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Financial Crime and Pregnancy in prison

By Dr Felicity Gerry QC and Dr Lucy Baldwin

“it’s a horrible place to be pregnant in prison, you don’t get extra food, not even milk and you are worried all the time it will kick off and your baby will get hurt, the stress is unreal” (Emma).

“I was pregnant and had had two episodes of spotting – which they knew, and they still put me on my own. I wanted to see a midwife and I was told I couldn’t. I’d have to see the nurse. I was upset and wanted to ask loads of questions, but I never got to ask them because I lost the baby anyway. I think it was the shock of going to prison that made me lose my baby. I had no history of miscarriage. There was no other reason. When I lost my baby, I was bleeding on my own in my cell for hours. I was terrified, and the prison said they would get me to the doctors in the morning. I was in so much pain they called an ambulance eventually. I lost my baby on the way to the hospital, in handcuffs. I will never forgive them for that. There was no need for cuffs. I wasn’t exactly running away, was I?” (Polly, Baldwin’s research, ‘Short but not Sweet’, 2017).

“I’m anxious...I can’t sleep at night, Like I need to know now, I want to know. It’s my baby. I want them to tell me if I’m allowed my baby or not” (Abi, Abbott’s research).

“I sat my board really late which was stressful in itself, I spent my whole pregnancy trying not to bond with my baby in case they took him... then I went into labour and I still didn’t know. Can you imagine that I went to hospital not knowing if I was coming back with him or not” (Dee, Baldwin’s research).

This article sets out some of what we said in our webinar on 24th March 2002 [<https://www.libertaschambers.com/media-hub/financial-crime-pregnancy-in-prison-webinar-video/>]

Between us we have decades of experience of practice and academic research on the shocking circumstances for women in UK prisons, particularly for non-violent offences. Despite the well-known vulnerabilities of women prisoners, the courts are still sending mothers and pregnant women into prison for financial crime and Parliament recently rejected a proposal to require judges to record how they consider the best interests of children in sentencing.

Most recently, Lucy's research on pregnancy in prison has highlighted the tragic case of Louise Powell whose child was still born in horrific circumstances in Styal prison. Hers made the headlines but there are many more whose plight is hidden and horrible. Given that the current international guidelines (the Bangkok Rules) are such that Sentencers are supposed to reserve custody for women in only the most extreme of circumstances. We ask the question – why are pregnant women being sent to prison at all for financial crime at all – whatever the figures? If we accept that the best interests of children is not to be imprisoned, that children should not be punished for the crimes of their parents and that repayment of losses is preferable together with disqualification from working with money, then what is the point of brutal punishments?

Lucy's research, and the research of Dr Laura Abbott reveals the often horrific, tragic experiences of women miscarrying in cells, giving birth in their cells, and having their babies torn from their arms when they have not gained a precious space on a prison Mother and Baby Unit (MBU), left bereft at their loss.

In their forthcoming book, 'Pregnancy in and After Prison' they argue that prison is not a safe space for pregnant woman and that in all but the most serious of cases there should be a presumption against sending a pregnant or perinatal women to prison. A position shared by Birth Companions and the campaign Level UP . The reality for pregnant women in prison is harsh.

We suggest that the term "most serious of cases" should be defined in law to exclude financial crime altogether. There are other sanctions available, and prison should be reserved for those who are a risk to the public. This is not to suggest that financial crime should not be punished at all but that alternatives are far more useful, even when the value is high. Ultimately it must be remembered that women offenders are such a low statistic that sentencing a woman is already an exceptional exercise so sentencing a pregnant woman to a non-custodial penalty makes sense. The attempt to deal with this in Petherick by suggesting 'on the cusp' cases could lead to non-custodial outcomes was somewhat non sensical in financial cases, as the reality is that the balance between the health and well-being of child and mother always outweighs financial loss.

