



Birth Companions statement on pregnant women and new mothers in prison

5 June 2020 (updated from original statement 4 June 2020)

By prioritising pregnant women and those on Mother and Baby Units in prison for early release back in March, the government sent a clear signal about their vulnerability, and the need to protect their safety and wellbeing during the Covid-19 pandemic. Yet two months on it seems only 22¹ have been released under the scheme; just six pregnant women and 16 mothers with babies².

Many more remain inside prison walls, locked in their cells for 23 hours a day or more with no visits from family, friends or many of their usual support services. Pregnant women and new mothers continue to arrive in our prisons to serve custodial sentences. All these women and babies are currently likely to be at increased risk from a system that struggles to protect their safety and wellbeing even during normal times.

This cannot continue. Here we set out a number of key calls on the Ministry of Justice and Her Majesty's Prison and Probation Service at this crucial point in the pandemic response.

1. Pregnant women, mothers of young infants and their babies should still be released as soon as possible.

Her Majesty's Inspectorate of Prisons' recently published *Report on Short Scrutiny Visits to Prisons Holding Women* were scathing in their analysis of the efficacy of the government's early release schemes in the three prisons they visited: "the two early release schemes in operation had been largely ineffective in reducing the population. Despite the process taking up significant amounts of management time, only six prisoners had been released. This was a failure of national planning"³. Only 22 pregnant women and new mothers have so far been released early from the twelve women's prisons across the country.

The government recently announced that consideration should be given to how restrictions may cautiously be rolled back over coming weeks and months⁴. While restrictions remain in place, the programme of early release for pregnant women and

¹ <https://www.theguardian.com/society/2020/may/31/prison-release-schemes-close-to-impossible-to-deliver-says-watchdog-coronavirus>

²FOI response from HMPPS 2020 - https://www.whatdotheyknow.com/request/662195/response/1581915/attach/3/FOI%20200505001%20Min%20Response.pdf?cookie_passthrough=1

³ HMP Chief Inspector of Prisons <https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2020/06/Womens-prisons-SSV-2020.pdf>

⁴ <https://www.gov.uk/government/news/coronavirus-recovery-in-prisons-and-probation>

new mothers should not be abandoned, but extended, with creative and coordinated use of resources to ensure that every woman who can be moved into the community safely is supported to do so as quickly as possible.

Early releases should include mothers with responsibility for children under the age of two in the community. When judges sentenced these mothers to prison before the pandemic began, they did so with the expectation that they would, where appropriate, have contact with that child throughout their custody; have the opportunity to hand out expressed breastmilk if they were breastfeeding; and apply for Release on Temporary License (ROTL) to go home for a day or weekends to maintain their vital bond with their children. Lockdown means they now face complete separation. Children under two are unable to benefit from phone calls, letters and emails and may struggle with video communication. The impact of separation on mothers and children during this crucial developmental period is likely to be extremely damaging⁵.

2. Every woman released from prison should be given appropriate, adequate support.

At the moment many women are being released into risky, complex situations without the support or resources to address their needs and those of their babies. For example, women being released as planned during this time are only being given the standard discharge grant of £46, and not the increased grant being provided to those under Covid-19 early release schemes, who receive £80. There is wide recognition that the standard discharge grant does not meet the needs of women on release in 'normal' circumstances let alone in a situation where they need to be able to access a range of services via costly phone calls and mobile data, where they will face inflated food costs, and risks associated with taking public transport.

The work we have done to support women released from prison at the end of their custodial sentence during the pandemic has shown that the needs of these women are no less urgent than those of the few who have been released early. *All* women should be given adequate through the gate support, and ongoing support in the community to ensure they and their children are safe and have the resources they need.

HMIP's recent report on short scrutiny visits to women's prisons highlighted how release planning "was undermined by the lack of accommodation for many on release. This meant that since the start of the restrictions, 40% of prisoners released from Bronzefield and Eastwood Park and 20% of those release from Foston Hall had no accommodation on the day of their release"⁶. We know that lack of suitable accommodation has also been a factor in delaying or preventing the early release of pregnant women and new mothers. Creative solutions to finding appropriate, supported accommodation where needed for pregnant women and new mothers should be prioritised by all agencies involved, including those from the voluntary sector, as a matter of urgency.

3. Pregnant women, new mothers and babies who remain in custody should be kept as safe as possible and their care scrutinised closely.

