

Research Paper

2015/05



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

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Acknowledgements

This research was only possible because the National Research Committee of the National Offender Management Service (NOMS) gave me permission to access three prisons (HMP Newhall, Eastwood Park and Bronzefield). But that was only the beginning. The MBU Managers of each of those three establishments were incredibly generous with their time and did their utmost to accommodate me, show me around, facilitate access to prisoners in their MBUs and take part in interviews.

I am also grateful to *Women's Breakout*, *Women in Prison* (in particular the Women's Support Centre in Woking) and *ISIS Women's Centre* in Gloucester for helping me reach out to women in the community, and also to Denise Marshall at *Birth Companions* for steering me in the right direction.

My biggest thanks go to the women themselves for agreeing to talk to me and for sharing their private lives, their pain, their losses, their children and their astonishing positivity. Each one of them wanted to make life better for other women prisoners in the future. Each one of them was an inspiration to me. A special thank you to WB, my initial inspiration and to Natalie Sedacca at Hodge, Jones and Allen, for bringing us together.

Thank you to the Griffin's Society for driving this scheme forward and to Christine Leeson for her patience and support. Last, enormous thanks and respect to Professor Loraine Gelsthorpe, Professor of Criminology and Criminal Justice and Deputy Director of the Institute of Criminology, who somehow found the time to guide and supervise me.

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Abstract

This research was carried out in furtherance of the Griffin's Society vision for the response of the criminal justice system to women and girls to be proportionate, fair and just.

The study focused on women prisoners' experiences of the MBU decision-making processes utilising semi-structured interviews with women prisoners and MBU staff in three women's prisons in three entirely different geographical locations, as well as with ex-prisoners in two different geographical locations. Although a small-scale study, the three MBUs make-up 50 per cent of the MBU provision in the female prison estate in England and Wales. It is the first study into MBU provision to actually document and draw upon the first-hand experience of prisoners.

Findings which have emerged through thematic analysis indicate that the MBU decision-making process is unclear and obscure to women prisoners and they are not adequately informed of their choices early enough. Once in prison, if a prisoner makes an MBU application, she is given minimal information about the process. She is usually in a very late stage of pregnancy, which affects her experience of the process. The lack of attendance and engagement from social workers who write adverse reports also adds to the unfairness of the process. Further, late decision making can render the appeals process, such that it is, nugatory. On a positive note, the research also shows that once in the MBU, women and babies can flourish, and prisoners can make very significant changes in their lives.

The Report concludes that the Ministry of Justice should commission further research to examine in greater detail some of the issues identified in order to better understand both the barriers to applying for and to gaining an MBU place, and in particular to examine who is rejected and why.

1 Introduction

I am a practising barrister, specialising in the fields of public law, civil liberties and human rights, having also spent many years representing those charged with criminal offences. The impetus for this piece of research came from a case I became involved in at the end of 2013, acting for a woman prisoner. The facts are set out in the resulting judgment¹. In brief, WB, as she is referred to in the judgment, was remanded in custody at HMP Bronzefield, awaiting trial for a serious offence. She was approximately four months pregnant at the time of her remand. She had another child who was being temporarily cared for by a paternal aunt. She had never been to prison before. English was not her first language. Once in prison, the liaison officer told her about the existence of the prison Mother and Baby Unit ('MBU'). She made an application for a place with some help from the liaison officer. The MBU Admissions Board did not consider her application until three weeks before her due date. She was refused a place because of historic concerns about her parenting raised by the Local Authority (Children's Services). The baby was removed from her 48 hours after she gave birth. She found the strength to challenge these decisions in the High Court. In doing so, she shone a light on the chasm between policy and practice.

1.1. The legal context

As recognised by the courts in England and Wales, there are few interventions that might be considered more serious than separating a mother from a very young child.² In a case in which a mother was excluded from an MBU following alleged misbehaviour and thus separated from her child³, the High Court said at [16] that "*a decision-maker within the Prison Service is bound to give effect to article of the European Convention...it is obvious that a decision to separate mother and child engages Article 8*". Article 8 of the European convention on Human Rights ('ECHR'), which is part of our domestic law through the Human Rights Act 1998, protects the right to private and

¹ *R (WB) and (W) v SSJ* [2014] EWHC 1696 (Admin)

² *R (P) v Secretary of State for the Home Department, R (Q and another) v Secretary of State for the Home Department* [2001] EWCA Civ 1151, [2001] 1 WLR 2002

³ *R (CD and AD) v Secretary of State for the Home Department* [2003] EWHC 155 (Admin), [2003] 1 FLR

family life. The judge in that case went on to say that the best interests of the child and the engagement of Article 8 of the ECHR are not by themselves determinative on whether a decision to separate is lawful. On the facts of that case the two issues were (1) did the decision-maker in fact accord primary consideration to the best interests of the child? And (2) was the decision to separate a permissible one in the sense of being justifiable and proportionate?

1.2. Procedural fairness

When I delved into the process that led to the refusal of a place to WB it became apparent that the process had been procedurally unfair for a number of reasons. The legal challenge was brought relying on Article 8 of the ECHR as well as domestic public law, arguing that the procedural and substantive obligations imposed by Article 8 had been breached in respect of both WB and W (her child) and there had been various other public law breaches. The challenge was successful, the High Court directed the MBU Board to reconsider the case and the Ministry of Justice paid out damages to WB for the period of enforced separation from her baby, with a separate sum for W, to be held in trust for him. WB was ultimately acquitted of the crime she was charged with and was eventually permanently reunited with both her children.

1.3. Policy versus Practice

The litigation demonstrated that a reasonably sound paper policy (at the relevant time, Prison Service Instruction 54/2011) could be palpably unfair in the way it operated on the ground. For example, WB did not have access to her dossier (the file that is put together by an MBU Liaison officer and disclosed to the Board) which included adverse reports from the Local Authority Children's Services, until the day of her Board hearing, and then only had 15 minutes with an interpreter to digest them; she was not asked if she wanted a friend or Personal Officer to assist her (as envisaged by the policy); there was no pre-birth parenting assessment carried out by the Local Authority, as there should have been.

Further, her appeal against the refusal of a place to the Women's Team (an external team which is a part of the National Offender Management Service (NOMS)) was decided nine days after she had given birth and the Local Authority had already removed the baby. Even if the appeal decision been positive, given the lateness of the decision, the chance of reunification would have been

gravely affected, as the baby had started a relationship with a foster carer. A negative decision is also much harder to challenge if a baby is already building its attachment with someone other than his mother.

Thus timely decisions about MBU places are absolutely crucial. The High Court judge in WB's case said this at [76]⁴:

“It is true that apart from providing that an application must be made three months before the due date, the PSI does not expressly require things to be done in a particular schedule, or to be done quickly. But it is obvious that a Board must take place as soon as possible after a prisoner applies for a place on an MBU, and it is obvious that the prison authorities must be diligent and active in working out what information a Board is likely to need and then in providing the Board with that information. Otherwise, the provisions of the PSI cannot be effective; for example, the provisions about conditional refusal and any appeal from an adverse decision of a director or governor are likely to be pointless” [my emphasis]

Her case inspired me to try and explore, through qualitative research, how fair and / or accessible the process for MBU admissions is. In addition, I became aware of the reported under-use of MBUs as well as reportedly high rejection rates. I wanted to understand how women prisoners experienced the whole admissions process to see if this might shed light on these issues. The Griffins Fellowship provided that opportunity.

⁴ See fn 1.

2. Overall Research Design

Given the complete dearth of recorded views of pregnant women prisoners on this issue, I was determined to try and record the experience of women prisoners themselves, not just those of state agencies or NGOs who come into contact with them.

At the beginning of 2015, I wrote to letters to the Governors of four out of six prisons with MBUs, introducing my research and seeking access to women prisoners and MBU staff in order to interview them. The letters were co-signed by my academic supervisor at the University of Cambridge. I indicated that I would of course apply for the requisite permission from NOMS if they agreed. HMP Peterborough responded with an outright refusal whereas HMP Eastwood Park (in Wotton-under-Edge, Gloucestershire), HMP New Hall (in Wakefield, West Yorkshire) and HMP Bronzefield (in Ashford, Surrey) were willing to accommodate my research, subject to permission from NOMS.

At the same time I contacted numerous women's centres, women's organisations, NGOs working with prisoners (in particular organisations working with female prisoners, as well as babies of prisoners and families of prisoners), and prison lawyers across the country, seeking assistance with either circulating questionnaires to women prisoners with MBU experience (either those who had spent some time in an MBU or those who had been refused a place) or getting access to ex-prisoners with that experience. I devised a poster to be displayed or forwarded on (**Appendix A**). I offered a Boots voucher to any woman willing to be interviewed to thank her for her time. I also posted requests on Twitter and Facebook. I received various responses but no-one was able to facilitate access to prisoners or circulate questionnaires.

