



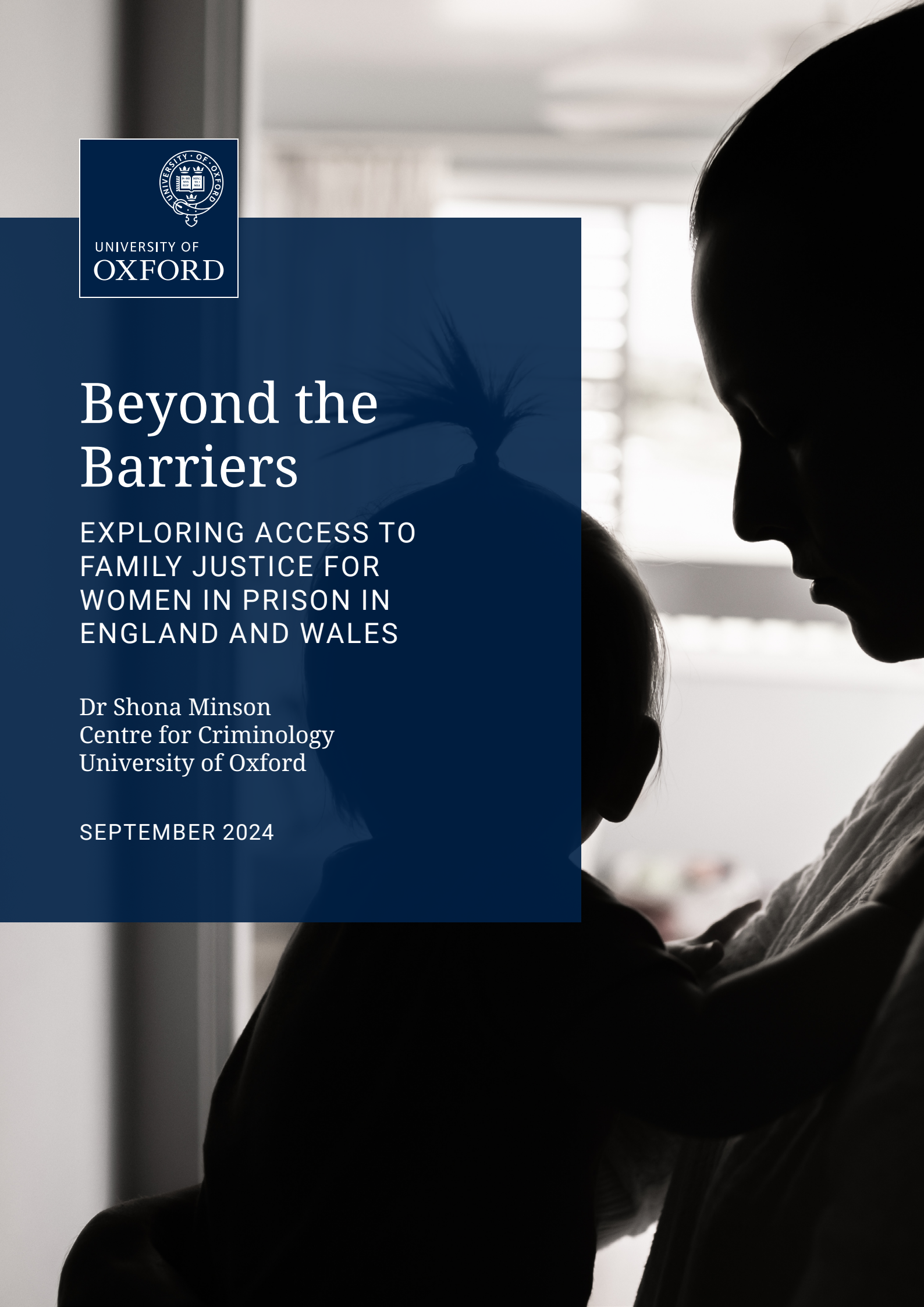
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Beyond the Barriers

EXPLORING ACCESS TO
FAMILY JUSTICE FOR
WOMEN IN PRISON IN
ENGLAND AND WALES

Dr Shona Minson
Centre for Criminology
University of Oxford

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“I think fundamentally there is a real problem in trying to ensure equal footing. And Part One in the Family Procedure Rules is very clear about that. There are so many other areas within family proceedings where we always return to that, about putting people on a fair footing. But I think you’re prevented in achieving that when you have a mother in prison.” - Judge

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Executive Summary

This report examines the significant challenges faced by women in prison in England and Wales who try to participate in family justice proceedings. The study provides in-depth analysis of the systemic barriers that hinder imprisoned mothers from participating effectively in family proceedings, thus undermining the principles of fairness and equality that are fundamental to the justice system.

