



Department  
for Education

# **Applications to mother and baby units in prison: how decisions are made and the role of social work**

**A case review of social work decision making (2017-2021)**

**24 November 2022**

**Isabelle Trowler in partnership with What Works for Children's Social Care**

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## Foreword

It has been a real privilege to undertake this project and I am so grateful for the opportunity to look in depth at the decision making process for prison based mother and baby unit (MBU) applications. I have learnt a great deal from all those involved, and hope that this report can offer insights and suggestions to improve the system and hopefully increase the number of women who make successful applications to MBUs. Throughout this review, I have been struck by the passion and relentless advocacy for women in prison and their children, both from organisations within the third sector and prison staff alike.

I am grateful to the team of senior social workers without whom this review would not have been possible. Alongside their demanding day jobs, this group of social workers have contributed to and supported the delivery of the review, bringing their own extensive practice experience and expertise to the process. The final report is thanks to their input, analysis, and reflections throughout the review period.

Although this review was restricted to the MBU admissions decision making process, over the last few months the mothers and professionals I have spoken to have raised a far wider range of issues. Whilst we have had to limit ourselves to the core aim of the project (to examine the local authority social work contribution to the MBU Board decision making process) there are many other issues raised during this review that merit further consideration if we are to improve the experience of children with mothers in prison.

I am thankful for the contribution of Birth Companions and the women with lived experience who we worked with to gain an invaluable insight to how the MBU admissions system is experienced by women and their children. Their input helped inform the design and focus of the review and throughout the review they provided useful challenge and ensured a real world perspective.

I now look forward to working with partners across government, the prison estate and the third sector to take forward the recommendations from this Review and ensure that our MBU application process is making the right decisions for women and children.

**Isabelle Trowler**

Chief Social Worker for Children and Families (England)

# Executive Summary

## Background

Prison sentences, by their nature, result in the separation of children from their primary caregivers. Mother and baby units (MBUs) within the female prison estate provide an opportunity for babies to remain with their mother in a safe setting whilst their mother serves her custodial sentence, giving the chance for mother and child to bond and maintain a secure relationship.

In 2019, Lord Farmer carried out a review looking at the importance of strengthening female offenders' family relationships. This recommended that the Chief Social Worker for Children and Families (England) carried out a case review of "children removed from primary carers when they entered prison". Our report looks at the findings from this case review. As there is currently no requirement for people who are in prison to declare if they have children when they are placed in custody, there are challenges to reviewing cases where children are in the community. For this reason, we focused on the social work input and wider decision making process that determines whether to offer a prison MBU placement to women who apply.

## Research methods

We appointed a panel of eight social workers to examine a sample of applications made to MBUs between 2017 and 2021. The panel reviewed case files to determine whether the MBU Boards' decisions to reject or accept a woman's MBU application were reasonable and made in the best interests of the child. Alongside the social workers' case review, researchers at WWCSO conducted a thematic review of MBU applications with the aim of understanding patterns across mothers' case files.

We also engaged with key stakeholders to inform our review: the MBU Board chairs, women with lived experience of the MBU application process (through the charity Birth Companions); social workers; and a range of third sector organisations, charities, and academics with expertise in the prison system. The social worker panel also visited each of the six prisons with MBUs in England to meet the staff and women living on MBUs and to see the physical environment of the units.

## Headline findings

Of the 39 reviewed applications that had been rejected by the MBU Boards, the social worker panel agreed that both the decision and the decision making process by the Board was reasonable in 25 cases. A number of these cases showed examples of good practice and engagement by social workers and the Board members. These included high quality evidence provided by social workers which demonstrated a clear

understanding of the functions of an MBU and full and cohesive multidisciplinary approaches.

However, the panel raised concerns about 14 of the 39 rejected applications. Issues raised were:

- The MBU Board's decision to reject the application was not deemed to be reasonable in 3 of the 39 cases.
- There was a lack of social worker involvement in 10 of the 39 rejected applications, with social workers either not attending the MBU Board hearing, not writing a report for the MBU Board hearing, or both.
- Where there was social worker engagement, this was deemed below-standard in 3 of the 39 rejected applications

We also found a lack of support for women through the MBU application process and a lack of scrutiny of the MBU Boards' decisions.

## **Discussion and recommendations**

A recurring finding from this review was the inconsistency in the application process: inconsistency in the input from social workers for each mother's application; inconsistency in the risks permitted by different MBU chairs; and inconsistency in how decisions were made.

Our recommendations seek to rectify these inconsistencies as well as improving the information and support available to women. From our findings, our recommendations are as follows:

1. Consideration should be given to the types of support a woman can have access to before, during and after the MBU Board hearing, including emotional support and advocacy.
2. Chairs should ensure at the start of the hearing that the mother is aware of her rights prior to the hearing commencing.
3. The Ministry of Justice (MoJ) and HM Prison and Probation Service (HMPPS) should explore whether providing legal representation to mothers as part of the application process would improve outcomes for women and their children.
4. Women's prisons should work to ensure that the recent Pregnancy, Mother and MBU guidance is fully implemented and that all women in prison who are pregnant or have children under 18 months are made aware of MBUs within five days and have the support they need to apply. The MoJ and HMPPS should monitor the implementation process and work with prisons to improve the process where problems occur.



5. The role of the independent Board Chair should be formalised as an independent public appointment with a fixed term, with powers to command a response from statutory services.
6. The Boards' decision making should be subject to regular and expert scrutiny. This could be conducted either independently or as part of a pre-existing inspection process.
7. The Chairs should regularly peer review and discuss decisions as a group to improve the consistency of decision making.
8. Membership of the recently introduced Appeal Panel (to support the Women's Team at HMPPS with appeal decision making) should be published, alongside data on the number of appeals of MBU applications and their outcomes.
9. In all cases, the Board should have a whole family assessment conducted by a local authority child and family social care service to inform their decision.
10. The Department for Education should amend Working Together (2018) to clarify the responsibility of children's social care in the woman's home authority to provide to the Board an assessment of suitability of a mother and baby placement. In all cases it should be expected that a children's social care representative with responsibility for the case attends the Board (either in person or virtually).
11. More information on prison settings, MBUs and training opportunities should be available to social workers and provided to local authorities.
12. Consideration should be given to the Board having access to its own dedicated local social work advisor with an understanding of the prison system and expertise to assist the Board in its deliberations about placements, disruptions, and discharge arrangements; and to liaise with home authorities to help facilitate the decision making and planning arrangements. The advisor could also have a role in assisting any appeals process.
13. Findings from the current pre-sentence reports pilot should be carefully considered so that high quality and timely pre-sentence reports can be completed for all women with children/women who are pregnant.

We hope these changes will go some way to improving the current system and provide more women and children with the crucial opportunity to stay together and build a relationship for the future.

## Introduction

There has long been concern about the impact of separating mothers from their children when mothers are sent to prison. Lord Farmer's 2019 Review, looking at the importance of strengthening female offenders' family and other relationships to prevent reoffending, raised concerns about women whose children are removed from their care while they are in prison (Farmer, 2019). He also highlighted the low take up of places in mother and baby units (MBUs) and reflected on anecdotal reports that social workers in the community are reluctant to recommend women be granted these places. To better understand what might be happening in practice, Lord Farmer recommended that:

[“A Case Review of children removed from primary carers when they entered prison to be carried out by the Chief Social Worker for England \(Children and Families\), to ensure that decisions taken are always in the best interests of children. The review should examine social work practice, including the role of support services in keeping families together.”](#) (Farmer, 2019)

This report presents the findings of this case review, which examines the social work input to decisions in response to applications to prison MBUs in England. An MBU is a unit within a women's prison where a mother can live with her baby (typically up to the age of 18 months).

Although Lord Farmer's review asks questions about the separation of all primary carers and children through the prison system, there is currently no requirement for people who are in prison in England and Wales to declare if they have children when they are placed in custody. While parents are encouraged to declare if they have children, there is no systematic or central system that records this information. From engagement with mothers who had been in prison, we heard how some women with older children in the community were worried to voluntarily let prison staff know about their children. This was due to fear about what might happen to them, including concern that involvement from children's social care might result in their children being removed from their care.

This, therefore, presents challenges to reviewing cases where children in the community are removed from their parents' care because of parental imprisonment. For this reason, this review focused on applications for MBU places as in these cases, women have disclosed that they have children in their applications made to prisons and the applications are recorded. Through data linkage, these records can be used to identify local authority children's social care records where they exist.

This case review also includes female prisoners living in Wales: there are no female prisons in Wales so women who live in Wales and who are sentenced to custody must serve their prison sentence in England. The review was conducted in partnership with What Works for Children's Social Care (WWCSC) and a team of senior social workers drawn from the local authorities in England where the prisons with MBUs are based, plus two local authorities in Wales.

Parental imprisonment has a significant impact on the children of the parents who are imprisoned (SCIE, 2018). Decisions taken in the community to separate children from their family must consider the best interests of the child. However, sentencing decisions which may result in children being separated from their families have no obligation to consider the best interests of a child (although sentencing guidelines do set out that dependent children should be considered when determining appropriate sentence) (Sentencing Council, 2019). This review looked at whether decisions to grant or refuse an MBU place were reasonable and made in the best interests of the child. The child's best interests were assessed in line with the Working Together (HM Government, 2018) guidance.