Thereafter, Jackie Russell from *Women's Breakout* (WBO) circulated my request and poster via e-mail to all WBO contacts and through that, I made contact with the *Women's Support Centre* in Woking and *Isis Women's Centre* in Gloucester, both of whom put me in touch with women in the community who had been in an MBU.

Before I began the interview process, I had the benefit of a telephone interview with Denise Marshall from *Birth Companions*, an NGO with a long history of working with pregnant women in

prison. Denise herself worked in HMP Holloway from 1996 until its recent closure. She is currently involved in running pregnancy groups at HMP Bronzefield and HMP Peterborough. As a result of conversations with her I refined the questions that I had in mind for both women and MBU staff. I was also able to get an insight into the MBU process from her perspective.



3. Contextual debates

3.1. The female prison estate and MBU occupation

There are currently 12 women's prisons in England, one in Scotland and none in Wales. This study is limited to England and Wales. The female prison estate in England and Wales currently includes six MBUs⁵. These are located at HMP & YOI Styal (nine rooms; up to ten children)⁶, HMP & YOI New Hall (nine rooms; up to ten children)⁷, HMP Eastwood Park (12 rooms; up to 13 children)⁸, HMP Askham Grange (ten rooms; up to 11 children)⁹, HMP Peterborough (12 rooms; up to 13 children)¹⁰ and HMP Bronzefield (12 rooms; up to 13 children)¹¹.

The last remaining designated female open prisons, HMP East Sutton Park and HMP Askham Grange (which has an MBU), were ear-marked for closure in 2013, but those decisions have been subject to legal challenge and both prisons remain open at the time of writing. In November 2015, the Government announced the closure of HMP Holloway (the MBU having been closed in 2013). In February 2017, there is capacity for 64 mothers and 70 babies (to allow for twins) across the female prison estate at any one time.

A HMIP unannounced follow-up inspection at HMP New Hall in 2012 found that "*The mother and baby unit was an excellent facility but, like units elsewhere, it was underused. It was not clear whether this was an administrative problem or due to lack of demand.*" (HMIP, 31 January–10 February 2012: 5¹²). A similar comment is made following a 2013 inspection at HMP Eastwood Park (HMIP, 11 – 22 November 2013: 6): "*The mother and baby unit was a good resource but, as we have found elsewhere, was underused*". However, the 2015 New Hall inspection did not highlight underuse as a particular issue (HMIP, 8-9 June 2015). Both the 2013 and 2016

⁵ There is a 7th existing facility but it is a specialist MBU for young women at Rainsbrook Secure Training Centre (three rooms; up to four babies) which accommodates 12 – 18 year old males and females in Warwickshire. MBU Placements are referred directly via the Youth Justice Board.

⁶ A closed prison in Cheshire; the MBU is managed by Action for Children.

⁷ A closed prison in Wakefield; the MBU itself is now managed by Action for Children (previously they only ran the nursery).

⁸ A closed prison in Gloucestershire.

⁹ An open prison in York; the nursery is run by Barnados.

¹⁰ A closed prison in Ashford, Middlesex; purpose built in 2004 and privately funded; largest female prison in Europe; operated by Sodexo.

¹¹ A closed prison in Cambridgeshire; privately funded; operated by Sodexo.

¹² In the introduction by Nick Hardwick, HM Chief Inspector of Prisons.

inspections of HMP Bronzefield praise the MBU facility but neither mentions underuse (HMIP, 9 – 20 November 2015; 8 – 19 April 2013).

The MBU at HMP Holloway was closed in 2013 on the basis of ‘over-supply’ following the National Offender Management Service (NOMS) report *Women’s Custodial Estate Review* (Robinson, 2013). The rationale for the recommendation¹³ was as follows:

“The National Capacity for Mother and Baby Units (MBU) is 77 mothers and 83 babies, to accommodate multiple births. There are currently more mothers than babies in the units due to pregnant women being accommodated there. Occupancy of the units has been declining reflecting the overall reduction in the number of women in custody. On 25 June 2013 there were 31 women and 28 babies being accommodated in the units.

All MBUs hold mothers with babies until at least 18 months old, except at Holloway where it is restricted to babies of approximately nine months of age, due to the physical restrictions of the unit. As Holloway is approximately 20 miles from the MBU at Bronzefield, we propose that the unit at Holloway closes, with a consequent reduction of 13 places. Should Askham Grange close, it would result in a further reduction of 10 MBU places”¹⁴

It is difficult to see why it is asserted above that “Occupancy of the units has been declining reflecting the overall reduction in the number of women in custody” (p.29), when history (and the statistics) show otherwise.

3.2. The female prison population

In 2002, Lord Woolf, the then Lord Chief Justice, decided, in a case called *R v Mills*¹⁵, that primary carers with no previous convictions who were caring for young children should not receive a custodial sentence for a non-violent offence where an alternative disposal was available. This decision was against the background of a soaring prison population and the first time the Court of

¹³ Recommendation 1, p. 6: “The mother and baby unit at Holloway should close in order to reduce over-supply without affecting closeness to home. There would be a further reduction of ten places should Askham Grange close”.

¹⁴ P. 29.

¹⁵ [2002] 2 Cr. App. R. (S.) 52

Appeal took the view that the soaring female prison population was a relevant consideration when deciding what the correct sentence was. His judgment included the following statistics at paragraph 15:

...with a mother who is the sole support of two young children, as is the case here, the judge has to bear in mind the consequences to those children if the sole carer is sent to prison. Finally, he should take into account the current situation in relation to the female prison population. Since 1993 there has been a remarkable increase. The female prison population has always been substantially lower than that of the male prison population. But the annual increase since 1993 is as follows. It increased from 1,560 to 2,260 in 1996, and then to 3,350 in the year 2000. In November 2001 the total number of females in prison had risen again to 4,020. Females currently comprise 5.9 per cent of the total prison population. The proportion has increased from an average of 4.4 per cent in 1997, to 5 per cent in 1999, and 5.2 per cent in the year 2000. Between November 2000 and November 2001 the number of females held increased by 19 per cent, from 3,380 to 4,020. That 19 per cent increase in the female prison population has to be compared with an increase of 6 per cent in the male prison population. The male prison population is substantially larger. There the increase is from 60,690 to 64,430.

Other research suggests that the number of women in prison nearly trebled between 1993 and 2005, with the figures beginning to decline in 2008 (Bromley Briefings Prison Factfile, Autumn 2016). However, in the autumn of 2015 there were still over 2,000 more women in prison than there were twenty years previously (Minson, Nadine and Earle, 2015). At the time the *Women's Custodial Estate Review* was written (31 March 2013), there were 3,869 women in prison in England and Wales. On 28 March 2014, the female population was 3,895 (MOJ Prison Population Figures 2014¹⁶). On 13 March 2015 there were 3,855 women in prison in England and Wales (MOJ Prison Population Figures 2015¹⁷). On 18 March 2016, the female prison population was 3,894 (MOJ Prison Population Figures 2016¹⁸). On 3 February 2017, it was 3,969 (MOJ Prison Population Figures 2017¹⁹).

¹⁶ <https://www.gov.uk/government/statistics/prison-population-figures-2014> Accessed 6 February 2017

¹⁷ <https://www.gov.uk/government/statistics/prison-population-figures-2015> Accessed 6 February 2017

¹⁸ <https://www.gov.uk/government/statistics/prison-population-figures-2016> Accessed 6 February 2017

¹⁹ <https://www.gov.uk/government/statistics/prison-population-figures-2017> Accessed 6 February 2017

Thus it would appear that *if* the occupancy of MBUs is declining as suggested in *Women's Custodial Estate Review*, it is certainly not due to a declining prison population. Whilst there *may* have been a decline in MBU occupancy from 2012 to 2013 (Galloway, Haynes and Cuthbert, 2014), recent MOJ statistics (see below) show that there has not in fact been a decline of MBU occupancy since the 2013 review which states that "On 25 June 2013 there were 31 women and 28 babies being accommodated in the units" (p. 29).

On 6 February 2016, the Ministry of Justice published a Management Information Notice on MBUs, which included the following findings:

In 2015, 69 women were received into a MBU, a decrease of 9 compared to 2014. 61 babies were admitted into a MBU during 2015, a decrease of 4 compared to the previous year.

At the end of 2015, there were 37 mothers residing in a MBU in England and Wales and 39 babies. This is a similar level to 2014.

During 2015, 100 babies resided in a MBU, compared with 96 during 2014. Over the same period, 107 women resided in a MBU during 2015 and 111 during 2014.

If, therefore, we compare, on a 'snapshot' basis, the number of mothers and babies residing in an MBU at the end of 2015 and the end of 2014, with the number in June 2013, there has been an increase not a decline. Of course given that the available capacity in that period was 64 mothers, it still means that only 58 per cent of the spaces were occupied.