The 'Together a Chance' pilot which placed social workers in two women's prisons, made it possible to undertake a study of imprisoned mother's participation in family court proceedings concerning their children. Dr. Shona Minson's research provides a crucial foundation for policymakers, legal practitioners, and prison authorities to work towards a more equitable family justice system that acknowledges and addresses the unique challenges faced by women in prison.

Part I of this report provides context for the research. It sets out the basis for the expectation that imprisoned mothers should take part in family court proceedings and discusses the reasons for embedding social workers in women's prisons. In Part II four main barriers to participation, identified from the research data, are explored in detail. Part III concludes with reflections on the findings, and recommendations for improving future practice.

KEY FINDINGS

1. BARRIERS TO PARTICIPATION

- Women in prison face numerous obstacles when engaging with family courts, including restricted communication, limited access to legal advice, and the physical inability to attend court hearings.
- The lack of judicial understanding of prison regimes, processes and restrictions limits the possibility of achieving procedural justice for parties in prison.
- The prison environment severely restricts mothers' participation in decisions affecting their children's welfare.
- The input and professional expertise of the prison based social workers is invaluable to women. It provides a crucial bridge between all other professionals and the mothers in prison, and is essential to achieving procedural justice.

2. IMPACT ON WOMEN'S HEALTH AND WELLBEING

- Taking part in family court proceedings places strain on women. There are significant physical, emotional and psychological costs to them of taking part in these court cases. It is both the experience of the court proceedings and the decisions made, that cause harm to women.

3. IMPACT ON CHILDREN

- The lack of maternal involvement in family proceedings can result in decisions that are not in the best interest of the children.

4. LEGAL REPRESENTATION AND ADVICE

- Incarcerated women often struggle to obtain adequate legal representation due to logistical challenges.
- The lack of accessible legal resources exacerbates these difficulties, leaving many women without proper guidance during crucial proceedings.

5. FAIRNESS IN FAMILY PROCEEDINGS

- The Family Procedure Rules aim to ensure fairness and equal treatment in family courts, but these rules are not effectively applied to women in prison.
- The disparity in access to justice for imprisoned mothers underscores a critical need for procedural reforms to uphold the principles of fairness.

RECOMMENDATIONS

1. **Improve Communication Channels:** There should be a social worker embedded in every prison for women. Establish clear and efficient communication channels between prisons, courts and local authorities to ensure timely notifications and co-ordination of participation in court proceedings. This could include having named officers, social workers, or staff in each prison who are notified when proceedings are initiated to which a person held in prison is a party.
2. **Develop Training and Education:** There should be training available, and compulsory for all those who interact with mothers in prison, within each profession (social workers, lawyers, judiciary), to increase understanding of the specific challenges and needs of imprisoned mothers, to reduce biases and improve support.

3. **Enhance Legal Support:** Specialised legal aid and advice services should be provided and tailored to the needs of imprisoned women. Staff in prisons should be trained and supported to assist with the logistical and administrative aspects of accessing family justice.
4. **Improve Case Management:** Develop a Practice Direction to consider and accommodate the specific challenges faced by imprisoned mothers.

“Beyond the Barriers” highlights the urgent need for systemic changes to support incarcerated women in accessing family justice. By addressing the barriers and implementing the recommended reforms, the justice system can better uphold its commitment to fairness and equality. Ensuring that mothers in prison have the means to participate fully in family proceedings is not only a matter of justice for the women but also a critical step in safeguarding the welfare of their children.

Background

2. INTRODUCTION

The women's prison population in England and Wales stands at around 3,600 on any given day. Over the course of a 12 month period many more women than that number move in and out of prisons; on remand before trial, on remand between trial and sentence, after sentence, or when recalled to prison for the breach of a licence condition. Despite recommendations to the government from the Joint Committee on Human Rights in 2019¹, no data is routinely collected, and it is therefore hard to know exactly how many women in prison are mothers of dependent children. Inspections in HMPYOI Bronzefield and Peterborough estimated that between 50% and 60% of women in those institutions were mothers to children under 18 years². It is estimated that around 17,000 children experience the imprisonment of their mother each year³. In England and Wales, 69% of women sentenced to imprisonment have committed a non-violent offence. The most common offence for women is theft. 53% of women have been sentenced to less than six months in prison, which means they will spend only three months, half their sentence, in prison before serving the rest 'on licence' in the community⁴.