The panel were asked to consider whether they agreed with the Board's assessment of risk factors, and whether they could have reached a different but equally reasonable decision based on the evidence available. This review also sought to understand how the decision making process for this system is working, with a particular focus on the role of social workers and whether there are opportunities to improve the system to allow more women and babies to remain together.

## **The focus of the review**

The focus of the review was to explore the social work input into MBU decisions, as well as the wider decision making process that determines whether to offer an MBU placement to women in prison who applied. Underpinning Lord Farmer's recommendation was a hope that we might be able to find a way to increase the number of babies who come to live with their mothers within an MBU.

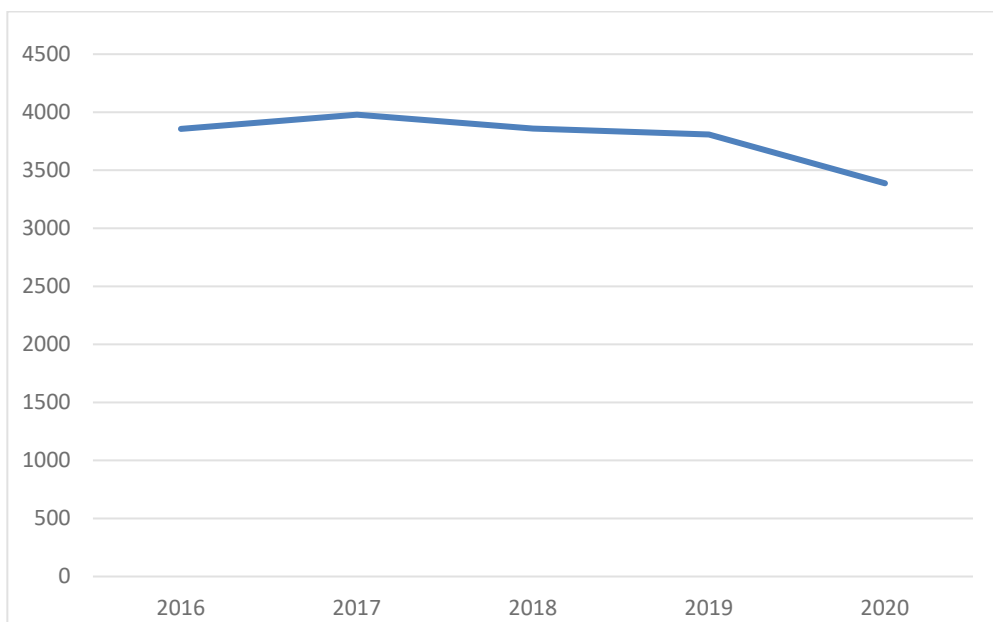
This report also provides some wider commentary on social work attitudes to maternal imprisonment and the role that statutory child and family social work plays in promoting family life through placements in MBUs or promoting contact between mothers and children.

# Background

## Women’s prisons in England

Over the last 30 years the female prison population has remained relatively stable at around 4 to 5% of the general prison population (Sturge, 2022). Figure 1 illustrates the female prison population between 2016 and 2020, the years in which the majority of MBU cases were considered for the review.

**Figure 1: Female prison population 2016 to 2020**

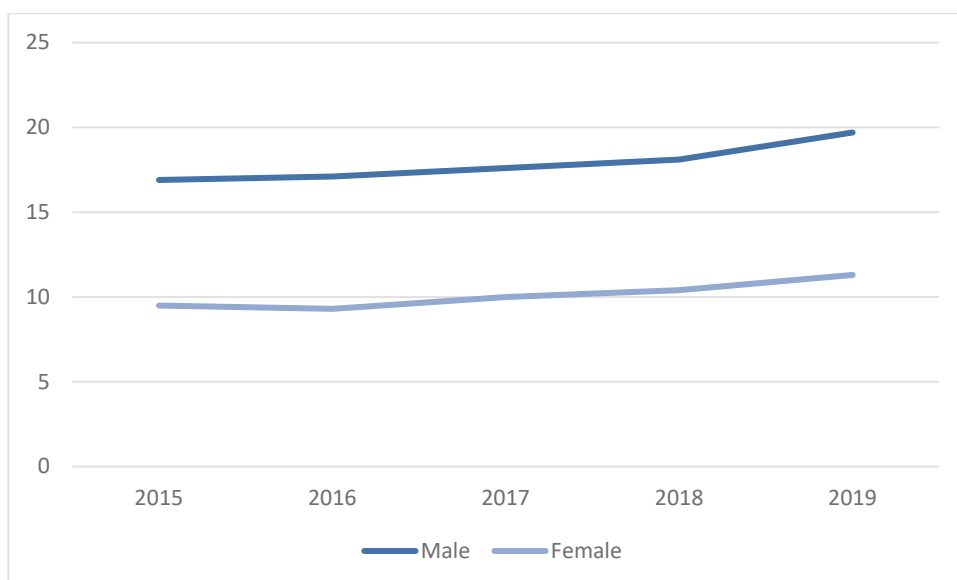


Source: Ministry of Justice, 2021a

Women are often placed significant distances from their home: on average a female prisoner is placed 46 miles from their home (Ministry of Justice, 2021b), with many held over 100 miles from home (Farmer, 2019).

Over the last 30 years, the proportion of women being sent to prison to serve short prison sentences has risen. In 1993 a third of custodial sentences given to women were for less than six months, by 2019 this had nearly doubled (62%) (Prison Reform Trust, 2021). On average women are sentenced to shorter prison sentences than men because women are in general convicted of less serious crimes. However, from 2015 to 2019 (the period of our review), Figure 2 illustrates that there has been a slight increase in the average custodial sentence length served by women from just under 10 months to around 11 months.

**Figure 2: Average custodial sentence length by sex in months between 2015 and 2019**



Source: Ministry of Justice 2019

Table 1 shows the types of offences committed by women who received immediate custodial sentences between 2017 and 2020. Theft offences were the most common. This does not encompass all women who were eligible to apply for an MBU place during this period as those on remand and those who receive suspended sentences can also apply for a place. It does, however, give an insight into the types of crime committed by the women in prison who may be eligible for a place on an MBU.

**Table 1: Type of offence committed by women who received immediate custodial sentences between 2017 and 2020**

Type of Offence	2017	2018	2019	2020
Theft offences	3416 (47.5%)	2965 (45.9%)	2550 (43.4%)	1501 (34.3%)
Violence against the person	651 (9.1%)	585 (9.1%)	786 (13.4%)	845 (19.3%)
Summary non-motoring	825 (11.5%)	788 (12.2%)	510 (8.7%)	417 (9.5%)
Drug offences	418 (5.8%)	403 (6.2%)	399 (6.8%)	340 (7.8%)
Misc crimes against society	603 (8.4%)	552 (8.5%)	459 (7.8%)	297 (6.8%)
Public order offences	303 (4.2%)	302 (4.7%)	285 (4.9%)	264 (6.0%)
Possession of weapons	206 (2.9%)	205 (3.2%)	247 (4.2%)	238 (5.4%)
Fraud offences	353 (4.9%)	253 (3.9%)	248 (4.2%)	198 (4.5%)
Robbery	176 (2.5%)	183 (2.8%)	176 (3.0%)	116 (2.7%)
Summary motoring	118 (1.6%)	113 (1.8%)	105 (1.8%)	56 (1.3%)
Criminal damage and arson	64 (0.9%)	65 (1.0%)	47 (0.8%)	49 (1.1%)
Sexual offences	56 (0.8%)	39 (0.6%)	31 (0.5%)	27 (0.6%)
Not known	0 (0.0%)	12 (0.2%)	35 (0.6%)	24 (0.6%)
Total	7189	6465	5878	4372

Source: Ministry of Justice and HMPPS 2017-2020

## Mothers in prison

Approximately three in five women in prison have a child under 18 years old, and it is estimated that around 17,000 children are affected by maternal imprisonment each year. The impact for children can be wide ranging: for example, 95% of children with a mother in prison have to leave their family home when their mother goes to prison. In addition, maternal imprisonment is associated with poor educational attainment, emotional trauma, and increased risk of offending for children.

The most recent annual figures for March 2021 to March 2022, show that on average there were 29 pregnant women in prison. For this same period there were a total of 50 births to women spending time in custody.

The table below shows the number of MBU applications made between 2017 and 2021. It shows a decline in the number of MBU applications over the last four years. Some of this decline may be explained due to the decline in the number of people sentenced to prison in 2020 and 2021 due to the COVID-19 pandemic (for a variety of reasons, such as court case backlog). Some applications are not pursued, illustrated by the number of applications which are neither approved nor rejected each year. This can be for a range of reasons, for example because of Family Court decisions or remanded women not returning to prison after sentencing.

**Table 2: Applications to MBUs from 2017-2021**

Year from April-March	Applications	Approved	Refused
2017-2018	118	60	38
2018-2019	97	46	15
2019-2020	95	46	15
2020-2021	62	26	17

Source: HMPPS 2017-2021

## Mother and baby units in England

An MBU is part of a women's prison where a mother can live with her baby up to the age of 18 months. There is provision for extended placements where appropriate, such as when the mother's sentence ends shortly after the child is 18 months old. In exceptional circumstances placements can be extended up to a maximum age of 24 months. Pregnant women, and women with children younger than 18 months old can apply. There are no exclusions relating to remand status/sentence, offence type, sentence type or sentence length.