Surprisingly, there is no routine data collection of the number of women in prison who have children and / or who are separated from them by incarceration (although in 2010 it was estimated that 17, 240 children were separated from their mothers by imprisonment: Wilks-Wiffen, 2011) and another report estimated that approximately 3,000 babies aged two years and under have their mothers imprisoned each year (Galloway, Haynes and Cuthbert, 2014). Recently

published MOJ statistics²⁰, based on linked data from 2012, suggests that between 24 per cent and 31 per cent of all female offenders have one or more child dependents. However inadequate the data collection, and however difficult it is without proper recording systems in place to estimate the exact number of women with children *aged two and under* in prison at any time, there are without doubt many more than 64 imprisoned mothers who have babies at any one time (as indicated above, the number is estimated as 3,000 babies per year).

Which leaves us with the hitherto unanswered (by research, as opposed to speculation) question – why is the occupation of MBUs low?

3.3. The Statistics: MBU admissions and rejections

Although the NOMS rationale for closure of the Holloway MBU, and the intention to close the Askham Grange MBU, was ‘over-supply’ (or under-use), the available statistics on admissions to MBUs appear to tell a different story. A response from the MOJ to a Freedom of Information Request (‘FOI’), made on 12 April 2013, revealed that data sought about MBU admissions was only centrally collated from 2010. Further, the response stated that answers to these two questions

How many prisoners:

....

d) appealed against refusal of a place on a Mother and Baby Unit

e) were successful in an appeal against refusal of a place on a Mother and Baby Unit...

were not held centrally, would require a manual check of individual prisoner records which would take too long / would be too costly²¹. The available data was provided in a table as follows:

²⁰ Female Offenders and child dependents 8 October 2015:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/465916/female-offenders-child-dependents-statistics.pdf. Accessed 3 February 2017.

²¹ FOI82151. Liam Allmark, 24 April 2013.

Table 1: MBU application data from financial years 2010/11, 2011/2012 and 2012/2013

	2010/11	2011/12	2012/13
Number of applications received for admission to MBU	256	254	221
Number of applications approved	139	121	120
Number of applications refused	26	34	33

The above table shows that a large number of applications appear neither to have been approved nor refused in each financial year (91, 99, 68 respectively). It may be that there is an explanation for the discrepancy – for example, a prisoner may have changed her mind about having her baby with her, been released early, miscarried or lost her child in childbirth or had her child taken into care. Unfortunately the reasons for the large number of ‘lost’ applications are simply not recorded. Of those applications that resulted in a decision, we can see that 15 per cent were rejected in the financial year 2010/2011; 22 per cent in 2011/2012 and 22 per cent in 2012/13.

Following a FOI request I made on 20 October 2015, I received the following information in a response dated 8 January 2016²²:

Table 2: MBU application data from financial years 2013/14 and 2014/15

Date	Applications for a MBU place	Applications approved	Applications refused	*Appeals applications against a refusal	*Successful appeal applications
2013 - 2014	210	80	28	11	4
2014 - 2015	197	74	32	8	2

*this data was collected from August 2013 – March 2015.

Once more this data showed a large number of unaccounted for applications i.e. applications that were neither approved nor refused (102 and 91 respectively).

²² FOI 100916

The rejection rate in relation to those applications that resulted in a decision in 2013/2014 is 26 per cent (a 4 per cent increase from 2012/2013) and in 2014/ 2015 is 30 per cent (a further 4 per cent increase). Thus what we can see is a steady rise in the rejection rate over a five-year period.

In 2014/2015, only 25 per cent appealed their refusals, and of those, only 25 per cent were successful.

3.4. MBU admissions policy and procedure

The policy that applies to admissions and management of MBUs is currently set out in a 2014 Prison Service Instruction ('PSI') entitled, 'Mother and Baby Units' (PSI 49/2014)²³. The published policy rationale for providing MBUs in the previous PSI (PSI 54/2011) was:

To reflect society's normal assumption that the best place for a young child is with his or her parent, the English and Welsh Prison Service has allowed mothers to care for their babies in prison. To allow this to happen, a Mother and Baby Unit is designated living accommodation within a women's or mixed gender prison, which enables mothers, where appropriate, to have their children with them whilst in prison. Currently there are seven units across the prison estate." (Executive Summary, para 1.1).

Prior to that, Prison Service Order (PSO) 4801 'The management of Mother and Baby Units' (4th edition, 2008) began with this as an introduction:

For well over a hundred years, it has been common for women prisoners to care for their babies in prison. This reflects society's normal assumption that the best place for a young child is with its mother. In prison, that assumption is less easily made and there have to be procedures and processes for reaching a proper decision on whether a mother should be allowed to have her child with her...The PSO was first issued in February 2000 and since then the number of MBU places has increased, new childcare and protection procedures have been introduced and the Courts have given judgements on several MBU cases which have refined the legal position of MBUs in the

²³ Replaced PSI 54/2011 on 23 December 2014.

Prison Service. This 4th Edition of the PSO consolidates good practice from the past and sets out the latest position on the management of MBUs.

The language of the current PSI is strikingly different in its introductory tone. The opening paragraph now focusses on the importance of making “defensible” decisions:

1.1 This PSI provides clear, substantiated guidance to enable managers and staff to make defensible decisions in relation to assessment of suitability for, and on-going provision of Mother and Baby Unit (MBU) places. It covers the role of MBUs, the Application process, Separations and Managing MBUs. It sets out the revised operational framework for all women’s prisons in delivering the MBU specification and applies to all adult female prisoners (aged 18 and over), including recalls, received into prison.

Paragraph 1.2 then goes on to say:

In line with legislation, the National Offender Management Service has in certain circumstances allowed mothers to care for their babies in MBUs in prison. A MBU is designated living accommodation within a women’s prison, which enables mothers, where appropriate, to have their children with them.

Whilst the emphasis has changed from a rebuttable presumption that mothers *should* be with their babies to one which suggests that MBU provision is made because of legal obligations and it is a privilege available to a certain few, the essence of the admissions procedure has not changed from 2011 to 2014 (although some of the necessary safeguards have been fleshed out).

There is a positive change in the 2014 policy: there is now a presumption that all babies can be accommodated until the age of 18 months (previously 9 months in some MBUs and 18 months in some²⁴), with the possibility of a longer stay in exceptional circumstances (paragraphs 1.5 – 1.6):

Findings suggest that during the first 18 months of life the pressure of maturation tended to protect babies from low stimulation environments and development

²⁴ At Askham Grange 18 out of 62 babies held in the MBU over a period of five years (2009 – 2013) had been allowed to remain beyond 18 months and 4 beyond 24 months. None of the other MBUs had retained a baby beyond 24 months (Further Equality Impact Assessment, Women’s Custodial Estate Review, NOMS, July 2014).

progressed normally²⁵. However, from the age of 18 months babies may be more sensitive to the stimulation of the environment they reside in.²⁶ Relationships are key features of the environment and process of attachment, the quality and sensitivity of the mother /child interaction at 6-15 weeks correlates directly with the "attachment relationship" at 18 months.²⁷ Within the first 24 months of life foundations for language comprehension, reasoning and impulse control develop. Beyond this, major development of working memory, inhibitory control, cognition and mental flexibility occurs.

All MBUs should be available to accommodate babies up until the age of 18 months. There may be exceptional circumstances where the child should remain in the MBU beyond 18 months which will need the approval of the Head of the Women's Team...

Applications by mothers (or prospective mothers) for a place in an MBU, are considered by an Admissions Board. A mother is only admitted to an MBU following:

- a) An application by a mother for a space on the unit
- b) A recommendation to the Governor from the multi-agency admissions board, chaired by an Independent Chair
- c) The endorsement of that recommendation by the Governor

The primary criterion is that a place in the MBU is in "the best interests of the child" or children. The criteria are set out as follows at para 1.7:

The decision to admit a mother and her child takes into account:

- a) Whether it is in the best interests of the child
- b) The necessity to maintain good order and discipline within the MBU
- c) The health and safety of other babies and mothers within the unit

²⁵ Jiminez, J.M and Palacios, J (2003) When home is in jail: Child Development in Spanish Penitentiary Units, *Infant and Child Development*, 12, 461-474 (fn as per PSI).

²⁶ Jiminez, J.M and Palacios, J (2003) When home is in jail: Child Development in Spanish Penitentiary Units, *Infant and Child Development*, 12, 461-474 (fn as per PSI).

²⁷ Lewis, M et al, 1984 (fn as per PSI). Correct citation: Lewis, M, C Feiring and C McGuffog, et al, 'Predicting psychopathology in 6-year-olds from early social relations' (1984) *Child Development*, 55:1, 123-136

'Best interests' is further expounded at paragraph 2.16:

The best interest of the child is the primary consideration (alongside the safety and welfare of other mothers and babies in the unit) therefore the Board must be satisfied that the following criteria are met before admission is granted:

- There are no concerns about mother's conduct and behaviours which may place her own and other mothers and children on the unit at risk
- The applicant has provided a urine sample for a Mandatory Drugs Test (MDT) which tests 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 such as the child being in care or subject to a Child Protection Plan as a result of the applicant's treatment of that child.