It is in the best interests of the child, in accordance with section 1(1) of the Children Act 1989 and Article 3 of the United Nations Convention on the Rights of the Child 1989 for mothers to participate fully in family court proceedings which have determinative consequences for their child. It is not known how many mothers in prison are a party to family court proceedings during their imprisonment, nor has there been any data available on how participation in family court proceedings is affected by imprisonment. The situation is further complicated by the fact that as there are only 12 women's prisons in England, and none in Wales, many women are imprisoned out of the local authority area in which they live and where the court proceedings take place.

¹ Joint Committee on Human Rights (2019) 'Right to Family Life: Children whose mothers are in prison', London

² HM Chief Inspector of Prisons (2017) Report on an Unannounced Inspection of HMP & YOI Bronzefield. Edinburgh: Her Majesty's Inspectorate of Prisons. HM Chief Inspector of Prisons (2018) [Report on an Unannounced Inspection of HMP & YOI Bronzefield](#). Edinburgh: Her Majesty's Inspectorate of Prisons.

³ Wilks-Wiffen, S. (2011) Voice of a Child. London: Howard League for Penal Reform

⁴ Offender Management Statistics, Ministry of Justice, (London, 2022); for more information on women's imprisonment see Bromley Briefings, London: Prison Reform Trust, published twice a year and Prison Reform Trust (2022) 'Why focus on reducing women's imprisonment?'

3. REASONS FOR PARTICIPATION

CHILDREN'S RIGHTS AND THE BEST INTEREST PRINCIPLE

The Human Rights Act 1998 gives children, as citizens, a right to the enjoyment of family life under Article 8, and under Article 14 a right to enjoy rights without discrimination. Article 2 of The United Nations Convention on the Rights of the Child 1989 (UNCRC) states that every child should be protected from discrimination or punishment, including that which they suffer because 'of the status or activities of their parents'. In the family court if a child is separated from their parent because of abuse, harm, neglect, or the likelihood of those things, the child's best interests are the paramount consideration of the court under section 1(1) of the Children Act 1989. The child will be represented by a Guardian ad Litem with lawyers appointed and paid for by the state, and if the child is separated from their parent, alternate caregivers will be assessed and financed by the state. In the criminal courts if a child is separated from their primary carer as a result of the parents' imprisonment, the court does not have a statutory duty to make enquiries about the child, nor to ensure that their welfare has been considered and alternative care plans made for them.

Research conducted in England and Wales found that children whose primary caring mothers are sentenced to imprisonment suffer procedural discrimination in breach of Article 2 of the UNCRC, as their rights under UNCRC Article 3 for their best interests to be a primary consideration in any proceedings concerning them, Article 12, their right to be heard in any proceedings concerning them, and Article 20, their right to special protection and assistance from the state if separated from their parents, are not upheld due to their mothers' status as a person who has been convicted of crime⁵. In 2019 the Joint Committee on Human Rights held an enquiry, 'The Right to Family Life: Children whose mothers are in prison'. Harriet Harman MP, the Chair of the Committee, said, 'The right of a child to family life is only given lip service when their mothers are sent to prison.' The enquiry found that at every stage of the criminal process involving their mothers, children's rights are not upheld⁶. The consequences of such procedural discrimination are wide-ranging and long lasting and include but are not limited to a change of carer, change of home, change of school, separation from their siblings, disrupted education, increased poverty, social isolation and shame⁷. Research from several countries suggests that children who have experienced maternal imprisonment will have diminished future outcomes in later life, including a higher prevalence of mental and physical health issues⁸, and an increased likelihood of dying before the age of 65 than their peers⁹.

⁵ Minson, S. (2019) *Maternal Sentencing and the Rights of the Child*, Palgrave

⁶ Joint Committee on Human Rights (2019) 'Right to Family Life: Children whose mothers are in prison', London

⁷ Minson, S. (2019) *Maternal Sentencing and the Rights of the Child*, Palgrave; Beresford, S. (2018) 'What about me? The impact on children when mothers are involved in the criminal justice system'. London: Prison Reform Trust

⁸ Murray, J., Farrington, D. (2008) Effects of Parental Imprisonment on Children. In Tonry, M. (Ed.), *Crime and Justice: A review of research* (vol 37.) (pp.133-206) Chicago, IL; University of Chicago Press; Scharff Smith, P. (2017) "When the Innocent Are Punished: The Children of Imprisoned Parents." *Punishment & Society*, vol. 19, no. 4, pp. 505–507, doi:10.1177/1462474514564927; Children of Prisoners Europe, (2021) [Psychological perspectives on parental imprisonment: Adverse Childhood Experiences and chronic stress](#).

