

Written evidence from Birth Companions (COV0125)

Considering the needs and rights of women facing multiple disadvantage during pregnancy, birth and early motherhood.

Pregnant women and new mothers who face severe and multiple disadvantage are at high risk of harm as a result of the challenges that have arisen during the Covid-19 pandemic. The specialist services built in ordinary times with the needs of these women in mind will be strained as a result of the pressures faced across the maternity, wider health, social care and criminal justice systems.

Pregnant women and new mothers in prison

Much evidence has demonstrated that even in 'normal' times pregnant women, new mothers and babies face unacceptable levels of risk in the prison system¹²³⁴ - a situation exacerbated by the measures put in place to manage the pandemic.

We need a sustainable strategy for keeping pregnant women and mothers of young children involved in the criminal justice system safe. Keeping women locked up in a prison cell for more than 23 hours a day, with no access to family visits or many of the peer and professional support services they rely on for both mental and physical health needs, is not a solution to the problem Covid-19 poses in our already broken prison system. Challenges can and must be brought where this approach encroaches on women's human rights - particularly their right to life (Article 2), protection from inhuman or degrading treatment (Article 3) and the right to a private and family life (Article 8).

There can be no question that there has been a fundamental shift in the nature and implications of imprisonment since judges sentenced these pregnant women and mothers to prison, and we would urge recognition of the fact that those implications can be particularly traumatic, and hold especially serious consequences, where the children in question are under the age of two, and therefore in the critical '1001 days' so fundamental to child development. Judges handing down custodial sentences to the mothers of babies and infants did so with the expectation that they would, where appropriate, have contact with that child throughout their custody and apply for Release on Temporary License (ROTL) allowing them to go home for days and weekends to maintain their vital bond. Lockdown means they now face complete separation amidst a time of unprecedented pressure and anxiety. As mothers are unable to communicate with these young children in any way (unlike older children who can benefit from phone calls and letters/ emails) we and others will be campaigning for a prioritised response to mothers in prison with caring responsibilities for children aged two and under. A key part

¹ Abbott. L, Scott. T, Thomas. H, and Weston. K (2020) Pregnancy and Childbirth in English Prisons: Institutional Ignominy and the Pains of Imprisonment. *Sociology of Health and Illness* (Accepted 25th November 2019, published online 10.01.2020).

² Newcomen, N (2016) A Report by the Prisons and Probation Ombudsman: Investigation into the death in December 2013 of a prisoner at HMP Low Newton.

³ RCM (2019) [RCM position statement on Perinatal Women in the criminal justice system](#): *Separation of mothers from their babies should be considered a serious incident and avoided unless absolutely necessary to guarantee safety of mother or baby.*

⁴ Baldwin, L. and Epstein, R. (2017). Short but not Sweet: A Study of the Imposition of Short Custodial Sentences on Women, and in Particular, on Mothers. De Montfort University.

of this response should be the prioritisation of use of ROTL for mothers of young infants as soon as this is feasible.

Sentencing

Pregnant women and new mothers are still being sent to prison during the Covid-19 crisis, including mothers remanded or recalled for minor breaches and forced to leave their babies in the community.

Now, more than ever, it is imperative that sentencers follow the established guidance on mitigating factors relating to sole or primary care of a dependent relative. In particular, the Sentencing Council guidance states that the impact of a sentence on dependents should lead to consideration as to whether the sentence could be suspended, and where the defendant is a pregnant woman, the relevant considerations should include the effect of imprisonment on the woman's health and any effect on the unborn child. Clearly, the regime in place in prisons across the estate at the current time, and for the foreseeable future, should set the threshold for custody – whether on remand, or after sentencing – higher than ever.

Release from prison

By prioritising pregnant women and mothers with babies in prison for early release back in March, the government sent a clear signal about their vulnerability, and the need to protect their safety and wellbeing. Yet two months on, only 22 pregnant women and mothers with babies have been released under this scheme.

The early release scheme should be extended, with creative and coordinated use of resources to ensure that every woman who can be moved into the community safely – including all mothers of under-twos – is supported to do so as quickly as possible.