There are currently six MBUs in England in the following women's prisons: Styal, Bronzefield, New Hall, Askham Grange, Peterborough and Eastwood Park. The map at

Figure 3 below illustrates the geographical spread of prisons with an MBU. Across the country there is capacity for 64 mothers and 70 babies (to allow for multiple births), with each MBU being equipped for 10 to 12 mothers.

**Figure 3: Map of prison MBU locations and nearby cities**



Source: Deviant Art 2022

Whilst in the MBU, the mother is responsible for their child (although the governor of the prison has a duty of care for both mother and baby). All parents in prison retain parental responsibility for their child (whether in an MBU or not) unless there is a court order removing this. An internal prison document known as a “care plan” will be made for all children living in an MBU (this is different to a statutory care plan for a child in public care). This should be done within the first four weeks. The decision to allocate a place in an MBU to a mother is reviewed every eight weeks to ensure the placement in the MBU remains viable. There is a nursery on site which cares for the child whilst the mother undertakes any courses or work during her sentence.

MBUs are routinely inspected as part of Her Majesty’s Inspectorate of Prisons’ (HMIP) wider inspections of the prisons in which they are based. These inspections assess the four ‘healthy prison’ areas: safety, respect, purposeful activity and rehabilitation and release planning, as well as following up recommendations from previous inspections. MBU nurseries are also inspected by Ofsted, with one receiving an Outstanding rating in 2017 (Peterborough), and the rest receiving good ratings between 2017 and 2019. Many women spoken to during these inspections mentioned the high quality of support they received. The decision making process from applications to appeals, is not part of any inspection process.

## **The MBU Chairs**

There are four independent Board Chairs, who are employed by HMPPS on a consultant basis. The Chairs have either a legal or social work background and are responsible for chairing the multi-agency Board and making a recommendation to prison governors/directors as to whether to offer a place to an applicant. The four Chairs are all long serving: two have been in post for 22 years, one for 16 years and one for 17 years.

There used to be regular meetings of Board Chairs, but this is no longer the case. They do not receive any professional case supervision but have ongoing dialogue with the MoJ Women's Team, particularly in relation to complex cases.

## **The policy framework for MBUs 2017 to 2020**

Our Case Review examined applications to MBUs from 2017 to 2021. During this time, the MBU Prison Service Instruction (issued in 2014) provided the operational framework for all women's prisons in delivering the MBU specification. This included guidance for MBU staff on how to make sure the best interests of the child are central to the process of admissions and in the MBU itself.

A new operational policy framework was published in September 2021 after a full review by HMPPS. As all the cases considered by the panel were subject to the 2014 Prison Service Instruction, we have used this as the basis for examining the decisions made around applications. However, this report will consider changes to the Framework against any potential recommendations in the discussion section of the report (Ministry of Justice and HMPPS 2021).

## **From application to decision**

The 2014 Service Instruction, in place at the time of the Review, sets out the policy framework for the running of and the admissions process for MBUs. The Children Acts (1989 and 2004) are used to define the roles of the local authority and mother in relation to an MBU placement.

The decision to admit a mother and her child must consider the best interests of the child, the necessity to maintain good order and discipline in the MBU and the health and safety of other babies and mothers in the unit. Where a mother does not have parental responsibility or there is a Sex Offences Prevention Order in place, then an Admissions Board may be inappropriate.

To support this process, all women's prisons have an MBU liaison officer or deputy who assists women to complete an application form. MBU applicants apply for the unit of their choice with any decision by one MBU to allow or refuse admission binding on all MBUs. Alongside the mother's application the liaison officer will also compile a case file containing the local authority children's social care report, adult social care report (where



appropriate), a security report, medical records and other offender and prison reports for the consideration of the Board.

The purpose of the Board is to make a recommendation to the governor/director of a prison as to whether a child and mother should be admitted to an MBU. Ordinary admissions boards are required to be multi-disciplinary and should include an independent chair, a manager with line management responsibility for MBU, the MBU manager, and the community offender manager. A social worker from the woman's home local authority is also encouraged to attend to represent the best interests of the child.

An applicant can be supported at the Board meeting by an appropriate individual of their choosing (such as a family member, friend, prison staff member or their solicitor). It should be noted that a solicitor can support an applicant at the meeting, but they are not there to represent them in their professional capacity.

The Board must evaluate the evidence submitted as part of the woman's case file, particularly the details of her application, the length of the sentence given, whether separation may be inevitable and the verbal or written evidence she provides. The Board has the following expectations to offer a place:

- There are no concerns about mother's conduct and behaviours
- A drugs test has been undertaken and is negative for illicit substances
- The applicant is willing to refrain from substance misuse
- The applicant is prepared to sign a standard compact, which may be tailored to her identified individual needs
- The applicant's ability and eligibility to care for her child is not impaired by poor health or for legal reasons.

Other than in relation to an emergency admission, a decision to offer a mother a place on an MBU should not be made without a written report from the women's home local authority children's social care services which states that they are not aware of any concerns which would prevent a place on an MBU being offered. This report should raise any significant concerns in relation to past parenting history which might impact on the mother's ability to parent in an MBU.

The report should also consider alternative possible care arrangements for the child, particularly if it is envisaged the child may leave prison before its mother and determine whether other family members may be able to care for the child if appropriate.

Decisions taken by the Board must be defensible, based on evidence and properly recorded (including whether the Board's decision was unanimous or not).

If the mother's application is refused and she was not present at the Board hearing (in person, by video/phone link, or by written statement), she has the right to ask for a

second hearing where she is able to put forward her case personally. If the mother's application is refused and she participated at the Board hearing, then she has the right to appeal through the request and complaints procedure to the Head of Women's Team, who will review the case. If the mother's appeal is unsuccessful, there is a possibility that the mother could challenge the decision through the courts by way of judicial review.

Whilst in theory there is one centralised application process, in practice most women apply to the MBU closest to home and the Board allocated to that MBU considers their application.

## **Changes to the policy framework 2021**

From 2019 to 2021 HMPPS undertook a policy review of the current arrangements for the operation of MBUs (Ministry of Justice and HMPPS 2021). The new guidance made changes in response to extensive engagement with HMPPS staff, women with lived experience, the health sector, children's social care, academics and the third sector.

The new guidance seeks to address concerns about inconsistent engagement and working in partnership with local authorities through the introduction of operational guidance on the responsibilities of relevant agencies. This includes an MBU factsheet and template assessment to support social workers inputting to MBU admissions processes. The guidance also includes a requirement to have social work input in all MBU decisions. A pregnancy mother and baby liaison officer role has been introduced with additional funding to be a point of liaison with other agencies including children's social care.

In response to feedback from women with lived experience who felt that Boards were professionally heavy and balanced against them, the updated guidance clarifies that family members, peers, legal representatives, or other advocates can attend Boards as a McKenzie Friend.

The new guidance seeks to improve the continuity of care from pregnancy to MBU placement and following an MBU placement by introducing a multidisciplinary individual care plan template for pregnant women and mothers to young children. Following feedback about delays to the application process caused by delays receiving a social work assessment, the updated guidance makes clear that a social work assessment should be provided within 45 days, with the option to escalate this nationally if no assessment is provided.

The guidance also highlights the need for increased and adapted visits for pregnant women and mothers. It makes clear that prisons should support contact between mothers and their children where local authority children's services are involved.

The introduction of an MBU Advice Panel is intended to give expert input to central appeals and placement extension decisions. The Advice Panel is made up of

multidisciplinary experts and is called on by the HMPPS Women's Team where required to advise on emergency admissions, placement appeals, and upper age limit extension applications.

# Methodology of the review

## The case review

We carried out a case review to determine whether the MBU Boards' decisions to reject or admit a mother's application for her and her child to live in the prison's MBU were reasonable and made in the best interests of the child. The panel were asked to consider whether they agreed with the Board's assessment of risk factors, and whether they could have reached a different but equally reasonable decision based on the evidence available. Ethics approval for both the case review and the qualitative thematic review (see below) was obtained from the WWCSO ethics committee.

We appointed a panel of eight senior social workers to the Review Team from the six English local authorities with prison MBUs, and two senior social workers from Wales to reflect the fact that women in Wales are sent to prison in England (referred to as "the panel" from now on). All have substantial experience in child protection practice, management, and leadership (see appendix for further information). The panel was chaired by the Chief Social Worker for Children and Families.

The panel's aim was to examine applications made to MBUs in the three years before February 2020 (to account for the impact of COVID-19), including a number from Wales. The panel also looked at two cases from 2021 due to delays in receiving case files. All available cases from this period were collected for review (a total of 106 case files), although one MBU had missing data that could not be examined over a period of two years.

To obtain the applications made to MBUs, the Chief Social Worker for Children and Families worked with prisons to access the case files compiled as part of the application process when a mother makes an application to serve her custodial sentence on an MBU. Once the files were shared by the MBUs, WWCSO approached the relevant local authorities to set up data sharing agreements to safely view the corresponding families' case files. WWCSO then pseudonymised all files so that the family could not be identified.

Members of the panel did not review any files where they had had personal involvement with the woman who applied or where their local authority was involved.

To ensure the cases were reviewed by the panel in a consistent manner, WWCSO and the Chief Social Worker for Children and Families developed a review proforma. They worked with the charity Birth Companions, a charity which supports pregnant women and new mothers who live in challenging circumstances both in prison and in the community, to host a roundtable with women with experience of applying to MBUs in prison, to input into the review proforma. The proforma was also piloted by the panel.