⁹ Van de Weijer, S.G.A., Smallbone, H.S. & Bowman, V.J. Dev (2018) '[Parental Imprisonment and premature mortality in adulthood](#)'. *Journal of Life Course Criminology* pp 1-14

If during a mother's imprisonment family court proceedings take place, in the course of which decisions are made about the care arrangements for her children, these will often be determinative of the children's future trajectories. It is in the best interests of a child that their mother is able to fully participate in those proceedings, therefore, if a sentence of imprisonment prevents a mother from participation in proceedings, it follows that her child is the subject of further 'discrimination as a consequence of the status of their parent' contrary to Article 2 of the UNCRC.

PROCEDURAL JUSTICE: THE RIGHT TO A FAIR TRIAL

Article 6 of the Human Rights Act 1998, (Article 6 of the European Convention on Human Rights) gives every citizen the right to a fair and public hearing:

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law." Article 6, Human Rights Act 1998

There is no legal definition of fairness, but the Guide on Article 6 references four elements which must be present in a fair trial¹⁰.

1. The right to adversarial proceedings
2. The right to 'equality of arms'
3. The appropriate administration of evidence
4. Reasoned judicial decisions

The first two elements, as 'participation rights', must be at the forefront of judicial consideration when managing proceedings where one party is imprisoned. The first element, the right to adversarial proceedings, is 'in principle the opportunity for the parties to a criminal or civil trial to have knowledge of and comment on all evidence adduced or observations filed... with a view to influencing the court's decision'¹¹. Article 6 gives the parties to any proceedings the right to present the observations which they regard as relevant to their case, to be duly considered by the trial court. The 'appropriate administration of evidence' means that the court must, in turn, communicate all documents at its disposal to the parties¹².

¹⁰ 'Guide on Article 6 of the European Convention on Human Rights, Right to a fair trial' (civil limb) (2022)

¹¹ Ibid, p.89

¹² Ibid, p.89 'The right to adversarial proceedings must be capable of being exercised in satisfactory conditions: a party to the proceedings must have the possibility to familiarise itself with the evidence before the court, as well as the possibility to comment on its existence, contents and authenticity in an appropriate form and within an appropriate time (Krčmář and Others v. the Czech Republic, 2000,42; Immeubles Groupe Kosser v. France, 2002, § 26), if necessary by obtaining an adjournment (Yvon v. France, 2003, 39).' Infringement of the right may take place as a result of non-disclosure of documents held by social services about a child, even if the parents have been informed of their content. McMichael v. the United Kingdom, 1995

The second requirement of ‘equality of arms’ has been defined by the European Court to mean that the court must maintain a ‘fair balance’ between the parties, ‘affording each a reasonable opportunity to present his case under conditions that do not place him at a “substantial disadvantage” vis-a-vis the other party’¹³. The proceedings in their entirety must be “fair” within the meaning of Article 6.1.

THE FAMILY PROCEDURE RULES

The Family Procedure Rules 2010 make it clear that it is the intention of the courts of the Family Division in England and Wales to provide parties with a ‘fair trial’¹⁴. The overriding objective of the rules is set out in 1.1:

‘1(1) These rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly, having regard to any welfare issues involved.

1(2) Dealing with a case justly includes, so far as is practicable—

(a) ensuring that it is dealt with expeditiously and fairly;

(b) dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues;

(c) ensuring that the parties are on an equal footing;

(d) saving expense; and

(e) allotting to it an appropriate share of the court’s resources, while taking into account the need to allot resources to other cases.’

The ‘Family Procedure Rules Amendment 2017’¹⁵ entitled ‘Vulnerable persons: participation in proceedings and giving evidence’ was developed due to concern that certain groups of people involved in family proceedings might not be able to participate effectively. It added the following Rules:

‘3A.4(1) The court must consider whether a party’s participation in the proceedings (other than by way of giving evidence) is likely to be diminished by reason of vulnerability and, if so, whether it is necessary to make one or more participation directions.