The government also has a duty to protect women's lives after release from prison, while on probation supervision or on special purpose license (early release). We are concerned that the risks and complexity of the situations many women are being released into at the current time are not being adequately addressed. For example, women being released under 'business as usual' (planned releases – not early release schemes) are only being given the standard discharge grant of £46, and not the increased grant being provided to those released under Covid-19 related schemes, who receive £80.

It's also vital that pregnant women and mothers released early from prison during the pandemic are not returned to custody as the infection rate drops, unless there is a clear justification for doing so. Some of the women who have been released have been making preparations for birth in the community, others have recently given birth and are in the postnatal period, and many have been reunited with their children, partners, and wider support networks. These women and babies must not be faced with the trauma that a transition back to prison would entail. Instead, they must be given the sustained, holistic support they need to build a positive future for themselves and their families.

The risks posed by the prison system more widely

At the moment it is harder than ever to gauge the impact the prison regime may be having on pregnant women and new mothers in custody. Communication with women is difficult and heavily reliant on the officers working with them, and Her Majesty's Inspectorate of Prisons (HMIP) has suspended full inspections. While we await the first reports from their alternative 'short scrutiny' visits to women's prisons, these are being conducted without the usual health and social-care focused involvement of the Care

Quality Commission, and are unlikely to include specific assessments of the situations of pregnant women, mothers on MBUs and mothers of babies under two in the community. The experiences and needs of these women should form the focus of a specific and urgent investigation across the estate.

Furthermore, the HMPPS review of Prison Service Instruction 4800 on MBUs (which lapsed in December 2018) has been delayed. This was intended to deliver a new framework to govern the care of pregnant women and new mothers in prison, due for publication this spring. In the meantime the female estate is continuing to operate without comprehensive mandated rules and without appropriate tools to mitigate risks and ensure that women and babies receive the care they need and are entitled to. HMPPS should complete the review as a matter of urgency, with recognition of the amplified risks women and babies face at the present time.

The Prisons and Probation Ombudsman is also soon to complete its investigation into the death of a baby at a women's prison in September 2019. When those findings are made available, their recommendations should also inform the situation of pregnant women, new mothers and babies in custody now and in the future.

Co-ordinated releases, and an end to custodial sentences in all but the most exceptional of cases, provide the answers to minimising the risk to mothers and babies in the pandemic, as they did before the outbreak, and as they will continue to do after this current public health crisis passes. The Government should use this as a turning point, and commit to full delivery of its Female Offender Strategy.

Pregnant women and new mothers experiencing multiple disadvantage in the community

Maternity care

Maternity services are facing significant staffing pressures and concerns have been raised about the redeployment of maternity staff to other areas of the health system, as well as reduced choice and support around birth options⁵. Midwives in some areas have told us of a near complete suspension of the continuity of carer models proven to improve outcomes for the most vulnerable women and babies, and there are anecdotal reports of drops in the number of safeguarding referrals being made in some maternity teams, suggesting low levels of identification of, and response to, concerns.

Women are also unable to access good postnatal support from partners, staff, or volunteers (visits to the postnatal wards are highly restricted), with implications for their ability to establish breastfeeding (particularly for post-operative mothers) and to navigate mental health issues.

It is vital that, as services are adapted to a 'new normal', NHS Trusts make every effort to restore and enhance continuity of carer and specialist midwifery models. Failure to do so as quickly and as fully as possible will risk violation of women's rights to safe care (Article 2), to protection of dignity and privacy, and to their rights to make informed choices about their own treatment (Article 8).

Family justice and social services

Recent reports from the Family Justice Observatory, including a rapid consultation on the use of remote hearings in the family justice system⁶ raise significant concerns in relation to local authorities' and family justice professionals' efforts to protect mothers' Article 6

⁵ <https://www.birtherights.org.uk/wp-content/uploads/2020/03/Final-Covid-19-Birtherights-31.3.20.pdf>

⁶ <https://www.nuffieldfjo.org.uk/coronavirus-family-justice-system/family-courts>

rights to a fair and public hearing, and Article 8 rights to a family life. This report raises particular concerns about urgent applications for interim care orders in relation to newborn babies, with new mothers having to join hearings from a side room in the hospital, with a lack of support, difficulties in connectivity and very little opportunity to ensure any privacy while the hearing was taking place.

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