A total of 106 case files were received from five of the six prisons: 39 rejected, and 67 accepted. Askham Grange MBU was not included in this sample because it is an open prison which women can only request to be transferred to if they meet the criteria set out in the Security categorisation policy framework (which is different from the criteria in other prisons with MBUs) (Ministry of Justice and HMPPS, 2020). This usually happens through a transfer from another prison MBU, so the woman's MBU acceptance has already been approved by an MBU Board.

For the case review, a sub-sample of 50 case files were examined: all 39 rejected applications where the mother and baby were not granted an MBU place, and a subsample of 11 accepted cases, where the mother was granted permission to take up a place in an MBU.

Each case was reviewed by two different panel members using the review proforma, and the Chief Social Worker also reviewed each of the cases. Wherever possible when identifying these accepted cases, we sought a range of sentence length, type of crime, first/second offence. We aimed to ensure diversity in terms of ethnicity, immigration status, age and social-economic background and care experience.

## **The qualitative thematic review**

Alongside the social workers' case review, researchers at WWCSA conducted a thematic review of MBU applications with the aim of understanding patterns across mothers' case files, including differences between mothers who were accepted or rejected from the MBU. The thematic review examined the characteristics of mothers and family histories.

Using all 106 case files provided by the MBUs and local authorities (obtained as above), 39 rejected and 67 accepted applications from five MBUs in England from 2017 to 2021 were examined.

A more in-depth analysis was also conducted on a subsample of 15 accepted and 15 rejected cases. These were selected purposively to include applications from across all five MBUs and cover a range of characteristics related to the mother's age, the type of offence, and prior involvement of children's social care.

This thematic review provided additional information to the case review as it involved a deeper analysis of the risk and protective factors in the mother and family case history. Reviewers for this part of the project sought to find patterns across cases. A full [report of this analysis by WWCSA](#) is published alongside this report.

## **Stakeholder engagement**

Working with the charity Birth Companions, we engaged with a group of women with lived experience of the MBU application process over the course of the review. We held a

series of roundtables to inform our areas of focus and get a better understanding of women's experiences of the application process and of being in an MBU with their baby. We consulted this group of women at key stages throughout the review, to offer insight when agreeing and finalising the terms of reference for the review panel; agreeing the questions for the panel to focus on when reviewing the case file; and to reflect upon and review the emerging findings.

In addition to Birth Companions, we welcomed views from and engaged with a range of third sector organisations, charities, and academics. We held a series of roundtables with social workers to get a better understanding of their experience of involvement with the MBU application process.

The panel also visited each of the six prisons with MBUs in England to meet the staff and women living on MBUs and to see the physical environment of the units. The visits mostly took place in the summer of 2021 when some COVID-19 lockdown restrictions were being lifted.

## **Engagement with MBU Board Chairs**

The Chief Social Worker for Children and Families met with the four MBU Board Chairs during the process of the review. These meetings were conducted virtually with each Chair. The Chairs were invited to share their understanding of their role, their experience both prior to becoming a chair and in role and their experience of engagement with children's social care as part of the Board process.

## **Social work polling**

This review is particularly focused on social workers' input into MBU Boards decision making and to what extent that does, or could, influence outcomes. However, we also wanted to find out more about what social workers thought about family relationships when a mother is in prison, the extent to which they were familiar with the prison system and how both these things might influence their assessments and decision making.

Working in partnership with the Principal Social Worker Network for Children and Families, we polled social workers, asking about their knowledge, experience, and attitudes in these areas. We received 110 responses from social workers in England and 22 responses in Wales. We got responses from a range of social workers with varying experience in the profession and a mix of frontline and senior roles. These results give an insight to the range of social work views, but it is a small self-selecting sample of the child and family social workers in England. The results of the poll provide a snapshot rather than a representative sample of the profession.

# Findings

## Case review by expert panel: Findings

### Rejected cases overview

Of the 39 reviewed applications that had been rejected by the MBU Boards, the panel agreed that both the decision and the decision making process by the Board was reasonable in 25 applications.

For the remaining 14 cases, there were four instances where at least one panel member disagreed with the Board's decision. While the panel agreed with the Board's decision in the ten other cases, they raised concerns with the decision making process. In addition to disagreeing with the overall decision, the following concerns were also highlighted by the panel:

- In three cases, there was a lack of social work engagement, with no reports provided and non-attendance at the MBU hearing meaning no input was provided from children's social care. For one of these cases, both members of the panel also disagreed with the Board's decision.
- In four cases, the social worker report was not written for the purpose of the MBU application, and therefore was out of date and/or did not consider the child's needs.
- In two cases, the panel highlighted that the social work report demonstrated a lack of understanding of key issues. For one of these cases, both members of the panel also disagreed with the Board's decision.
- In one case, the panel highlighted that the social work support the mother received prior to incarceration impacted on the quality of the report provided to the Board.
- In a further two cases, one member of the panel disagreed with the Board's decision whilst the other panel member agreed.
- In one case, one member of the panel highlighted that whilst rejecting the mother's application was a reasonable decision, it would also have been reasonable to offer the mother a placement, demonstrating the fine balance for borderline cases.
- In one case, one member of the panel highlighted that whilst the final decision was reasonable, the method by which the Board got there was not appropriate as they based their decision solely on the fact that the social worker didn't support the placement rather than looking more broadly at the mother's application.

These concerns will now be considered in turn.

## Reasons for disagreeing with the Board's decision

There were four applications where at least one member of the review panel disagreed with the Board's decision. The key reasons for disagreeing with the Board are explored here.

### **a) Inevitable separation**

For one of the applications, the sole reason for the rejection was that the mother's prison sentence would mean the child would "age out" of the MBU after ten months, resulting in an inevitable separation. This was questioned by the panel due to the lack of expert consideration of attachment and child-development, and the impact of separation on the child. It also raised issues around inconsistency in decision making, as there are examples of applications where the mother was accepted onto the MBU despite the fact there would be an inevitable further separation down the line given the length of sentence. In this instance, the mother was a foreign national, which also raised the question as to whether this decision was made due to bias towards her immigration status or her race. Mothers with sentences that were greater than 36 months were more likely to be accepted than rejected (16 cases accepted, 7 rejected: 24% vs 18%), suggesting that sentence length in itself was not a deterring factor in the acceptance of applications.

### **b) Decisions based on mother's offence**

For one of the applications, the sole reason for rejection appeared to be the fact that the mother was remanded for a serious offence (murder), even though the guidance says that any woman, regardless of offence type, can apply and be considered for a placement. There were no concerns raised about the mother's parenting abilities and the social worker recommended a placement, but the Board did not mention the child's best interests in their decisions. Instead, the Chair of the Board stated that the mother's alleged offence was too serious a crime to have care of a child (even though she was at this stage on remand).

The panel also raised concerns around the use of language by the Board on mental health.

### **c) Finely balanced decision and MBU could have been an opportunity**

For two of the applications, the Board was split on the decision, and chose to reject the mother's application - a decision at least one member of the review panel disagreed with. For both of these applications, a panel member instead believed that the MBU placement should have been granted and could have been used as an opportunity for the mother, and one where further assessment could take place. In one of these cases, it was felt that the social worker displayed a lack of understanding of domestic abuse and made a negative assumption that prison is an inappropriate place for a baby without evidence (discussed below).



## **Social worker engagement**

Of the 39 rejected applications, there were only three cases where the Board made a decision contrary to the social worker's recommendation (and for one of these three cases, the panel disagreed with the Board's decision). This demonstrates the importance that social worker input plays in MBU applications and the value that the Board places on the information provided when making their decision.

The reasons for the MBU Board disagreeing with the social worker recommendation were due to the safeguarding risks the mother being on the MBU would pose to other residents. These were where:

- the mother was convicted of sexual abuse against a teenage boy which the social worker did not deem to pose a risk to children on the MBU, but the Board overruled this due to risks to visiting children
- the mother got into a physical altercation and had hurt another mother on the unit
- the offence the mother committed (murder) was deemed by the Board to be too high risk - this decision was questioned by the panel (as discussed above).

The panel highlighted two key issues with social worker engagement within the sample: either non-engagement by a social worker; or involvement by the social worker which was classed as below-standard.

### **a) Lack of social worker engagement**

In three cases, children's social care practitioners neither wrote a report nor attended the Board hearing. This meant there was a lack of information for the Board to draw on when making their decision on a recommendation to the prison governor/director. Whilst for two of these cases, the panel agreed with the Board's decision on the information available, it is unclear whether a different decision would have been reached had the Board and panel received information from the mother's home authority.

There were a further three cases where the social worker did not provide a report but did attend the hearing. Therefore, whilst there was some level of social worker involvement, this also raises concerns regarding whether the Board had the full range of information required to make an informed decision.

There were a further four cases where the social worker did not provide a report in response to the MBU application, but instead shared written information created for other purposes prior to the incarceration, such as child and family assessments. These reports lacked up-to-date parenting assessments and in some the panel commented that they did not take a whole family approach when looking at the child's needs. This again raises questions about how useful and relevant the information provided to the Board was.

### **b) Below-standard engagement by the social worker**

For two applications, the panel felt the social work report demonstrated a lack of understanding of key issues. For one application, this was a lack of understanding of the impact of domestic abuse upon the mother prior to entering prison and bias shown towards the MBU environment, with the social worker stating that a prison environment is unsuitable for a baby, without any evidence for this. For the second, this was due to lack of understanding of the safeguarding risk the mother posed to other children who visited the unit.