Procedurally, the following is suggested at paragraph 2.4:

Wherever possible all applications should be made not less than three months before the expected date of delivery. *A dossier must be compiled by the Mother and Baby Liaison Officer of the establishment where the applicant is resident*²⁸. It should contain at least the following information;

- Local Authority Children's Services Report
- Adult Social Service Report, where appropriate
- Security Report
- Relevant Medical Reports
- Personal Officer Report
- Report from Community Offender Manager

²⁸ All mandatory actions appear in italics within the PSI.

The Board has an Independent Chair (currently there are five such chairs in England). It is comprised of a multi-disciplinary team. The minimum requirement is the Independent Chair, Manager with Line Management responsibility for the MBU, MBU Manager and Community Offender Manager. It is considered 'highly desirable' to have a social worker from Children's Services in attendance to represent the best interests of the child. In practice, where the child or family is already known to the Local Authority, there will inevitably be some form of input from Children's Services. Indeed, there is now a mandatory requirement that the appropriate Local Authority Children Services provide a report to the Board before a place can be offered.

The Board is required to make a recommendation for acceptance or conditional acceptance or refusal to the Prison Governor who, according to the PSI, has the final say.

There is an internal appeal system (with no specified time limits or procedure), which is considered by a member of NOMS (Head of the Women's Team). This is all that is said about how to appeal in the PSI:

2.42 An applicant has the right to appeal a decision not to allocate a place on an MBU. She should use the Prisoner Complaints system PSI 02/2012 in the first instance. All appeals should be addressed to;

Head of Women's Team

Equality, Rights and Decency Group

NOMS

[postal address]"

4. Literature Review

There appears to be no research to date on the way admissions criteria are applied or how women prisoners experience the decision-making processes. Further, the views, voices and experiences of mothers who have been in prison are simply not recorded anywhere. Corston, 2007 is silent on the issue of MBU use and access. A 2005 study (North, 2005) looking at services for pregnant women and babies in prison found that the literature surrounding pregnant women and mothers in prison was extremely limited, with most of it consisting of reports by HMIP and importantly, the study...

“...could identify no published studies presenting prisoner’s views on, or experience of, pregnancy in prison, or MBUs”. (2005:8)

The available MBU related literature review focuses primarily on the services available to women in prison including for pregnant women. Related literature exists: for example there is now a solid body of academic and other literature on the sentencing of women who are primary carers (Wilks-Wiffen, 2011; Epstein, 2012; Minson, 2014; Baldwin, 2015; Minson, Nadine and Earle, 2015) which is of course vital if the sentencing process is to be improved so that fewer women with children are imprisoned.

There are two papers that focus on the issue of MBU admissions. The first is a short Briefing Paper ‘*Prison Mother and Baby Units*’ (Howard League for Penal Reform, 1995), the impetus for it was complaints “about the treatment in facilities” on the MBU. The writers had access to two of the four MBUs in existence at the time (Askham Grange and New Hall). The writers found that there was no systematic collection of mothers’ application refused by the MBU and therefore “it has been impossible to assess how many mothers and babies were forcibly separated from each other in any given year”. The relevant admissions data recorded in the paper is as follows:

Statistics from the Department of Health showed that during the study year [June 1994 – June 1995] there were 115 applications to MBUs accepted and 5 refusals. The data suggested that four of the five refusals were the result of adverse Social Services (sic).

Prison staff indicated that many women did not apply for a place on a MBU even if they had children younger than 18 months. It was suggested that this was particularly true of women in prison remand.

The research makes no specific findings or recommendations and is out of date since it pre-dates the prison service admissions policy and procedure.

The second is a very recent report (O’Keeffe and Dixon, 2015) the aim of which is to enhance care for child-bearing women and babies in prison. The authors recognise that babies represent a relatively small proportion of all children affected by maternal imprisonment, but argue that they are possibly the neediest and most vulnerable group ‘because attachment to the primary care-giver occurs during the first two years of a baby’s life and there is a robust evidence base across the disciplines of child development, psychology and psychiatry which, demonstrates that sudden separation from a primary care-giver before the age of 18 months has a profound and long lasting impact upon a person’s ability to establish healthy relationships and to engage with the world in a positive way’(2015: 8). Their empirical research was based primarily on 22 semi-structured interviews with practitioners working in the female prison estate. No prisoners were interviewed. In relation to decision-making and take up of MBU places, the report indicates:

There is evidence to suggest that only a small number of women who are eligible for an MBU place actually apply for one. A study by Gregoire et al. (2010) sheds some light on this issue; of the 112 women in their study sample, the vast majority (90per cent) knew about MBUs prior to imprisonment but just less than a third of women (30per cent) applied for a place. In a significant number of cases this decision related to the living circumstances of the child at the time of the mother’s imprisonment with 24per cent of children being in a social services placement and 16per cent living with another family member. A further 10per cent of women did not apply as the age of their child meant that a separation from them would be inevitable at some point in their sentence. It is interesting to note that almost a quarter of women (24per cent) felt that prison was not the right environment for their child and 4per cent of women did not know they could apply.” (2015: 16)

Their own research identified a range of other factors, which mitigate against women making an MBU application (as reported to them by prison officers and charities working within the female estate):

- women choosing to not reveal their status as mothers to the authorities and making their own 'informal' care arrangements;
- women not expecting to receive a custodial sentence at court so are unprepared for making the necessary care arrangements, including MBU application;
- women being traumatised when they arrive in prison creating a difficult context in which to absorb information about their child placement options;
- the trauma of arrival in prison causing a mother's breast milk to dry up thus having a detrimental impact on the bond with their baby, and making it less likely that they will seek to keep their baby with them;
- mothers feeling like they are 'choosing' their baby over their older children who may be living with relatives in the community, should they apply for an MBU place;
- women being inadequately informed about the provision available in MBUs and the benefits of residing in one;
- some social workers working within a 'pro-separation' model which focuses on finding alternative care for children rather than exploring fully the possibility of MBU placement;
- mothers viewing themselves as incapable of effective parenting and their babies as being better off without them;
- women may be under pressure from family members to leave their babies in the community.

(2015: 2)

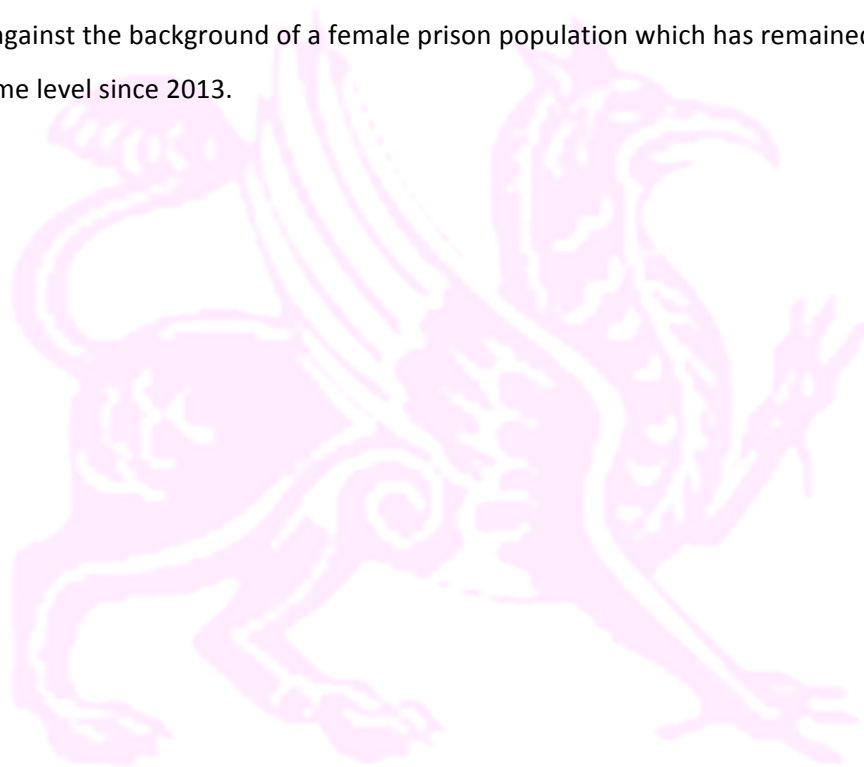
Interestingly, the study concludes with recommendations for further research areas. The recommendations include the following two areas, which, to an extent, mirror the aims of this research:

Given the issues of under-capacity of MBUs and also the recent/threatened closures, the Ministry of Justice/NOMS may wish to commission qualitative research to increase understanding of how women make decisions about the placement of their babies following a custodial sentence. This may include examining their levels of knowledge and awareness, who is involved in the decision-making process and the support they have received.

