

Research Paper

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Lost Spaces: Is the current procedure for women prisoners to gain a place in a prison Mother and Baby Unit fair and accessible?

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Executive Summary

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Background:

I am a practising barrister, specialising in the fields of public law, civil liberties and human rights, having also spent many years representing those charged with criminal offences. The impetus for this piece of research came from a case I became involved in at the end of 2013, acting for a woman prisoner (*WB*), in a judicial review challenge to the fairness of the admissions procedure for a place in a prison Mother and Baby Unit (MBU). One of the most striking factors to me was that the MBU Admissions Board did not consider her application until three weeks before her due date. She was refused a place because of historic concerns about her parenting raised by the Local Authority (Children's Services). The baby was removed from her 48 hours after she gave birth. The second most striking feature, to me, was that her appeal against the refusal of her place was not decided until nine days after she gave birth. The High Court found the process to be procedurally unfair and non-compliant with human rights standards. The case shone a light not just on the need for timely decisions but also the chasm between prison policy and practice.

Key Objectives:

Having a child can be an overwhelmingly important period in a woman's life. Separation from that child can have profound consequences for both. The above case, combined with the reported under-use of MBUs as well as reportedly high rejection rates, raised vital questions: How do we treat pregnant women law-breakers when they are sentenced to custody? How do women apply for a place in a Mother and Baby Unit in the prison? What are the key challenges for them? Why are there such challenges? How can they be addressed? This report reflects research to deepen our understanding of these issues.

Overall Research Design:

Given the complete dearth of recorded views of pregnant women prisoners on this issue, I was determined to try and record the experience of women prisoners themselves, not just those of state agencies or NGOs who come into contact with them. My aim was to try and reach as many women as possible, within and outside prison, who had applied for an MBU place, whether accepted or rejected. I also wanted to interview prison staff involved in the MBU admissions process. Ultimately it proved very difficult to reach women in the community and women who had been rejected, whether in prison or outside. However, with the permission of the National Research Committee of NOMS (as it then was), I was able to access prisoners who were residing in three different prison MBUs as well as staff working in each one. I was also able to interview one woman who had been refused a place and was still in that particular prison. Although a small-scale study, the three MBUs make-up 50 per cent of the MBU provision in the female prison estate in England and Wales. It is the first study into MBU provision in England and Wales that I am aware of to actually document and draw upon the first-hand experience of women prisoners.

Methodology:

I adopted a qualitative perspective to my research and, within that, the grounded theory approach to qualitative data analysis. The research questions I chose focused on women's experiences of the decision-making processes and shaped this study. I conducted 13 semi-structured interviews with women prisoners, two with ex-prisoners and five with MBU staff. I also took into account a questionnaire completed by one woman prisoner and a telephone interview with an NGO worker. Once the interview process was completed, I began the process of thematic analysis. I chose a thematic analysis because of its flexibility.

Thematic Analysis – Key Findings:

My analysis revealed the following key themes:

- Women were not expecting a custodial sentence at court and thus made no provision for their babies;
- There was a lack of consistent information sharing with women prisoners upon entering into prison about the existence of MBUs, the benefits of MBUs or how to access them;
- Social workers played a powerful, if not determinative, role in the MBU decision-making process (whether they attended the MBU Board or not);
- The majority of the women accepted into an MBU had not been to prison before;
- There was a long delay between an MBU application being made and the MBU Board being held (this was particularly significant in light of a completely unexpected finding that babies born in prison were likely to be born prematurely);
- There was a lack of prior warning of the Board date and the late disclosure to women prisoners of information and reports (including adverse ones) being considered by the Board;
- There was a lack of knowledge amongst prisoners of the fact that there is a right of appeal against the decision of the Board.

Summary Conclusions:

This research highlights that:

- The MBU decision-making process is unclear and obscure to women prisoners and they are not adequately informed of their choices early enough.
- Once in prison, the overwhelming evidence from this study is that if a prisoner makes an MBU application, she is given minimal information about the process and effectively prevented from taking any meaningful part in the admissions process. Her contribution is limited to attending an interview, ill-informed and ill-prepared, as to what is expected of her and what is being said about

her which may affect her adversely. Not only is she ill-informed, she is usually in a very late stage of pregnancy, which undoubtedly affects her experience of the process.