¹³ Ibid, p.90. (Kress v. France [GC], 2001, § 72; Regner v. the Czech Republic [GC], 2017, § 146; Dombó Beheer B.V. v. the Netherlands, 1993, § 33).

¹⁴ [Family Procedure Rules 2010](#)

¹⁵ [Family Procedure Rules Amendment 2017](#)



(2) Before making such participation directions, the court must consider any views expressed by the party about participating in the proceedings.'

3A.5 (1) The court must consider whether the quality of evidence given by a party or witness is likely to be diminished by reason of vulnerability and, if so, whether it is necessary to make one or more participation directions.

(2) Before making such participation directions, the court must consider any views expressed by the party or witness about giving evidence.'

The amendment was created due to concern about parties who were the subject of domestic violence, but it has been developed to include other factors including physical and mental disabilities; age and understanding; and cultural background. The court is directed to take into account a party's 'domestic circumstances.' The court can make 'participation directions' in response to a party's vulnerabilities, for example to support a party who is uncomfortable with the presence of another party, or who has anxiety about attending in person, or experiences difficulties with comprehension. A direction may be used to deal with the 'structure and timing of the hearing and the formality of language used.' It is clear from the amendment that the court recognises that a person who is 'vulnerable' may have participation difficulties, which may include giving evidence. The Equal Treatment Bench Book, produced by the Judicial College, provides further explanation of the intended usefulness of vulnerability assessments:

*'The family court assesses vulnerability on the basis of a number of different factors which are likely to diminish a party or witness's ability to participate in the case. When assessing these factors, the court should consider the ability of parties or witnesses to understand the proceedings and their own role, put their views to the court, instruct their representatives and attend the hearing without significant distress.'*¹⁶

There is no specific mention of the vulnerability of a person taking part in court proceedings from prison, but it is clear that the Family Court recognises that it is important that all parties to proceedings are able to understand and fully engage with the proceedings.

4. RESEARCH CONTEXT

In 2018 I was an observer in the Family Law Clinic run by the Prisoners' Advice Service in women's prisons and heard women's accounts of the difficulties they faced when taking part in both private and public law proceedings. It was difficult to understand the scale or nature of the potential barriers to participation as no data was collected by prisons or courts. As part of that work family law advice booklets for women in prison were developed through

¹⁶ [Equal Treatment Bench Book](#) (2023) London: Judicial College, p.49

a collaboration between women in HMP Bronzefield, the Prisoners' Advice Service and the organisation Rights of Women¹⁷.

In 2019 the Farmer Review¹⁸ recommended that social workers should be employed in women's prisons:

'Recommendation 28: The Ministry of Justice to fund an on-site social worker as part of the multi-disciplinary team within each prison.'

The Farmer Review team found that women were not supported to have ongoing relationships with their children due to a lack of engagement with them by community social workers.

'the physical severing of family ties when a woman enters custody often has profound and lifelong consequences for both them and the children or other dependents involved. Indeed many women in prison are still trying to fulfil primary carer responsibilities towards their children and, where possible and appropriate, they should be given support to do so. However, I heard that they often feel they are trying to do this in the teeth of opposition, or lack of engagement, from children's social services in the community.'¹⁹

The Review goes on to note the lack of consistency in the treatment of mothers in prison:

'A recurring theme in the Call for Evidence and in focus groups of women in prison conducted for the Review, was the lack of a consistent approach from social workers to helping mothers in prison maintain and strengthen their family ties. The Children Act 1989 enshrined in law the principle that the interests of the child should be paramount. So the application of this principle in differing circumstances may be an important contributing factor towards the prevailing sense that social workers are sometimes sympathetic and sometimes antipathetic towards facilitating contact between children and their imprisoned mothers.'

However, evidence to the Review suggested that the starting point for many social workers is that children should not visit prison and further that it was not an appropriate place for young children who might benefit from being with their mothers in Mother and Baby Units. Choice for Change, a voluntary organisation which counsels women through difficult experiences with pregnancy, child or parenting loss in HMP Bronzefield and HMP Downview, wrote that there:

¹⁷ PAS Family Law Guides (in association with Rights of Women) : Prisoners Advice Service, 2018 - <https://www.prisonersadvice.org.uk/information/women-prisoners-justice-group-wpjg/>

¹⁸ Farmer, M. (2019) 'The Importance of Strengthening Female Offenders' Family and other Relationships to Prevent Reoffending and Reduce Intergenerational Crime'. London, Ministry of Justice.