There is also a pressing need for further research into why rejection rates for MBU applications are so high and this could include an examination of consistency in applying admission criteria across establishments.

(2015: 6)

In summary, the search for relevant literature yielded very little as far as the MBU application process is concerned and a total absence of prisoners' voices in relation to their experiences. The available (albeit incomplete) data (i.e. between 2010 and 2015) shows a relatively high rejection rate in regard to applications for an MBU place which steadily increases (i.e. from 22 per cent to 30 per cent), against the background of a female prison population which has remained at the almost the same level since 2013.



5. Research methodology

5.1. Data collection and methods

I adopted a qualitative perspective to my research and, within that, the grounded theory approach to qualitative data analysis (Glaser and Strauss, 2009). Having chosen a design which would focus on women's experiences of the decision-making processes, once I had finalised the participant information sheet (see **Appendix B**), my proposed questions (**Appendix C and D**), the consent form, and obtained ethical approval from the Institute of Criminology, University of Cambridge, I was able to make contact with and interview women in the community who had been in an MBU. Unfortunately, only two women out of a potential five actually attended as arranged.

Thereafter, I made an application to the National Research Committee (NRC) of NOMS to interview women prisoners and staff in the three prisons identified above. The NRC application form and process is a relatively complex one. I made the application on 4 August 2015. On 28 August 2015, the NRC requested further information. On 2 October 2015, the NRC granted approval in principle subject to certain modifications.

I then wrote back to each of the three prison Governors who had agree to allow me access and they in turn put me in touch with the MBU Managers (or equivalent) in each establishment. I sent each manager the participant information sheet and consent forms for each interviewee and asked to interview willing women who were in the MBU, as well as any who had been rejected and were still in that particular establishment, as well as relevant MBU staff. I was required to apply to each establishment for security clearance and for permission to bring a voice recorder into prison.

I placed an advertisement in *'Inside Time'*, reaching out to women in prison with MBU experience, asking them to write to me if they were willing to complete a questionnaire (**Appendix D**) and in return I would send a Boots voucher to them or their family, as they chose. Two prisoners wrote to me from HMP Peterborough, one of whom completed a questionnaire and returned it in the SAE I sent her. I wrote to her again with some follow-up questions and another SAE, but did not hear back. I sent her partner a voucher as promised.

5.2. The interviews

In November and December 2015, I visited each prison. I was shown around each of the three MBUs, each one quite different from the other in terms of space and facilities, but all three had a welcoming and warm air. HMP Eastwood Park has a very spacious nursery space, whilst HMP New Hall has a much smaller one. HMP Bronzefield, the newest of the three prisons (and the only privately run one of the three), has a 'sound and light' sensory room for babies. All three MBUs were bustling with activity and one was to capacity. One MBU Manager told me that they were full because "We have done a lot of advertising. We have sent leaflets out to lots of other prisons that don't have Mother and Baby Units. That's not happened before" (**MBU Manager 1**).

All mothers in the Unit are expected to work in prison, after just six weeks of 'maternity leave'. The nursery staff take care of the babies during working hours.

I asked permission to give prisoner interviewees a Boots voucher for their time. Each MBU Manager was extremely helpful and did their best to facilitate this (at New Hall the MBU was managed by an external charity, Action for Children²⁹).

In November and December 2015, I was able to interview four women residing in the MBU at HMP New Hall plus the Action for Children MBU Manager; five women in the MBU at HMP Eastwood Park plus two members of staff (the MBU Manager and Nursery Manager, who kindly agreed to meet me in London in February 2016 for a joint interview; four women in the MBU at HMP Bronzefield, plus one woman in the main prison who had been refused a place, and two members of staff (the MBU Manager and the MBU Liaison Officer who I interviewed jointly).

The two interviews with women in the community took place in two different women's centres, in Gloucester and Woking, in June 2015.

All the interviews were semi-structured. The interviews with women in prison lasted between 30 and 50 minutes. One interview with a non-English-speaking prisoner required the use of an interpreter from Language Line over the telephone. One interview with an ex-prisoner in the community lasted 1 hour and 20 minutes. The interviews with MBU staff lasted around one hour.

²⁹ <https://www.actionforchildren.org.uk/in-your-area/services/early-years-and-family-support/family-support/new-hall-mother-and-baby-unit/> . Accessed 3 February 2017.

In two of the staff interviews, there were two MBU staff members present in the interview, both of whom participated.

The interviews with both women prisoners and ex-prisoners were designed to elicit their experience of the whole admissions process including the impact, if any, of social workers. The secondary purpose was to seek their views on whether any change in the process was necessary or desirable. I chose a semi-structured format in order to combine consistency with flexibility. Flexibility was particularly important as I was asking women from diverse and difficult backgrounds and experiences, with different levels of self-confidence and expressive powers, to share very personal stories.

With the MBU staff I interviewed, all of whom were involved in the admissions process, the purpose was firstly, to get an understanding of how the process worked in each establishment and secondly, to get their views on whether they considered the process to be fair and accessible.

5.3. Table 3: Total sample size and mode of analysis

WOMEN PRISONERS IN AN MBU	13 (including 1 by questionnaire)
WOMEN IN PRISON REFUSED AN MBU PLACE	1
EX-PRISONERS WHO HAD BEEN IN AN MBU	2
TOTAL	16
MBU STAFF	5
NGO STAFF	1 (by telephone)

Once the interview process was completed, I had each interview transcribed verbatim and then began the process of thematic analysis. I chose a thematic analysis because of its flexibility: ‘Through its theoretical freedom, thematic analysis provides a flexible and useful research tool, which can provide a rich and detailed, yet complex account of data’ (Braun and Clarke, 2006: 5).

I read and re-read each one to familiarise myself with the data. I then generated initial descriptive codes from the data (for example, ‘sentencing’, ‘timing of MBU application’, ‘procedure’, ‘delay’, ‘social services’, ‘experience of Board’) and thereafter identified recurring themes across the

whole data set (Bazeley, 2013). For example, women were just not expecting a custodial sentence at court and thus made no provision for their babies. I then reviewed and refined the themes, defining and naming them, and finally, interpreting them.



6. Analysis and findings

6.1. Emergent themes

As indicated above, I conducted a thematic analysis of the transcribed interviews. My analysis revealed the following themes:

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

The first three themes are supported by earlier research findings (Minson, Nadine and Earle, 2015).

6.2. Profile of respondents

Of the 16 women who applied for a place in an MBU, four had already given birth to their babies in the community by the date of sentence; the remainder were at different stages of their pregnancy, from six weeks to 36 weeks, at the date of sentence. Seven out of 16 (44 per cent) were not expecting to go to prison at all and were shocked and traumatised upon admission,

having not given any proper thought to what would happen to their baby. They did not all begin their sentence in a prison which had an MBU (for example, a number of the women at HMP New Hall had originally been at HMP Foston Hall or Low Newton), and even if there was an MBU, there was not necessarily a suitable place available (one woman had gone from HMP Styal to New Hall and another had gone from HMP Bronzefield to Eastwood Park due to security concerns).

The one woman who was refused an MBU place was 28 weeks pregnant at the time of her sentence with a long history of mental illness, crack addiction and a number of drug related convictions. She had two teenagers who had been adopted many years ago.

6.3. Prior knowledge of MBUs

11 out of the 15 who were accepted had never been to prison before (in other words, 73 per cent). Of those, nine were first time offenders (60 per cent). Two out of the nine had been told about the existence of MBUs by an NGO worker (one was put in touch with Castle Gate, a charity working with prisoner's families at HMP Gloucester that has since closed down, whilst on remand, and the other was told at court by NEPACs, a charity operating in the North East). The others heard by completely different routes: 1) via an Offender Manager at HMP Low Newton 2) via her barrister at court 3) via her solicitor, in cells, post-sentence 4) via an internet search pre-sentence 5) via the prison MBU liaison officer three days after she came in and two days before her baby was born 6) via another prisoner at HMP Holloway 7) via another prisoner who found her crying in her cell because her 11 month old baby was in the community. This prisoner described the experience in this way: *"...so the day I came in here, I don't think I stopped crying for two weeks, I didn't know anything, I didn't even look on the internet before I came. I just didn't think I was coming...a girl came up to me the very second day 'Come on out, come and get some breakfast'...It was totally overwhelming and I kept crying, I kept crying...and she was really lovely to me...and she just said 'What's the matter?'" and I said 'I've got children and a baby, he is only eleven weeks' and she said 'well you know there is a mother and baby unit?', I said 'No'" (Prisoner 12).*

Thus the majority found about the existence of MBUs just moments before incarceration or only after they had were in prison, and then not necessarily during Reception screening. Those with previous convictions had heard via others in the community who had experience of prison or through a previous custodial sentence.