For one application, the panel considered that the social work support that the mother received prior to prison negatively affected the quality of the social worker assessment of the mother's parenting ability. Minutes from social work meetings (held prior to offending) which were shared with the Board showed that the social worker had missed several core group meetings and a change of social worker was needed due to their inexperience.

### **Examples of good practice by social workers and Board members**

As mentioned above, for the majority of rejected cases (25 of the 39) the panel agreed with the decision of the Board. A number of these cases showed examples of good practice and engagement by social workers and the Board members.

Elements praised by panel members in these cases include:

- high quality evidence provided by social workers, demonstrating a clear understanding of the functions of an MBU as well as providing relevant history of the mother's background, highlighting current concerns clearly and focussing on meeting the child's needs
- assessments of the mother considering and referring to other assessments taking place, showing a full and cohesive multidisciplinary approach
- using a creative approach when the Board members were split on the decision by issuing a conditional refusal pending further assessments whilst at the same time authorising contact between the mother and baby for three times a week

### **Cases where there was a high risk to child**

Within the 25 rejected cases where the panel agreed with the Board's decision and decision making process, there were four cases which, due to the nature of the mother's offence being violence against children, meant she posed a significant safeguarding risk to children:

- One case where the mother was convicted of cruelty to a child following the death of her child
- One case where the mother was on remand for the murder of her own older child

- Two cases where the mother was on remand for causing the death of their child or having been aware of significant risk, leading to the deaths of her children

Causing harm to a child demonstrates that the mother poses a safeguarding risk to other children. If the mother remained in the community, it is unlikely that she would be permitted to maintain contact with children. Further, it is likely that the mother would attract negative behaviour from other residents on the MBU due to the nature of her offence. A prison MBU would not be able to manage this level of risk as it currently operates because it does not have staff who provide round the clock parenting support or specific child safeguarding.

### **Inconsistency in approaches by the MBU Board**

There were some instances where the panel considered that the MBU Board used the MBU hearing as an opportunity to discuss the mother's (alleged) offence with the mother and ask her questions about what happened and why the offence occurred. This type of questioning goes beyond the remit of the Board which is to assess whether it is in the child's best interests to reside in the MBU with their mother and whether this can be managed safely. The proportion of applications which were accepted or rejected varied between the MBUs, with two accepting around half of applications and one accepting almost three quarters of applications.

### **Support for the mother**

Of the 39 rejected cases, there were only ten cases where the mother was supported (by someone acting in a McKenzie Friend capacity) to attend the MBU hearing. The person supporting the mother varied, ranging from the father of the child or other family member, the cell mate within the prison, a supportive professional such as the liaison officer, or the mother's solicitor.

### **Placement decisions for women on remand**

Mothers on remand are yet to be convicted of an offence. For this reason, refusing a woman the opportunity to remain with their child needs particularly careful consideration. Of the 39 rejected applications looked at, 12 were from mothers on remand. For two of these applications, at least one panel member disagreed with the panel's decision. For three of these applications, the panel raised concerns about the quality of the social work report. For the remaining seven applications made by mothers on remand, the panel agreed with the Board's decision and had no concerns about the social worker practice.

### **Accepted cases overview**

As well as reviewing rejected cases, the panel also reviewed 11 accepted cases to determine if the decision had been made in the best interest of the child. The panel agreed with the Board's decision in all 11 accepted cases. None of the accepted cases reviewed by the panel were applications from mothers on remand.

## High level of risk accepted

Of note is the fact that there were several accepted cases where the panel considered that the Board viewed the MBU as an opportunity for further assessment. However, this approach was not taken with all cases. There was an inconsistency in decision making with similar levels of risk cited as a reason for rejecting applications.

One example is where the mother endangered her children's lives during a serious mental health episode. During the MBU Board hearing, it was recognised that there were significant safeguarding risks that had been raised by children's services, and a detailed discussion was held as to how these risks should be managed. A further example is an instance where the mother was only permitted to have supervised contact with her older child due to the safeguarding risks she posed to them. In both cases, the Board felt that the MBU provided an opportunity for the mother to parent her baby. This contrasts with several rejected cases, where there were instances of significant safeguarding risks that led to the application being rejected, with no consideration for how the risks could be managed.

## Inevitable separation

In eight of the accepted cases, due to the length of mother's sentence and age of the child it was highly likely that there would be an inevitable separation of baby and mother once the baby ages out of the MBU. This contrasts with a rejected case (considered above) where the sole reason for rejecting the mother's application was the inevitable separation.

## Qualitative thematic review findings

Our findings from the qualitative thematic review provide an understanding of the characteristics of the women who apply to MBUs and their families and look at any differences between those who were granted an MBU place and those that were rejected. For the qualitative thematic review, 39 rejected and 67 accepted applications from the five MBUs in England from 2017 to 2021 were examined.

## Mother's offending

Where the offence was known, the most common type of offence for all applications was violence against the person. The proportion of mothers whose applications to MBUs were accepted with violence against the person as an offence was lower than for mothers who were rejected. The second most common type of offence for mothers who were accepted to the MBU was drugs offences, while the second most common type of offence for mothers who were rejected from an MBU was theft and handling stolen goods.

The average sentence length for those where the sentence was known, was similar for both groups. Of mothers whose applications were rejected 59% had previous

convictions, whereas less than half of mothers whose applications were accepted had previous convictions.

A third of mothers whose applications to an MBU were rejected were on remand or unsentenced.

**Table 3: Type of offence by number of mothers**

Type of (current) offence by number of mothers <sup>1</sup>	Accepted Applications (N=67)	Rejected Applications (N=39)
Violence against the person <sup>2</sup>	17 (25%)	16 (41%)
Drugs offences	14 (21%)	3 (8%)
Fraud and forgery	8 (12%)	4 (10%)
Theft and handling stolen goods	6 (9%)	8 (21%)
Breach of bail / license / spvsn order	2 (3%)	6 (15%)
Burglary	2 (3%)	5 (13%)
Robbery	4 (6%)	3 (8%)
Sexual offences <sup>3</sup>	4 (6%)	1 (3%)
Criminal damage and arson	3 (4%)	1 (3%)
Possession of weapons	2 (3%)	2 (5%)
Other	5 (7%)	5 (13%)
Unknown	17 (25%)	2 (5%)

**Table 4: Mother's sentence length**

Mother's sentence length	Accepted Applications (N=67)	Rejected Applications (N=39)
On Remand / Unsentenced	5 (7%)	13 (33%)
<6 months	1 (1%)	1 (3%)
6-12 months	8 (12%)	3 (8%)
13-24 months	14 (21%)	4 (8%)
25-36 months	9 (13%)	6 (15%)
>36 months	16 (16%)	7 (18%)
Unknown	14 (21%)	5 (13%)
<b>Average sentence length (months)</b>	<b>35</b>	<b>33</b>

<sup>1</sup> We have recorded where some mothers had more than one type of offence (but multiple offences of the same type by the same mother are not counted due to insufficient information on number of charges)

<sup>2</sup> Includes murder

<sup>3</sup> Includes controlling prostitution

**Table 5: Mother's previous convictions**

<b>Mother's previous convictions</b>	<b>Accepted Applications (N=67)</b>	<b>Rejected Applications (N=39)</b>
Yes	30 (45%)	23 (59%)
No	22 (33%)	5 (13%)
Unknown	15 (22%)	11 (28%)

## Other children

For mothers whose applications to the MBU were accepted, it was most common for this child to be their first child. Conversely, for mothers whose applications were refused from the MBU, it was most common for them to have three or more children. For mothers who did have children, the average number of other children for those who were accepted to the MBU was 2.1, whereas the average number of other children for those who were rejected from the MBU was 2.7.

**Table 6: Mother's other children**

<b>Mother's other children</b>	<b>Accepted Applications (N=67)</b>	<b>Rejected Applications (N=39)</b>
No	21 (31%)	4 (10%)
Yes 1 child	18 (27%)	10 (26%)
Yes 2 children	11 (16%)	9 (23%)
Yes 3 or more children	9 (13%)	16 (41%)
Unknown	8 (12%)	0
<b>Average (where mother has children)</b>	<b>2.1</b>	<b>2.7</b>

## About the children

Table 7 shows the child's age at the point of application to an MBU.<sup>4</sup> Often, children were unborn at this point, with 46% being unborn in accepted applications and 72% in rejected applications. Most other children were below six months of age, including some who were very newly born, with very few being above six months.

**Table 7: Child's age at the point of application to the MBU**

<b>Child's age<sup>5</sup></b>	<b>Accepted Applications (N=67)</b>	<b>Rejected Applications (N=39)</b>
Unborn	31 (46%)	28 (72%)
0-6 months	22 (33%)	10 (26%)
7-12 months	6 (9%)	1 (3%)
13-18 months	1 (1%)	0
Unknown	7 (10%)	0

Prior to entering custody, almost all children who were already born were in the care of their mother at the point when she was placed in custody, as seen in Table 8. We also looked at where children were living at the time of the mother's application to the MBU<sup>6</sup> (by which time the mother would already be in custody). Children of mothers whose applications were accepted, and who were born already, were most likely to be with a family member, with their father, or already on the MBU via an emergency placement. Children of mothers whose applications were refused by the MBU were mostly unborn, or newborn in hospital.

For 44% of children who were not accepted to the MBU, where they were placed subsequently was not known. Where the information was available, foster care was the most common placement. Some children were due to be placed with a family member or their father.

