBUs) at the time and existing links with outside support agencies for the children has meant that HMPPS has ready access to the resources to assess, and in eligible cases facilitate, early release for these groups within a reasonable timeframe.
10. The separate End of Custody Temporary Release (ECTR) scheme was open to all women who met the criteria of being low risk and close to the end of their sentence, and therefore women with dependent children were able to be released through this route.
11. Early release decisions are based on thorough risk assessments and are subject to healthcare pathways and secure accommodation. Assessments take account of all available information in each individual case and are made in consultation with the women themselves and agencies such as Probation, Children's Services, Adult Social Care and the Third Sector. This is to ensure decisions are evidence-based, and to ensure there is continuity of support where appropriate. Some individuals are legally ineligible for the early temporary release scheme, for example where they are being held on remand.
12. Supportive provisions in women's prisons, including provisions for those who are pregnant or have young children, are now being increased again as part of our recovery programme. These include re-instating visits. These provisions ensure that those who remain in prison or who are recalled can access appropriate support.
13. Midwifery services for perinatal women have continued to be delivered throughout the pandemic and recent HMIP reports praised the level of support midwifery services were continuing to provide.
14. Throughout the pandemic we have kept 5 out of 6 of our Mother and Baby Units (MBUs) in operation and we have continued to consider applications for new placements.

Data collection

In the context of the pandemic, and the various restrictions in prisons introduced to control the spread of Covid-19, including the restrictions on visits, we consider it is more important than ever that the Ministry of Justice collect and publish data on the number of children whose mothers are in prison and the number of mothers in prison. This data must be collected immediately so that those affected can be provided with the necessary support. Further, as a matter of urgency, the Government must implement the recommendations from the Committee's 2019 report that:

- a) It should be made mandatory to ask all woman entering prison whether they have dependent children and what their ages are. This information should then be verified by cross-referencing it with child benefit data.*
- b) An annual census must be carried out in all prisons in which women are asked whether they have dependent children and what their ages are.*
- c) This data must be collated and published. (Paragraph 23)*

15. We acknowledge the need for improved collection and transparency of data on primary carers in prison and their dependents in the community.

16. Information on a prisoner's caring responsibilities and children living in the community is monitored locally by prison Governors/Directors to ensure the appropriate support can be provided to women and their families. On reception into custody, all prisoners are asked if they have any children living at home and what their ages are.

17. Currently, this information is not captured in a way that can be centrally monitored, and we know that there are challenges around parents being reluctant to disclose this information due to fear of involvement from social services. However, we are considering how to monitor and publish this information.

Funerals

All prisoners, both men and women, should be able to attend funerals virtually where a close family member has died. In order to comply with the right to respect for private and family life, the authorities must assess each request to attend a funeral (whether in person or virtually) on its merits. Where it is not possible to attend in person, arrangements for virtual attendance should be facilitated. This is important to ensure that prisoners are able to grieve and to participate in funerals as far as possible during the pandemic. The Ministry of Justice should carry out a check to ensure all prisons are able to join funerals of close family members virtually. (Paragraph 25)

18. The Government recognises the difficult compassionate issues caused by the pandemic concerning prisoners being able to contact relatives who are severely ill or to attend the funerals of those who have died.

19. In response to those issues, 248 iPads have been distributed across the prison estate for compassionate use, either to communicate with a severely ill relative or to attend a funeral virtually. Every establishment was provided with two tablets, including the contracted estate and the Secure Training Centres. The first call using this technology for compassionate purposes was made on 22nd April 2020.

20. Whilst the current video call service is a temporary measure, intended for use whilst contact with family and friends is limited as a result of social distancing measures, we are considering a longer-term solution for video calls in line with Lord Farmer's

recommendations, focussing on those who do not receive face-to-face visits under normal circumstances.

21. We have now reversed the automatic ban on attending funerals following recent guidance from Public Health England and have restored the pre-COVID policy on funeral escorts. Prisoners will now be entitled to apply in the way they were before the pandemic. There are some additional COVID safeguards and considerations in place, however these mirror pre-existing PHE guidance on other types of single day escort.