The MBU Managers and other staff I interviewed explained that women are asked during that screening process if they are pregnant (in any event, pregnancy tests are mandatory) and whether they have any children in the community. If they are pregnant, they will get a visit at some stage from an MBU liaison officer. However, as far as they were aware, women are not specifically asked if they have an under 18 month old in the community, nor is it specifically explained that a child under 18 months currently in the community could join the mother in an MBU. Further, and worryingly, none of them could be sure that the NOMS-issued MBU information leaflet was available or given out at the Reception screening.

Prison policy (PSI 49/2014) states that the following is a 'mandatory action' at paragraph 2.1:

The Governor/Director must ensure that procedures are in place to ask women on reception or at the earliest opportunity whether they are pregnant or have children under the age of 18 months. They must be provided with the prisoners' information booklet "All About MBUs" written by NOMS Women's Team. This information must be available in reception, first night centres and induction units, on each residential unit and in the prison library.

Only four out of 16 (25 per cent) had ever been given the leaflet ("*Yeah, I brought it here with us [from Low Newton] and showed all the lasses 'cos they'd never seen it*" – **Prisoner 1**). Not one of the 17 women had seen what an MBU actually looked like from within at the time of making her application, nor was she offered the opportunity ("*I thought I would be in me cell locked in all the time with me baby, that's what I thought, and when I came onto this unit my face just dropped*" - **Prisoner 4**).

In summary, the majority profile of women in my sample who were accepted into MBUs was someone with no previous convictions or relatively minor previous convictions that did not attract custody. In addition, seven (50 per cent) had other children in the community, who were being cared for by their partners or ex-partners or their mothers.

6.4. Experience of the MBU application process

None of the respondents had any prior knowledge of the Board process before they appeared in person or via video link before a Board. They each knew they had to "sit Board" (none of them

knew who exactly the Board comprised of). They all knew that you could not be using drugs (and that they would be subjected to mandatory drug testing) and needed to have had good prison behaviour. They all believed that the criterion for getting in was whether you could show you were a “good mother”. One respondent, who was legally qualified, was aware of the “best interests of the child” test, but she effectively understood that to be the same as the “good mother” test.

Another was told by her OM that they would look at “the best interests of the child”, but as she told me, she just thought *“Well, obviously it’s best to be with me because I’m her mum, and I’m gonna be away for a long time and she’s not gonna know me, and I wanna breastfeed...”*

(Prisoner 5). None of them was prepared for the Board in the sense that all but one was told of the Board either on the day of the Board or the day before. Only one respondent was told the date of the Board one week before.

The PSI states at para 2.11 *“The applicant can be accompanied by their Personal Officer or another appropriate person who can offer support and this must be offered to the applicant at least 48 hours prior to the Board (subject to security checks and the agreement of the Independent Chair).”* Only those who had Boards by video link from another prison had someone with them (four out of 16: two had their Offender Managers with them, one a worker from Action for Children and one had a supportive social worker with her). None of the remaining 12 were aware you could have a Personal Officer or any other member of staff with you, although one of them understood that she could have had her partner there if she wanted.

As far as disclosure of the dossiers were concerned, despite the PSI stipulating at para 2.12 that *“The papers for the Admissions Board must be circulated to all attendees, including the applicant, prior to the Admissions Board. We suggest this is at least 48 hours prior to the Board taking place and while we understand this may not always be possible, every effort should be made for papers that are available to be circulated at the earliest opportunity”*, with one exception, all respondents either received no disclosure at all before the Board or got the reports 15 minutes before the Board. The exception was a prisoner, who was being helped by Action for Children at HMP Styal, who got the reports a week before her video link Board. Of those who had no disclosure, one had her Board over the telephone between contractions in hospital whilst still detained by HMP Foston Hall (she was 37 weeks when sentenced and gave birth in week 40) and one had an emergency Board in her absence (she was 37 weeks when sentenced and gave birth

five days later). One MBU Manager explained *“Ideally, they are given the dossier 24 hours before, but if not for whatever reason, when we bring them onto the Unit we will give them the dossier and give them time to sit and go through it” (MBU Manager 2).*

All respondents, except two (one who did not speak English and another who was confident about the outcome), described the Board as an emotionally very difficult experience: *“terrifying”; “intimidating”; “nerve-racking”; “confusing”; “shaking and that with nerves”; “I was so scared...I didn’t wanna get my hopes up...”*; *“Nerve-racking, because everything is depending on that meeting, isn’t it? ...and I’m not the best talker”*; *“I remember panicking and feeling like I have to fight for my place...I remember breaking down in the meeting...”*; *“I didn’t have a clue to be honest, I didn’t know what to expect... I was sitting outside that room and I was absolutely terrified, because I did not know what to expect, didn’t know what they were gonna say...”*.

6.5. Timing of the Board

The PSI is silent on when the Board should be held. As referred to by the judge in the *WB* case cited above, the PSI simply states *“Wherever possible all applications should be made not less than three months before the expected date of delivery”*. However, it is not the timings of applications that is problematic for prisoners but the timing of the actual Board, as recognised by the judge. The judge stated, in terms, *“But it is obvious that a Board must take place as soon as possible after a prisoner applies for a place on an MBU and it is obvious that the prison authorities must be diligent and active in working out what information a Board is likely to need and then in providing the Board with that information”* (See para 1.3 above). However, as my findings demonstrate, it is not at all *“obvious”* to the prison service that this is the approach they should follow.

One MBU Manager said that *“We wouldn’t sit a Board until we have got all the information together [for the dossier] because there would be no point, we wouldn’t be able to make a decision” (MBU Manager 1)*. Another Manager said that they *“don’t do a lot before 32 weeks”* of pregnancy (MBU Manager 2). The third Manager said they aimed for two months before the due date (which is effectively week 32).

My research shows that of the 12 babies born in prison, seven were born prematurely (five in week 37 and two in week 38) – in other words, 58 per cent of those born in prison were born

prematurely. Of the 13 women (including the one who was rejected) who were pregnant in prison, the earliest Board was at around 30 weeks (two women), regardless of how early in the pregnancy the MBU application was made. The rest were held between 35 and 37 weeks and one actually took place during labour at full-term, as indicated above, and one took place a week after the baby was born (the baby was born in week 37, and as there had been no Board, the baby had to go out in the community for a week). The timing of the Board (and the lack of information prior to the Board) was a source of great distress to all the women I interviewed. Not only did the uncertainty add to the extreme stress each one was feeling, some had no doubt that it contributed to premature birth:

“They have got the length of your sentence, they know you are not going anywhere, they know you’re not going anywhere, they know you’re going to need that placement when the baby is due, there is no reason why they couldn’t do it earlier. I used to have nightmares that I was going to miscarry; I had gestational diabetes, I was getting off of heroin, I had no family, no money, not knowing whether social services are going to let me keep the child let alone the prison give me a place. How I just didn’t end up having a nervous breakdown I have no idea” (Ex-Prisoner 1)

“My suggestion for making the procedure better is make it quicker” (Prisoner 1)

“Social Services told me that they weren’t backing me ‘cos the risks were high of me coming back into custody and relapsing back into drugs which is I think what set me off...she was three weeks early, I was 37 weeks” (Prisoner 2)

“So it was a two all split [Board] decision and the Independent Chair made the decision to say ‘no’... I went back that night and write out my appeal. That morning I was walking over to work and was taking my appeal over to Action for Children and my waters went...I was 37 ½ weeks pregnant...I think I had held on so long, it were the stress...” (Prisoner 3)

“I think they do it too late sometimes – I think from 30 weeks you should have your Board, at least by thirty weeks” (Prisoner 6)

“My suggestion for change is to sit a Board in a suitable time, so not leaving it until the last minute, like one of the girls here who had to have her Board in labour...” (Prisoner 7)

“My suggestion for change is sitting the Board earlier...when you first come in, you’re stressed, you don’t know, especially if you’ve never been in here before, you don’t know how anything

works and you've got so much going on that I think if you are stressed out, it's not good if you are heavily pregnant...so it would be nice just to know a bit sooner, than to keep thinking "oh god it is going to happen? Am I going to get it?" going over it all the time..." (Prisoner 10)

MBU staff cited a number of reasons for not holding Boards earlier than they normally did: the prison wanting to wait until the pregnancy was viable, getting a mandatory drug test ('MDT') completed in time, the significant delays caused by Local Authority Children's Services (formerly, Social Services) in providing a report, not wanting to give spaces 'away' in case a prisoner comes in who has an earlier due date and wanting a sufficient period to monitor custodial behavior prior to a Board.