**Table 8: Child's primary carer before the mother entered custody**

<b>Child's primary carer before the mother entered custody</b>	<b>Accepted Applications (N=67)</b>	<b>Rejected Applications (N=39)</b>
Unborn	36 (54%)	30 (77%)

<sup>4</sup> Or if date of application was unknown, at the date of the MBU Board

<sup>5</sup> Or if date of application was unknown, at the date of the MBU Board

<sup>6</sup> Or if date of application was unknown, at the date of the MBU Board

Mother (including mother and baby foster care)	25 (37%)	8 (21%)
Newborn in hospital	0	1 (3%)
A family member	1 (1%)	0
Unknown	5 (7%)	0

**Table 9: Child's residence when application to the MBU is made**

Child's residence when application to the MBU is made (i.e. after mother is in custody)	Accepted Applications (N=67)	Rejected Applications (N=39)
Unborn	30 (45%)	30 (77%)
With mother (in community awaiting sentence at point of application)	1 (1%)	0
Newborn in hospital (usually with mother)	4 (6%)	4 (10%)
With father	7 (10%)	2 (5%)
With a family member	10 (15%)	0
With a family friend	1 (1%)	0
In foster care (or in unspecified care placement)	3 (4%)	3 (8%)
Already in the MBU (e.g. emergency placement made)	6 (9%)	0
Unknown	5 (7%)	0

**Table 10: Placement after the MBU decision**

Where is the child due to be placed after the MBU decision (after birth)	Accepted Applications (N=67)	Rejected Applications (N=39)
With father	0	1 (3%)
With a family member	0	5 (13%)
In foster care (or in unspecified care placement)	0	16 (41%)
In the MBU	67 (100%)	0
Unknown	0	17 (44%)

## Social work engagement

In 67% of cases reviewed as part of the qualitative review, there was a record of a report from children's social care (CSC) to the MBU Board. In 54% of accepted applications and 62% of rejected applications a social worker did not attend the MBU Board meeting.



Those who had prior CSC involvement appeared to be slightly more likely to have a social care report submitted (39 of 53, 74%), than those who had no prior CSC involvement (24 of 36, 67%). However, those who had prior CSC involvement appeared to be slightly less likely to have a social worker attend the Board (20 of 53, 38%), than those who had no prior CSC involvement (17 of 36, 47%).

**Table 11: CSC report**

<b>Report from CSC submitted to the MBU Board</b>	<b>Accepted Applications (N=67)</b>	<b>Rejected Applications (N=39)</b>
Yes	43 (64%)	28 (72%)
No	6 (9%)	6 (15%)
Unknown/unusable report	18 (27%)	5 (13%)

**Table 12: Social worker attendance at the MBU Board**

<b>Social worker attendance at the MBU Board meeting</b>	<b>Accepted Applications (N=67)</b>	<b>Rejected Applications (N=39)</b>
Yes	28 (42%)	13 (33%)
No	36 (54%)	24 (62%)
Unknown	3 (4%)	2 (5%)
Any other ethnic group	0	0
Unknown	52 (78%)	19 (19%)

## **Statutory involvement with the mother and her children**

Having contact with social services regarding current or previous children was disclosed in many of the mothers' applications. Three quarters of mothers whose applications were rejected from the MBU had prior involvement of children's social care with either this child or a previous child. In contrast, just over a third of mothers whose applications were accepted by the MBU had prior involvement of children's social care with either this child or a previous child.

**Table 13: CSC involvement for this child or other children**

<b>CSC involvement (for this child or mother's previous children)</b>	<b>Accepted Applications (N=67)</b>	<b>Rejected Applications (N=39)</b>
Yes	24 (36%)	29 (74%)

<b>No</b>	27 (40%)	9 (23%)
<b>Unknown</b>	16 (24%)	1 (3%)

## Ethnicity and nationality of mother

Of mothers whose applications were rejected by the MBU, 33% were recorded as White, 13% were recorded as Black, Black British, Caribbean or African. Mother's ethnicity was unknown for 49% of rejected applications. Further, of mothers whose applications were rejected by the MBU, 44% were recorded as British, and 14% were recorded as foreign nationals.

**Table 14: Mother's ethnicity**

<b>Mother's ethnicity</b>	<b>Accepted Applications (N=67)</b>	<b>Rejected Applications (N=39)</b>
White	13 (19%)	13 (33%)
Black, Black British, Caribbean or African	1 (1%)	5 (13%)
Asian or Asian British	1 (1%)	1 (3%)
Mixed or multiple ethnic groups	0	1 (3%)

**Table 15: Mother's nationality and immigration status**

<b>Mother's nationality and immigration status</b>	<b>Accepted Applications (N=67)</b>	<b>Rejected Applications (N=39)</b>
British	7 (10%)	17 (44%)
Foreign National	10 (15%)	3 (8%)
To be deported	2 (3%)	1 (3%)
Leave to remain	0	1 (3%)
Asylum Seeker (NRPF)	1 (%)	0
Unknown	47 (70%)	17 (44%)

## Fathers

The case files showed a wide range of relationships: some of the parents were in a relationship, whilst some of the mothers had strained relationships with the father or the father was unknown or did not want to be involved. A small number of case files for applications that were accepted and rejected by an MBU Board mentioned that the father was supportive of the mother and baby. However, as the mother's relationship with the father and their involvement with the baby was not often mentioned, there was not enough information to infer a difference between accepted and rejected case files in relation to the father's involvement. Similarly, there was little information provided about the mother's relationships with a partner who was not the father.

The in-depth thematic review provided some insight into the fathers' lives, such as previous involvement with children's social care, history of offending, substance misuse, mental health difficulties, their engagement with services and their involvement in their child's life. Again, the lack of recorded information about fathers means that it is difficult to draw conclusions about whether these characteristics differ between fathers where the mothers' applications to MBUs were accepted and those that were rejected.

## Parents as care leavers

There was very little information on whether mothers and fathers had experience of being in care or not. We were able to identify that 6 of 67 mothers whose applications were accepted were care experienced, as were 6 of 39 mothers whose applications were rejected.

**Table 16: Care experience of the mother**

<b>Is the mother care experienced?</b>	<b>Accepted Applications (N=67)</b>	<b>Rejected Applications (N=39)</b>
Yes	6 (9%)	6 (15%)
No/Unknown	61 (91%)	33 (85%)

**Table 17: Care experience of the father**

<b>Is father care experienced?</b>	<b>Accepted Applications (N=67)</b>	<b>Rejected Applications (N=39)</b>
Yes	1 (1%)	2 (3%)
No/Unknown	66 (99%)	65 (97%)

## Pre-sentence reports

In the present criminal justice system, the Judiciary or the defendant can request a pre-sentence report (PSR) before the defendant gives a plea. Alternatively, the Judiciary may request a PSR on the day of sentencing. The PSR is compiled by the probation service and used to determine the most appropriate method for dealing with an offender. Current MoJ and HMPPS Guidance in Determining PSR states that a PSR must give:

“Consideration of individual and particular vulnerabilities, domestic arrangements and caring responsibilities as well as the impact of any sentence upon those children or vulnerable adults cared for by the service-user (including pregnancy)”

Only two cases out of the sample of 106 reviewed had a PSR. Given the impact of parental imprisonment on the children of their parents, the inconsistent presence of PSRs in the cases was of some concern.

## Discussion

### MBU Boards as part of a family justice approach in England

The decisions made by MBU Boards have a life-long and profound impact on family life. The critical focus is rightly on the best interests of the child, but the decision of whether to grant a place also impacts significantly on parents, siblings and wider family networks. In engagement with mothers who had been resident in MBUs in the past, women were keen for us to understand the impact of these decisions. A mother's ability to live with her children is by default ended at the point of custodial remand or sentence. However, the state then invites us to consider it a possibility for those children under 18 months to live with their mothers, through the provision of MBUs and the MBU Board decision making process that goes with this.

Whilst it is important to note from the outset that we have found that in most cases the Board decisions are reasonable based on the information the Board had at the time (all 11 accepted cases, and 25 of 39 rejected cases), we have identified several issues which, in the interests of family justice, need to be resolved.

The similarities and differences between the powers and process of an MBU Board and those of the Family Proceedings Court came into sharp focus through the process of this review. Both share a responsibility to make decisions which interrupt the right to family life, often involving considerable risk factors and extensive social need, balanced with the need to assess capacity to parent both for the short and longer term.

In the Family Proceedings Courts, these dilemmas are explored and resolved through an army of professionals: psychologists, social workers, paediatricians, psychiatrists, sometimes with second and third expert opinions. The child is always provided with a Children and Family Court Advisory and Support Service (CAFCASS) Guardian who also advises the judge about a child's best interests. Parents and children, and sometimes other interested parties (for example grandparents or foster carers), benefit from their own legal representation. It is a process subject to myriad checks and balances and intense public interest.

In contrast, the MBU Board relies on a much smaller group of professionals to help reach its conclusions, often with very little knowledge about the history of the mother, or the child's wider family. The Chair's authority to require reports and attendance from relevant professionals at Boards is limited and while the Service Instruction for the operation of MBUs states that social work attendance at the Board should be encouraged, the Chair is not able to require this. This is evidenced by the significant proportion of MBU cases examined by this review where the social worker does not attend. This is more stark in cases where there is also no social worker report (3 of 39 rejected cases where no report or attendance at meeting, 3 of 39 rejected cases where no report but attended meeting,

and 4 of 39 rejected cases where no report for the purpose of MBU application but instead other CSC reports were shared).