- The lack of attendance and engagement from social workers who write adverse reports adds to the unfairness of the process.
- Late decision-making can render the appeals process, such that it is, nugatory.
- On a positive note, the research also shows that once in the MBU, women and babies can flourish, and prisoners can make very significant changes in their lives.

Recommendations:

- The Ministry of Justice (MOJ), which is the body ultimately responsible for all prisons, whether privately run or not, should require liaison between MBU Managers and those external to the prison service who are working in the criminal justice system, in particular the statutory services (for e.g.: social workers, probation officers, judges and magistrates) so that there is a proper and informed understanding of how MBUs work, what they offer and how to access them.
- The prison Reception screening interview should include an additional, specific question about whether a woman has a baby in the community as well as the age of that baby. Every woman (not just every pregnant woman) should be given the NOMS MBU leaflet. PSI 49/2014 currently states at paragraph 2.1 that handing out the leaflet is a mandatory action. However, this does not appear to be happening consistently. It may be the Reception screening should include a box to confirm that the leaflet has been given out.
- Further, the positive aspects of MBUs, including the excellent nursery provision, should be prominently and persistently advertised within the women's estate. This should be a nationwide MOJ initiative and not left to an individual MBU Manager. Women who are already in a prison which has an MBU who want to apply or are thinking of applying should be allowed to visit the MBU at an appropriate time. In prisons without MBUs, there should be photographs available of the different MBUs, showing the rooms as well as the nursery and other facilities. These actions should be mandatory requirements in every women's prison.
- There should be the equivalent of a service level agreement in place between MBUs and Local Authority Children and Adult Services, setting out mutual expectations, particularly in relation to report preparation, time frames and attendance at MBU Boards. All social worker being asked to express a view as to whether MBU admission is in the best interests of any particular child, should have a proper and full understanding of the MBU environment and facilities before they do so. To this end, relevant social workers should be invited by MBU Managers to visit an MBU within their

catchment area and their attendance should be made mandatory. This would explode myths and build relationships and ties. This should be done as a matter of urgency.

- It should be a mandatory action in the PSI 49/2014 (and any subsequent updating PSI) that the dossier provided to the MBU Board should be disclosed to the prisoner no later than 48 hours before a Board (it is currently just a recommended time frame at paragraph 2.3). This would mean that decisions about when a woman is going to attend a Board and be told about it would have to be much more systematic than they currently are (the research shows that most are told only on the day of the Board).
- MBU Boards should be held much earlier than they are. The PSI (and any subsequent updating PSI) should be amended to reflect the judge's view in the *WB* case that MBU Boards should be held as soon as possible after an application is made. It should also stipulate that they *must* be held by Week 30 at the very latest (unless of course a woman is sentenced much later into her pregnancy, and then they should be held as soon as possible after admission).
- To have a proper understanding of the take-up or otherwise of MBU places, prisons should be required to record not only the number of applications, admissions and refusals, but also why an application to an MBU is not progressed (i.e. whether it has been withdrawn or whether a woman has been unexpectedly released or whatever other reason it does not end in an admission or a refusal), given the large discrepancy in the existing statistics between applications, admissions and refusals. The statistics should also include the age and ethnicity of all those accepted or rejected, as well as a brief reason for rejection (e.g.: drug use). This data should be collated nationally and reported annually.
- The appeals process needs to be urgently reconfigured to comply with ordinary principles of fairness and due process, with an emphasis on speedy decision-making. The procedure to be followed as well as the approach that will be taken by the Women's Team should be set out in terms.
- The MOJ should commission further research to examine further some of the issues identified in this report in order to better understand both the barriers to applying for and to gaining an MBU place, and in particular to understand the profile of those rejected. This is vitally important given that i) it is widely accepted (and reflected in current prison policy) that attachment to the primary carer takes place in the first two years, and separation before 18 months can have a profoundly negative impact on the child ii) there is a growing body of evidence which suggests that MBU residents are less likely to re-offend than the general female prison population, and iii) regardless of whether there is an

impact on recidivism, MBUs have the potential for promoting the future well-being and welfare of children as well as that of their mothers.

ENDS