The research

Most pregnant women in prison have committed low risk of harm offences, are victims of domestic abuse and/childhood abuse. Many have traumatic histories, substance misuse issue and mental health difficulties. All too often prison is being used as a supposed 'place of safety' for mothers and babies in the absence of alternative resources in the community. Epstein et al's recent study with 22 pregnant women showed all were sentenced for nonviolent offences 5, for shoplifting – 6 for breach/recall (missed appts /failure to change address), 2 were on remand, 4 drugs offences. Just last month a woman was recalled to prison for failure to attend appointments, she had given birth 24 hours earlier. Her baby was taken into care. This is not acceptable, there needs to be a greater focus on early, supportive trauma informed, community based alternatives to prison for non-violent women and especially those who are pregnant.

The Nuffield Trust undertook research into the healthcare experiences of prisoners. Their report 'Locked Out', although not exclusively focussed on women, revealed that in a 12 month period across 2017/18 56 birth to women took place, and six of the women (1-10) women gave birth before they reached hospital. In both 2019 and 2020 two babies were stillborn when mothers gave birth in cells, one mother on her prison toilet.

In 2016 Michelle Barnes, took her own life at HMP Low Newton, five days after the death of her baby, after being refused an MBU space and separated from her baby 48 hours after her birth. An independent inquiry found that Michelle's post-birth mental health care was inadequate and that planning and preparation for the separation of her and her baby were poor. Michelle was traumatised and alone when she hung herself in her cell.

Why mother and baby units are not the answer

In the UK there are six mother and baby units with the capacity to hold 66 babies and 54 mothers (there is an allowance for twins). However, as discovered by Maya Sikand in her report 'Lost Spaces', overall the units are rarely more than 50% full (there is some variation between individual units). Sikand found that rejection rates were high, most often down to a social workers reluctance to support the mothers' applications (often despite never having seen the facilities). The process of applying for an MBU space is inconsistent and very stressful for the mothers. Mothers in both Baldwin and Abbotts research described how their boards were not sat until quite late in their pregnancies and decisions were delayed, sometimes not being made until after the birth (the case for two mums in Baldwin's study).

Inefficiency is not a reason to abandon the mother and baby unit idea but, it is still prison. With no let up for mothers who need support not detention especially when they have not committed a sexual or violent offence, or their case has a background of abuse, addiction, or other vulnerabilities. The research must be being ignored by judges and legislators using mother and baby units as a panacea not a cure or perhaps as a smokescreen for fear of headlines.

What can be done?

The New Sentencing Council's Guidelines for women which came into force on 1 October 2019, note that when a Sentencer is considering 'sole or primary carer for dependent relative' as relevant sentencing factor; then they should, in the case of a pregnant woman, consider the potential effect on the defendant's health and the health and wellbeing of her unborn child. The downside of 'consider' is that it is not an obligation. There is also a serious concern that sentencing guidelines deter magistrates and judges from educating themselves on the available research, global guidance.

It has reached a clear point where gender specific sentencing guidelines are needed. Lucy has also mapped out the need to consider implementation of a 'Perinatal Pathway for the Courts'. This pathway would include specific and detailed guidance to legal advocates and Sentencers regarding the needs and preferred outcomes for pregnant mothers and mothers in the perinatal period. In addition, sentencers and

legal advocates should receive training in this specific area, enabling them to make informed decisions and recommendations.

Given the mother of the baby who died in Bronzefield was on remand, and the mother of the most recent dead baby was serving only a sentence of only a few short months and was her first time in prison, it is clear the guidelines are not being adhered to consistently. It is incumbent on advocates to place the already available research before sentencers - certainly no sentence of a pregnant mother should go ahead without it – it has been available for a very long time.

Conclusion

The experiences of women who are pregnant and suitable for alternatives to custodial sentences demonstrates that the international and domestic legal issues on punishment and human rights are not having a discernible impact in this area and women and children are suffering as a result.

What must occur is the replacement of guidelines with a mandatory requirement to ONLY sentence a pregnant or nursing mother to imprisonment if her offences was so severe and her risk of harm to the public is so high, that only a custodial sentence is warranted. In such an incidence, the rights of the mother and child to a healthy, safe and supportive and compassionate environment must be paramount. Unless this change is implemented, mothers and babies will continue to die in prison.

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