Given the potential consequences of being refused an MBU placement, we questioned the fact that, although women can be supported at the Board by a relative, friend or advocate, that person cannot, if qualified to do so, act in their capacity as a lawyer. Of the cases considered by the panel, only ten women were supported by a McKenzie Friend at the Board. While the right of women to be supported at the Board by a relative, friend, or advocate acting as a McKenzie Friend has been clarified in the updated MoJ Policy Framework, women in effect have no right to legal representation to help argue their case.

One barrier to introducing the right to legal representation for the mother during the hearing is that it would become a legal process, which would then require HMPPS to also have legal representation. This would result in greater cost and potentially make the process longer and more adversarial in nature. Lengthening the process is challenging given the importance of ensuring women have access to an MBU as soon as they need it. However, we felt proper consideration should be given to whether providing legal representation to women and children would improve the system and outcomes.

**Recommendation 1:** Consideration should be given to the types of support a woman can have access to before, during and after the MBU Board hearing, including emotional support and advocacy.

**Recommendation 2:** Chairs should ensure at the start of the hearing that the mother is aware of her rights prior to the hearing commencing.

**Recommendation 3:** The MoJ and HMPPS should explore whether providing legal representation to mothers as part of the application process would improve outcomes for women and their children.

In addition to the lack of legal support available during the MBU hearing, women with lived experience of the MBU process told us about the lack of information they received about the existence of MBUs and the application process. The women spoke of inconsistent information about the application process to MBUs and the different facilities at different MBUs. They told us this was often learned through word of mouth from other residents of the prison. We also heard that women who had not yet given birth or were in custody before being able to make an application to the Board experienced uncertainty, stress, and anxiety as they did not know if they would be able to have their baby with them after the birth or if their baby was already born, for how long they would be separated.

Under MoJ and HMPPS guidance in use at the time of our review, the prison liaison officer's role was to inform women about the existence of places in the MBU. Recently new guidance has been published and the Liaison Officer role has been "strengthened".

Now there is a specific Pregnancy and MBU Liaison Officer who should ensure “timely identification, contact and signposting to relevant support services” including the MBU, with the initial contact and signposting to take place within five calendar days. We are pleased to see these changes although further research is needed to determine whether the strengthened guidance is being implemented and is sufficient to ensure all women receive consistent information about MBUs.

**Recommendation 4:** Women’s prisons should work to ensure that the recent Pregnancy, Mother and MBU guidance is fully implemented and that all women who are pregnant or have children under 18 months are made aware of MBUs within five days of being sentenced and have the support they need to apply. The MoJ and HMPPS should monitor the implementation process and work with prisons to improve the process where problems occur.

Whilst guidance makes clear that all decisions must meet the test of best interests of the child as set out in the Children Act 1989, establishing what is in a child’s best interests is often a finely balanced decision, and in any event, it is not, and cannot be, the only consideration. The MBU Boards’ stated considerations include the need to take factors other than the best interests of the child into account when it makes its decision, and this makes the process substantially different from the family court process. Consideration also needs to be given to the welfare of other women and their children on the MBU, and the capacity of the MBU to manage a combination of complicating factors or to take on new placements. We did not see any examples of the welfare of other women and their babies as an active and first reason to refuse a placement, although we did see this as a factor in some instances where a Board was considering subsequent separation of a baby from their mother because of incidents in the MBU between the mother and other prisoners (as discussed in the findings section). We also did not see any examples where capacity of an MBU was given as a reason to refuse an application due to considerable under-occupancy within MBUs across England.

The Board Chairs are not public appointments and there is no scrutiny of their decision making by any inspectorate or other external body. We are not aware of any process which looks at the quality of decision making of individual Boards, or any recent process that checks consistency across Boards. The case analysis found several instances of inconsistency between what level of risk the MBU was willing to accept, with high levels of risk accepted in several cases, but a similar level of risk rejected in others.

The function of the MBU Board is different to the Courts and does need to take into account a range of operational factors. However, the panel concluded that different arrangements should be considered to ensure that the MBU Board is given the authority it requires (not least to command a response from statutory services), it is more accessible to regulatory scrutiny, and to ensure it is a fair process for the mother and the child.

**Recommendation 5:** The role of the independent Board Chair should be formalised as an independent public appointment with a fixed term, with powers to command a response from statutory services.

**Recommendation 6:** The Boards' decision making should be subject to regular and expert scrutiny. This could be conducted either independently or as part of a pre-existing inspection process.

**Recommendation 7:** The Chairs should regularly peer review and discuss decisions as a group to improve the consistency of decision making.

Similarly, to ensure transparency about processes, it would be beneficial if more information about the appeal process was made available. The revised operational framework from 2021 did seek to improve the appeals process by collecting data on appeals and introducing an Appeal Panel of multi-agency experts to support the Women's Team at HMPPS with appeal decision making. However, it is not clear who sits on the Appeal Panel and how and when they are consulted during the appeal process.

**Recommendation 8:** Membership of the Appeal Panel should be published, alongside data on the number of appeals of MBU applications and their outcomes.

## The role of the social worker

In almost a quarter of rejected cases (23%), there was no report submitted from children's social care to the MBU Board. This is concerning as it means the Board are without a full up-to-date assessment, which is necessary given the complexity of the decisions.

The significance of the social worker report is revealed by the case analysis where we did not find any examples where the Board's decision to offer a place went against the social worker recommendation, and only three rejected cases where the Board had gone against the recommendation of the local authority (although our panel disagreed with the Board's decision in one of these cases). We also saw examples where the social worker assessment was used as the reason for refusal, rather than an independent judgement of the Chair. This demonstrates the weight that the Board places on these assessments and the gap left when they are not provided.

Our findings also reveal the complexity of many of the applicants lives, underlining the need for a full and up-to-date social worker assessment. Contact with social services regarding current or previous children was disclosed in many of the mothers' applications. Three-quarters of mothers whose applications were rejected from the MBU had prior involvement of children's social care relating to this child or a previous child; whereas just over a third of mothers whose applications were accepted by the MBU had prior involvement of children's social care with either this child or a previous child.



Unsurprisingly, in the applications where the mothers had been accepted by the MBU, there were fewer reports of having previous children removed from the mother's care.

Perhaps more surprising was the number of accepted applications in cases where there had been previous removals: in 3 out of 67 accepted cases, a mother had had previous children removed from her care, and for one of these there was no social worker report provided. Historical child removal certainly does not bar a parent from keeping subsequent children in their care, but it does illustrate the need for full and forensic assessment of any risks should this be under consideration.

The need for this is underlined when considering women serving longer sentences, where the decision making became much more complex given the inevitable separation of mother and child at some point. These are deeply ethical and complex questions about the best interests of the child. A finely balanced decision that would require a skilled and in-depth social work assessment of family functioning and capacity to parent, including not just the mother but potential carers within the family and the extended kinship network in the community.

The MBU Chairs also reported that timeliness and quality of social work reports from children's services were sometimes of concern and delays can result in avoidable separation of mother and baby. The 2021 updated guidance makes clear that a social work assessment should be provided within 45 days, or sooner if the social worker and MBU Manager feel that a more urgent assessment is needed, with the option for the Manager to escalate concerns via the relevant Service Manager or Director in the local authority if the assessment is not received. It is critical that social workers are supported to provide these assessments so that there are no delays to the application process.

MBU Chairs also noted that reports do not always have an up-to-date assessment, which women feel is unfair because they are based on historical information with scant information or understanding of the current picture. This echoes the case review findings where there were four rejected cases where the social worker report was not written for the purpose of the MBU application, and therefore was out of date and/or did not consider the child's needs.

**Recommendation 9:** In all cases, the Board should have a whole family assessment conducted by a local authority child and family social care service to inform their decision. This should include a balanced view of the best interests of the child and should at a minimum include:

- The suitability of the mother to have an MBU placement including where the placement might pose a risk, what the risk is and whether and if so, how it could be managed.
- The suitability and circumstances of alternative care arrangements should a placement not be granted.

- The impact of a placement or not on the child’s relationships and development. This should seek out and consider the mother and wider family’s views.
- Consideration to whether and how contact can be continued with wider family or the mother dependent on the decision made.

This recommendation goes beyond current children’s social care assessment criteria as set out in Working Together (2018). It will be for the Department for Education in partnership with local authority delivery partners to determine what, if any, differences there are between the type and thoroughness of assessment that would be carried out where there are child protection concerns and the whole family assessment recommended here.

Our findings also showed that in more than half of cases (57%) a social worker did not attend the MBU Board meeting (54% of accepted applications and 62% of rejected applications). It is unclear why there was no social worker attending. One possible reason is that in some circumstances, where their recommendation is clear (either in supporting or not supporting the application) and perhaps even underpinned by the authority of the Family Proceedings Court, it may seem unnecessary to attend as it would seem unlikely that the Board decision would contradict the recommendation. However, this does not account for all non-attendance. There were 7 of 39 rejected cases when, in addition to non-attendance at the hearing, there was also no social work report submitted. It is important to recognise that social workers have many competing responsibilities and significant time pressures upon them. Nevertheless, more must be done to ensure that social workers have the capacity to input into the MBU applications process and have the necessary communication links with staff based within the prison.

Our engagement work revealed frustration around this issue. In discussions with the MBU Chairs, all commented on the challenges of securing social work attendance at Boards. This was seen to be particularly problematic where there are differences in professional opinion in written reports which cannot be discussed when social workers do not attend. There was a clear sense that the responsibilities of the local authority (both in providing reports and attending boards) should be clearly set out in guidance. “Working Together” (2018) for example, does not make any reference to this group of children and what local authorities’ responsibilities are.