6.6. The role of social workers

The PSI dictates that, other than in an emergency admission, a decision to offer a place should not be made without "a written report from the appropriate Local Authority Children's Service which states that they are not aware of any concerns which would prevent a place on a MBU being offered"³⁰. Although there is no mandatory requirement for social workers to be present at MBU Boards, as indicated above, the PSI considers it to be "highly desirable to have a social worker from Children's Services in attendance to represent the best interests of the child."³¹

All three MBU Managers with whom I spoke said that they always invited the social worker to attend the Board, but they rarely attended. All three said that it was all the more important for a social worker to attend if they were not supporting a place, so the Board could ask further questions and fully understand why. However, despite requests, each Manager described an appearance by a social worker as "rare" (*"In eight months, I have only ever seen one social worker"* - **MBU Manager 2**). One Manager considered that social workers caseloads were too heavy and the huge catchment area covered by the prison meant that they were most unlikely to travel such distances. Two managers were firmly of the view that social workers should come and see their Units, to see what the Unit provides, as social workers did not seem to understand what they did and how they did it.

³⁰ Paragraph 2.17.

³¹ Paragraph 2.11

Whilst one MBU Manager said that if a social worker was not prepared to come to a Board and explain her position, an adverse report would not prevent them offering a place, the other two Managers were clear that whether or not a social worker attended, if they were not supporting a place, that view had very significant weight. One person said *“As an MBU Manager, I will never go against social services recommendations...to date with the Boards I’ve done, I have always gone with social services recommendation”* (MBU Manager 2). The other said *“...social services recommendation has a big bearing on our decision”* and *“their recommendation does have a greater bearing than anyone else’s”* (MBU Manager 3).

The perception of all the women I interviewed, which appears to have credence, was that if Children Services were not supporting a place, there was a high chance of rejection. One prisoner said that many are put off from applying on this basis. This is supported by the historical experience of Denise Marshall at *Birth Companions* who said that in HMP Holloway some women said they had decided not to apply or had withdrawn applications after being told *“if social services is opposing you, you won’t get a place; the process will upset you; this way we can work out your visits with the baby in advance and things will be less stressful.”* One prisoner I interviewed was of the view that if the social worker did not attend the Board, the social worker’s views should be discounted (Prisoner 3). Another said that it was unfair that social services’ views were *“the main factor”* in the MBU Board decision making process, that it should be a prison based decision (Prisoner 9). Another said that *“a lot of people get a no, because it’s down to their record – how many times they have been in prison – and social services”* (Prisoner 1).

6.7. The right of appeal

As set out above the PSI does not set out any criteria, time frame or detail about how to appeal. Only two of the 16 women were aware at the time there was an appeal process (both having been rejected by the Board). One woman told me that she had been on the MBU 13 months and had seen a lot of women rejected but the majority did not appeal. When I asked her why she thought that was, she said *“Because – honestly, when you’re in prison, you think you are the under-dog anyway, you don’t have any rights when you are in prison – you are a bad person and you’ve just go to get on with it, that’s how most women in prison think...They have got a very low self-esteem anyway, they haven’t got it in them to fight”* (Ex-Prisoner 1).

6.8. MBU placements as a catalyst for change

The most striking thing about each of the 15 women who had been accepted into an MBU was how profoundly grateful they were for the chance they had to be mothers to their babies (even when they had other children on the outside) and how each one spoke of the experience as both positive and life-changing.

One respondent, an ex-drug user who had initially been refused a place, said this:

“And it’s all turned out wonderful. I think that once somebody has got a place then the support and the help is massive you know. People read my paperwork and thought she is only going to last two minutes you know. ‘Cos that’s how it looked.” (Prisoner 3)

Another, who was only 18 years old when sentenced, and who had to attend three Boards and in relation to whom, Children Services were not supporting a place, expressed real gratitude to the prison:

“I thank the jail, I really do thank the jail and I thank [my Offender Manager] for getting me on this mother and baby unit because social services were adamant saying no, no, no, and I thank all the nursery staff and Action for Children and [the Custodial Manager]... [My son] would have been adopted by now so I’m really grateful for the jail, well the prison, if you know what I mean” (Prisoner 4)

This young woman had had her first child removed from her care when she was very young and so the impact of a place was even more profound. Another woman, who had been a drug user for many years, found that being allowed to be a parent had changed her life forever:

“You know what people say – oh never say never, ok but let me tell you I’m never coming back to prison again and I’m so sure. And it’s like, unless something happened to [my daughter], that would be the only time I would ever get into trouble, there’s no intention to at all – I have a life now, like a normal life and I know what’s it like now and that’s not for me anymore” (Prisoner 8)

Another long-term ex-drug user, who was living in the community with her child at the time of the interview, also found that her pregnancy was the catalyst for change and was determined to gain a place:

“I had worked really hard, I had done a lot of courses in there on CBT, domestic violence, you know – everything I could have done to try and...and I did it all off my own back...I didn’t have to do any courses, but I wanted to do everything because the weight of my past is very heavy. When I found out I was pregnant I had that battle, do I have an abortion? Because of my past, because of where I am. I was bang on heroin...can I really do this? And then I thought – no I want to change, I believe God gave me her for a reason, he has blessed me with her, so I tried really hard...without that MBU I wouldn’t be clean now and I wouldn’t have my daughter” (Ex-Prisoner 1)



7. Conclusions and Recommendations

7.1. Summary of conclusions

This research highlights that women are not adequately informed of their choices early enough and that the MBU decision-making process is unclear and obscure to women prisoners. It is striking that once in the criminal justice system, and pre-incarceration, women are not systematically told by lawyers or probation officers or social workers about MBUs, how they operate and what the possible benefits might be. Although not the subject of this research, it is quite clear that sentencing courts have little insight into what provision there is for mothers in prison, nor are they aware, for example, that if they passed a sentence that made it possible for a woman to leave prison with her baby at the 18 month separation point (in other words, where appropriate, passing a sentence of 36 months and under, depending on the age of the baby or the stage of pregnancy at the time of sentence), that would not only increase her chances of a MBU place, it might change her life and that of her child forever.

Once remanded in custody, the information-sharing process is still wholly inadequate, particularly for those who are not pregnant, but have young babies in the community. Once in prison, the overwhelming evidence from this study is that if a prisoner makes an MBU application, she is given minimal information about the process and effectively prevented from taking any meaningful part in the admissions process. Her contribution is limited to attending an interview, ill-informed and ill-prepared, as to what is expected of her and what is being said about her which may affect her adversely. Not only is she ill-informed, she is usually in a very late stage of pregnancy, which undoubtedly affects her experience of the process. The lack of attendance and engagement from social workers who write adverse reports adds to the unfairness of the process.

Further, late decision-making can render the appeals process, such that it is, nugatory. The appeals process, in its current form, is wholly inadequate. A fair process would set out exactly what the criteria are, a time frame in which to apply, details of who the decision-makers are and what evidence they will be considering, as well as the target time frame in which the appeal will be decided and the appellant informed of the decision.

The research shows that once in the MBU, women and babies can flourish, and prisoners can make very significant changes in their lives. It appears, however, from the profile of those who were in the MBU, that if you are a repeat offender with any custodial history, there is little prospect of admission. Given the profoundly positive impact for both women and their babies if separation is avoided, as against the sometimes, dire consequences of separation³², it must follow that every effort should be made to improve access to MBUs.

7.2. Recommendations

- The Ministry of Justice (MOJ), which is the body ultimately responsible for all prisons, whether privately run or not, should require liaison between MBU Managers and those external to the prison service who are working in the criminal justice system, in particular the statutory services (for e.g.: social workers, probation officers, judges and magistrates) so that there is a proper and informed understanding of how MBUs work, what they offer and how to access them.
- The prison Reception screening interview should include an additional, specific question about whether a woman has a baby in the community as well as the age of that baby. Every woman (not just every pregnant woman) should be given the NOMS MBU leaflet. PSI 49/2014 currently states at paragraph 2.1 that handing out the leaflet is a mandatory action. However, this does not appear to be happening consistently. It may be the Reception screening should include a box to confirm that the leaflet has been given out.
- Further, the positive aspects of MBUs, including the excellent nursery provision, should be prominently and persistently advertised within the women's estate. This should be a nationwide MOJ initiative and not left to an individual MBU Manager. Women who are already in a prison which has an MBU who want to apply or are thinking of applying should be allowed to visit the MBU at an appropriate time. In prisons without MBUs, there should be photographs available of the different MBUs, showing the rooms as well

³² https://www.theguardian.com/uk-news/2016/oct/21/inquest-into-death-of-prisoner-days-after-giving-birth-finds-very-serious-matters?CMP=share_btn_tw

as the nursery and other facilities. These actions should be mandatory requirements in every women's prison.