A critical mass of evidence has demonstrated that even in normal times pregnant women, new mothers and babies face unacceptable levels of risk in the prison

⁵ HMP Chief Inspector of Prisons <https://www.justiceinspectors.gov.uk/hmiprisons/wp-content/uploads/sites/4/2020/06/Womens-prisons-SSV-2020.pdf>

⁶ *ibid*

system⁷⁸⁹¹⁰. The current measures being used by the system in response to Covid-19 include locking pregnant women up in a prison cell for more than 23 hours a day, and denying women access to family visits. These measures are very likely to augment existing risks to women and babies' health and wellbeing, and could represent a threat to their human rights to life, to protection from inhuman or degrading treatment, and to family life.

At the moment it is harder to gauge the impact these measures may be having on pregnant women and new mothers in custody. Her Majesty's Inspectorate of Prisons (HMIP) has suspended full inspections and their alternative 'short scrutiny' visits to women's prisons are being conducted without the usual health and social care-focused involvement of the Care Quality Commission, although the first report on visits to three prisons published recently did contain HMIP's own health and social care inspectors' observations on the care of pregnant women and mothers¹¹.

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

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

4. Sentencing should take account of the challenges posed by the Covid-19 pandemic and the impact on women's imprisonment.

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

Now, more than ever, it is imperative that sentencers follow the established guidance on mitigating factors relating to sole or primary care of a dependent relative. In particular,

⁷ Abbott. L, Scott. T, Thomas. H, and Weston. K (2020) Pregnancy and Childbirth in English Prisons: Institutional Ignominy and the Pains of Imprisonment. *Sociology of Health and Illness* (Accepted 25th November 2019, published online 10.01.2020).

⁸ Newcomen, N (2016) A Report by the Prisons and Probation Ombudsman: Investigation into the death in December 2013 of a prisoner at HMP Low Newton.

⁹ RCM (2019) [RCM position statement on Perinatal Women in the criminal justice system](#): *Separation of mothers from their babies should be considered a serious incident and avoided unless absolutely necessary to guarantee safety of mother or baby.*

¹⁰ Baldwin, L. and Epstein, R. (2017). Short but not Sweet: A Study of the Imposition of Short Custodial Sentences on Women, and in Particular, on Mothers. De Montfort University.

¹¹ <https://www.justiceinspectors.gov.uk/hmiprisons/wp-content/uploads/sites/4/2020/06/Womens-prisons-SSV-2020.pdf>

this Sentencing Council guidance states that the impact of a sentence on dependents should lead to consideration as to whether the sentence could be suspended, and where the defendant is a pregnant woman, the relevant considerations should include the effect of imprisonment on the woman's health and any effect on the unborn child. Clearly, the regime in place in prisons across the estate at the current time, and until restrictions are lifted completely should set the threshold for custody – whether on remand, or after sentencing - higher than ever.

The Lord Chief Justice has already recognised this, stating that sentencers can and should take the current conditions in prisons and the 'heavier' impact a custodial sentence currently carries into account in their decisions about the use of custody. Many will do so, but this cannot be left to discretion – decisions with such huge implications for the human rights and safety of women and babies must be clearly directed and scrutinised.

We will be writing to the Lord Chief Justice and the Sentencing Council to express our concerns about the sentencing, remand and recall of pregnant women and mothers during the pandemic, and to seek assurances that appropriate expectations will be communicated to sentencers in response to this.

5. Easing the lockdown in prisons

The Ministry of Justice's National Framework published on 2 June 2020 sets easing of restrictions in the prison system¹². While we welcome the priority given in this plan to the restoration of family visits, it will be essential - given the continued need to restrict numbers and movement to a large degree for the foreseeable future - that the particular needs of pregnant women and mothers of babies and infants are prioritised. The steps to ease restrictions should also include consistent and coordinated use of Release on Temporary License (ROTL) arrangements for these women as soon as is possible, so they can re-establish family bonds and make plans for resettlement, including connections with community-based maternity and parenting services.

In summary

The already significant risks pregnant women, new mothers and babies face in prisons are likely to be greater during the Covid-19 crisis due to the impact on services and measures in place to contain the pandemic. There is less external scrutiny of the impact of this situation on women and children in prisons, and on their families in the community.

Co-ordinated releases, and an end to custodial sentences in all but the most exceptional of cases provide the answers to minimising the risk to mothers and babies in the pandemic, as they did before the outbreak, and as they will continue to do after this current public health crisis passes.

We urge the government to maintain its commitment to the supported release of as many pregnant women and mothers of young children as possible, and to use this opportunity to deliver a significant reduction in the number of women sentenced to prison as set out in the government's own Female Offender Strategy.

For more information on these and related issues, please contact Kirsty Kitchen, Head of Policy and Communications, at kirsty@birthcompanions.org.uk

¹² ¹² <https://www.gov.uk/government/news/coronavirus-recovery-in-prisons-and-probation>