**Recommendation 10:** The Department for Education should amend Working Together (2018) to clarify the responsibility of children’s social care in the woman’s home authority to provide to the Board an assessment of suitability of a mother and baby placement. In all cases it should be expected that a children’s social care representative with responsibility for the case attends the Board (either in person or virtually).

In some of our engagement, the differences in social workers willingness to engage in the Board process was raised. Possible prejudice against children living in prison settings was highlighted as a potential reason for this. The MBU Board Chairs noted that there was variation in the attitudes of the social workers they worked with. In their experience some social workers were open minded to the potential of an MBU placement whereas others started with a less favourable perception of an MBU placement.

There were concerns raised about how much knowledge social workers have of prison settings and a prison based MBU, which in turn could affect the quality of their report and their ability to make an informed decision. MBU Chairs emphasised the need to explain details of the prison system, the MBU provision and the processes involved to social workers.

Results from our polling with 110 social workers echo this. Only ten had experience of an MBU application, and only four of these had the opportunity to visit an MBU as part of the assessment. Furthermore, only 14% who responded to the poll reported that they had undertaken any form of professional development on working with children who have a parent in prison. The lack of experience and training may affect social workers' confidence in engaging with the MBU process: our polling found that only 4% of respondents felt confident in their knowledge about the application process for an MBU placement. This is less than the percentage of social workers who have previously completed an assessment of suitability for a mother to be placed in an MBU. However, the small sample size of the poll means this only provides a snapshot rather than a full picture of social workers' experiences.

Given that social workers engage infrequently with the MBU application process, potentially only once or twice throughout their career, it would be disproportionate to mandate additional training to all social workers in this area. There are however optional training courses available from charities such as Pact and NEPACs which should be highlighted to social workers, and information on the MBU environment should be made available to local authorities.

**Recommendation 11:** More information on prison settings, MBUs and training opportunities should be available to social workers and provided to local authorities.

Our engagement work also pointed to the need for more involvement from children's social care when the placement is coming to an end (as well as during the application process). There was a shared frustration from mothers and prison staff about the sometimes poor relationships with the home local authority for the woman and baby. They noted that there is often low attendance from local authorities in relation to planning meetings for children. Staff reported that this can result in weak discharge planning and unassessed and unmanaged risk. On a number of occasions, we heard that local authorities want to pass on case responsibility to the local authority in which the prison is based and close cases when women enter prison with a child. This raised concerns

about the quality of planning for when a child is discharged and suggests a need for greater consideration for release and separation planning overseen by a discharge Board.

Following Lord Farmer's recommendation for a prison based social worker, a pilot scheme by the charity Pact of prison based social workers in two women's prisons was launched (running January 2021 to December 2023) which has the potential to address some of these concerns. One of the aims of the pilot is to "provide a vital link with community social workers who have children of female prisoners on their caseload". If this pilot is successful and expanded, this model could help improve relationships between prisons and local authorities and may improve confidence and knowledge of social workers.

**Recommendation 12:** Consideration should be given to the Board having access to its own dedicated local social work advisor with an understanding of the prison system and expertise to assist the Board in its deliberations about placements, disruptions and discharge arrangements; and to liaise with home authorities to help facilitate the decision making and planning arrangements. The advisor could also have a role in assisting any appeals process.

## Pre-sentence reports

PSRs are completed by the National Probation Service who should ensure good assessments and recommendations are made to assist the courts in their sentencing decisions. PSRs should offer a valuable insight into the circumstances of individuals and their families, and in those cases on the cusp of custody, consider the potentially significant impact of imprisonment on children (including unborn children in the case of pregnant women).

The value of PSRs as a tool in preventing separation and identifying cases where an application to an MBU is required was highlighted in engagement with the MBU Chairs. However, they reflected that PSRs are not completed consistently and sometimes where they have been done their quality is questionable. Although the sentencing code is clear that the court is required to request a PSR unless it considers it to be unnecessary, our findings found only 2 cases out of 106 had a PSR.

Since our case review steps have been taken to improve PSRs. A PSR 'Aide Memoire' which focuses on the individual circumstances of female offenders was rolled out in August 2019 and refreshed in June 2022. This was designed to improve the quality and consistency of PSRs by highlighting key areas to consider when assessing women's needs.

The MoJ is also running a PSR pilot, which includes female offenders as a priority cohort as they have been identified as having particular needs for written PSRs. The pilot aims

to improve the quality, timeliness and targeting of PSRs. The evaluation of the pilot will be published in 2023. The pilot also includes engagement with the judiciary through written reports and liaison meetings to raise awareness of the specific issues faced by women and provide an increased understanding of the possible implications of sentencing. The findings of this pilot will be important, as most individuals and organisations we engaged with advocated for all women with children or pregnant having a full PSR at the time of sentencing.

**Recommendation 13:** Findings from the current Pre-Sentence Report pilot should be carefully considered so that high quality and timely Pre-Sentence Reports can be completed for all women who are pregnant and/or have children

## Conclusion

Prison sentences, by their nature, result in the separation of children from their primary caregivers. MBUs within the female prison estate provide an opportunity for babies to remain with their mother in a safe setting whilst their mother serves her custodial sentence, giving the chance for mother and child to bond and maintain a secure relationship.

Lord Farmer's 2019 Review highlighted the importance of maintaining family relationships, and this report takes forward his recommendation to examine decisions separating primary caregivers from their children during a custodial sentence. We focused on MBUs because there is currently no requirement for people who are in prison in England and Wales to declare if they have children when placed in custody, and no central system that records this information. The MBU application process does, however, provide a record of women's applications and, therefore, a means to examine if decisions are made in the best interests of the child. It is important to acknowledge that this review only captures a small percentage of all children who are affected when their primary caregiver is given a custodial sentence.

We wanted to use this review process to understand the current MBU application process, how decisions are made and to identify ways to improve the system for children. We were surprised to find that occupancy rates in MBUs in prisons are often low and so wanted to understand what more can be done to ensure they are utilised by mothers where it is in the child's best interests.

The overarching conclusion we drew from this review is the inconsistency which exists within the application process. We found inconsistency in the input from social workers for each mother's application: in some cases, detailed up-to-date reports were provided with the social worker attending the hearing, whereas in others, there was no report and no attendance at the hearing, meaning large pieces of information to help determine whether a mother should be granted a place were missing. We found inconsistency in the risks permitted by different MBU chairs, with some willing to use the MBU placement as an assessment opportunity, and others deeming it too high a risk. And we found inconsistency in how decisions were made, with some granting places despite there being an inevitable separation once the child ages out of the MBU, and others rejecting the application for the sole reason that there would be an inevitable separation.

Our recommendations seek to rectify these inconsistencies as well as improving the information and support available to women. More clarity is needed for the roles and responsibilities of those involved in the process. The role of the Board Chair should be formalised, with their decisions subject to scrutiny and peer review. Consideration should be given to the types of support available for mothers, as well as ensuring that women are informed of their rights during the application process. Finally, the responsibilities of social workers should be more clearly set out, with mandatory involvement in all

applications, and relationships developed between prisons and local authorities to improve social workers' understanding of prisons and the support provided to women on release. We hope these changes will go some way to improving the current system and provide more women and children with the crucial opportunity to stay together and build a relationship for the future.

## The Review Team

We appointed a team of eight senior social workers to the Review Team from the six English local authorities with MBUs, and two senior social workers from Wales to reflect the fact that women in Wales are sent to prison in England. The Review Team was led by the Chief Social Worker for England (Children and Families) under the academic supervision of the Emeritus Professor Sue White at the University of Sheffield. All the social workers in the Review Team have substantial experience in child protection practice, management, and leadership.

Panel Chair: Isabelle Trowler

Panel Advisor: Nimal Jude

Panel members:

- Esther Beresford, Service Manager, Children's Locality Safeguarding, Wakefield
- Darren Mutter, Head of Children's Services, Pembrokeshire
- Dan Jones, Service Manager, Newport
- Catherine Boyce, Strategic Safeguarding Manager, South Gloucestershire
- Sophie Wales, Assistant Director, Barnsley (previously York)
- Dallas Frank, Head of Quality Assurance, Safeguarding and PSW, York
- Louise Hurst, Head of Service, Child in Need and Child Protection, Cheshire East
- Patricia Denney, Director of Children's Performance, Monitoring and QA, Surrey
- Sam Nour, Head of Safeguarding Service, Cambridgeshire and Peterborough
- Kasey Senior, Audit and Practice Standards Service Manager, Surrey



## The Project Team

The case review analysis and thematic analysis was delivered by a team at What Works for Children's Social Care (Janae Goodridge-Downer, Hannah Collyer, Hannah Scott and Katherine Ostwaite).

The project management and engagement for the review was undertaken in partnership between the What Works for Children's Social Care (Eleanor Briggs, Katherine Ostwaite, Nimal Jude and Georgia Parry) and the Office of the Chief Social Worker in the Department for Education (Isabelle Trowler and Lauren McCrum).

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For any enquiries regarding this publication, contact us at:

[Office.OftheChiefSocialWorker@education.gov.uk](mailto:Office.OftheChiefSocialWorker@education.gov.uk) or [www.education.gov.uk/contactus](http://www.education.gov.uk/contactus)

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