- There should be the equivalent of a service level agreement in place between MBUs and Local Authority Children and Adult Services, setting out mutual expectations, particularly in relation to report preparation, time frames and attendance at MBU Boards. All social worker being asked to express a view as to whether MBU admission is in the best interests of any particular child, should have a proper and full understanding of the MBU environment and facilities before they do so. To this end, relevant social workers should be invited by MBU Managers to visit an MBU within their catchment area and their attendance should be made mandatory. This would explode myths and build relationships and ties. This should be done as a matter of urgency.
- It should be a mandatory action in PSI 49/2014 (and any subsequent updating PSI) that the dossier provided to the MBU Board should be disclosed to the prisoner no later than 48 hours before a Board (it is currently just a recommended time frame at paragraph 2.3). This would mean that decisions about when a woman is going to attend a Board and be told about it would have to be much more systematic than they currently are (the research shows that most are told only on the day of the Board).
- MBU Boards should be held much earlier than they are. The PSI (and any subsequent updating PSI) should be amended to reflect the judge's view in the *WB* case that MBU Boards should be held as soon as possible after an application is made. It should also stipulate that they *must* be held by Week 30 at the very latest (unless of course a woman is sentenced much later into her pregnancy, and then they should be held as soon as possible after admission / application).
- To have a proper understanding of the take-up or otherwise of MBU places, prisons should be required to record not only the number of applications, admissions and refusals, but also why an application to an MBU is not progressed (i.e. whether it has been withdrawn or whether a woman has been unexpectedly released or whatever other

reason it does not end in an admission or a refusal), given the large discrepancy in the existing statistics between applications, admissions and refusals. The statistics should also include the age and ethnicity of all those accepted or rejected, as well as a brief reason for rejection (e.g.: drug use). This data should be collated nationally and reported annually.

- The appeals process needs to be urgently reconfigured to comply with ordinary principles of fairness and due process, with an emphasis on speedy decision-making. The procedure to be followed as well as the approach that will be taken by the Women's Team should be set out in terms.
- The MOJ should commission further research to examine further some of the issues identified in this report in order to better understand both the barriers to applying for and to gaining an MBU place, and in particular to understand the profile of those rejected. This is vitally important given that i) it is widely accepted (and reflected in current prison policy) that attachment to the primary carer takes place in the first two years, and separation before 18 months can have a profoundly negative impact on the child ii) there is a growing body of evidence which suggests that MBU residents are less likely to re-offend than the general female prison population (O'Keeffe and Dixon, 2015: 4), and iii) regardless of whether there is an impact on recidivism, MBUs have the potential 'for promoting children's rights, future well-being, and welfare as well as the well-being of mothers' (2015: 5).

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APPENDIX A

Can you help?

I am researching the fairness of the procedure for getting a place in a prison Mother & Baby Unit (MBU).

I am looking to interview face to face or send a questionnaire to women who have applied for a place in any prison MBU since 1 October 2011.

Could that be you?

Whether you were given a place or refused a place or didn't take up a place, I would like to talk to you.

If you agree to a face to face interview and / or complete a questionnaire, you will receive a £15 Boots voucher.

I am doing this research as a Griffins Society Fellow with the University of Cambridge to try and make a difference to women's lives in prison.

If you can help, please e-mail me on: mayas@gclaw.co.uk



APPENDIX B

Information Sheet for participants

Name of Research Project: *Is the current procedure for women prisoners to gain a place in a prison Mother and Baby Unit ('MBU') fair and / or accessible?*

You are invited to take part in a research study. The researcher, Maya Sikand, is a barrister who specialises in civil liberties work. The study has received funding from the Griffins Society as part of their annual fellowship programme. The Griffins Society promotes research and effective practice in working with women and girls who are in prison or subject to criminal justice interventions in the community.

This information sheet aims to provide an outline of what participation means.

Background to the research

The female prison estate currently includes 6 MBUs (1 of the 6 is likely to close in the near future). The Ministry of Justice says MBUs are not used to capacity and underuse was the reason for closing the MBU at HMP Holloway in 2013. Applications by (prospective) mothers for a place in an MBU are considered by an Admissions Board, the primary criterion being that a place in the MBU is in the best interests of the child or children. The Board is chaired by an Independent Chair (currently there are 5 such chairs) and is comprised of a multi-disciplinary team. The Board then makes a recommendation for acceptance or refusal to the Prison Governor who has the final say. There is an internal appeal system, with no specified time limits and no oral hearing, which is considered by the Head of the Women's Team at the National Offender Management Service (NOMS) in the Ministry of Justice.

Statistics from 2012/2013 show that there were 221 applications for MBU places across the Women's Estate received, 120 approved and 33 refused. That means 68 applications are unaccounted for¹.

This research aims to identify if there are gaps between policy and practice and whether the process itself accounts for lack of take up

¹ MOJ answer dated 24 April 2013 to an FOI from Liam Allmark dated 12 April 2013.

of places and / or number of refusals. It aims to do so by trying to get first hand information from women prisoners or ex-prisoners themselves as well as from MBU staff to ascertain whether the procedure is experienced as fair and / or accessible, including the appeals system.

What does participation involve?

If you participate, you will be interviewed for up to an hour. The questions will revolve around your own experience of accessing an MBU place.

What will happen to the information you provide?

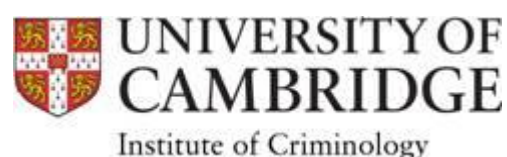
With your permission, the interview will be tape-recorded and then transcribed to allow for analysis of the data. You can choose to not be tape recorded, if this is the case the researcher will keep notes of the discussion. All information gathered will be anonymised and remain strictly confidential. Only the researcher will have access to this information - which will be securely kept on an encrypted device and will be destroyed after 5 years.

Participants can access the final report via the Griffins Society website:
<http://www.thegriffinssociety.org/>

If you would like further information about the study please contact the prison who can contact me.

Maya Sikand

Griffins Society Fellow and Barrister (Garden Court Chambers)



APPENDIX C

QUESTIONS FOR MBU RESEARCH PROJECT

For women prisoners/ ex-prisoners

1. Tell me about how you first came to apply for a place in an MBU? [Did you hear from another prisoner or prison or someone else? How long had you been there? Any language barrier? Help with your language?]
2. How many weeks pregnant were you at the time you made the application?
3. What did you know about the MBU and how to apply?
4. Tell me who (if anybody) advised you or helped you to understand the process? What was your experience of that help/advice?
5. Was a social worker from Children Services or Adult Services involved? If so, tell me about your experience of their involvement?
6. Was a Probation Officer involved? If so, tell me about your experience of their involvement?
7. Tell me how you found out the date of the Admission Board hearing? How long before the hearing was that? Did you see the MBU before the Board?
8. How many weeks pregnant at the time of the Admissions Board? Did you have any concerns / issues about the stage of the pregnancy at the time of the Board?
9. Were you given disclosure of all the reports prepared about you before that hearing? If so, how long before?
10. Were you told that you were allowed to have a PPO with you? Did you have one?
11. Tell me about your experience of the Admissions Board?
12. How did you find out what the result was?
13. If you were refused a place, tell me what support / advice you got about what to do next? [In addition did you have solicitor access? Prison law or family solicitor?]
14. Did you appeal? If so, tell me about your experience of that?
15. If you did not appeal, can you tell me why?
16. Do you have any suggestions for making the whole procedure better?

M. SIKAND
April 2015

APPENDIX D

For MBU Line Manager/ MBU Manager/MBU Liaison officer/any other relevant prison staff

1. Tell me about your experience / involvement in the MBU admissions process? [more specific questions will follow depending on their role]
2. At what stage in the process do you get involved? [more specific questions for MBU Liaison Officer will follow]
3. In your experience do women prisoners understand the process? Are they able to effectively participate in it?
4. Tell me about your experience of liaising with Social Services and their involvement in the process?
5. Do you have any suggestions for making the whole procedure clearer or better?

4. Tell me who (if anybody) advised you or helped you to understand the process? What was your experience of that help/advice?

5. Was a social worker from Children Services or Adult Services involved? If so, tell me about your experience of their involvement?

6. Was a Probation Officer involved? If so, tell me about your experience of their involvement?

7. Tell me how you found out the date of the Admission Board hearing? How long before the hearing was that? Did you see the MBU before the Board?

8. How many weeks pregnant at the time of the Admissions Board? Did you have any concerns / issues about the stage of the pregnancy at the time of the Board?

9. Were you given disclosure of all the reports prepared about you before that hearing? If so, how long before?

10. Were you told that you were allowed to have a PPO with you? Did you have one?

11. Tell me about your experience of the Admissions Board?

12. How did you find out what the result was?

13. If you were refused a place, tell me what support / advice you got about what to do next? [In addition did you have solicitor access? Prison law or family solicitor?]

14. Did you appeal? If so, tell me about your experience of that?

15. If you did not appeal, can you tell me why? **[Were you aware that you could appeal? – please answer even if you were granted a place]**

16. Do you have any suggestions for making the whole procedure better? [or any other comments]

MAYA SIKAND
November 2015
My e-mail address is mayas@gclaw.co.uk

*I am enclosing a STAMPED ADDRESSED ENVELOPE.