¹⁹ Ibid para 214, p.93

*'is often reluctance on the part of social workers to arrange contact between mother and child. It appears sometimes a prior judgment has been made that the woman are not deemed worth the hassle entailed.'*²⁰

The lack of Legal Aid due to changes introduced in 2014, and the changes to the timescales for Care proceedings, expecting all proceedings to be completed within 26 weeks²¹, were also noted to have made it more difficult for mothers to access legal advice, and participate in proceedings. The Review recognised that this was not in the best interests of children:

*'children being taken into foster care or permanently removed from their parents should not be taking place against the backdrop of such threadbare legal representation for their mothers.'*²²

The Review recommended that social workers should be employed in women's prisons in order to:

- Provide a vital link with community social workers who have female prisoners' children on their caseloads²³
- Improve take up of places on Mother and Baby Units (MBUs)²⁴
- Act as advocates for women in prison, for instance, in care proceedings and help to broker more constructive relationships with community social workers to improve outcomes for children²⁵
- Fulfil Care Act 2014 duties to provide social care to vulnerable women in prison²⁶

Although the government at the time accepted the recommendation, it was not acted on, and in 2021 after extensive consultation with interested groups across the sector, the charity Pact employed social workers on a three year pilot programme in two women's prisons²⁷. A stated aim of the intervention, 'Together a Chance', was for the social workers, 'To function as an advocate for women whose children are involved with children's social care in the originating local authority. Together a Chance aims to support best practice, by working together with other agencies in the best interests of the children whilst also promoting the mother's parental rights.'²⁸

²⁰ Ibid para 218 -219, p. 94

²¹ [Children and Families Act 2014](#)

²² [Farmer Review](#), *ibid* (3) above, paragraph 222, p.95

²³ *Ibid* paragraph 239 - 241, p.99

²⁴ *Ibid*, paragraphs 242 -245, p.100

²⁵ *Ibid*, paragraphs 246-249, p.100

²⁶ *Ibid*, paragraphs 250-251, p.101

²⁷ Rees, A., Waits, C., Bezecdky, Z. (2024) 'Together a Chance: Evaluation of the Social Worker for Mothers in Prison Pilot Project, 2021-2023. Final Report'. Wales, Cascade.

²⁸ *Ibid*

The data recorded by the two prison social workers has made it possible, for the first time, to research imprisoned women's experiences of family court proceedings in England and Wales.

The data on which this report is based comes from three primary sources:

1. Social work case files of mothers in prison involved in court proceedings in the Family Court of England and Wales. From anonymised case files I selected an original sample of 20 mothers in prison A and 36 in Prison B, who had family court involvement. The sample was then reduced to 16 from Prison A and 26 from Prison B to only include mothers whose proceedings were active during the period of their imprisonment. Further information on the case files is available at Appendix A, and samples from the case files are available at Appendix B.
2. Interviews with the social worker in HMP Send and HMP Eastwood Park
3. Interviews with five judges of the Family Court in England and Wales

Analysis of the data led to the identification of significant barriers in the way of imprisoned mothers who wish to participate in family court proceedings.



Part II: Barriers to Participation in Family Court Proceedings

The systems and structures of prisons create barriers to a mother's participation in family court proceedings and impact upon her ability to prepare for court proceedings and to be present and able to engage fully during court hearings. The absence of legal advice or knowledge within a prison, including the misunderstanding of parental responsibility, create difficulties which are then compounded by a lack of understanding of the processes and regimes of prisons by judges, lawyers and court staff. Understanding the restrictions of prisons, not just in terms of a prisoner's liberty, but with regard to the processes they can facilitate, is important for anyone with involvement in a family law matter where the mother is in prison.

5. PERCEPTION

Parental responsibility attaches to a mother at birth and is only removed if her child is adopted. It is, however, the mistaken belief of not just mothers themselves, but also prison staff, family members, and on occasion local authority social workers, that imprisonment removes a mother's parental responsibility.

'I've had more than one social worker either state or imply that mum doesn't have parental responsibility because she's in custody. And I understand what they're trying to say, or I hope they're trying to say, is that her ability to exercise parental responsibility is limited, which is true. But she still has it.' - Prison Social Worker

This mistaken belief can lead to women losing contact with their children, for example, women whose contact with their children is stopped by carers when they are imprisoned do not realise that they can ask the court to intervene to restart contact. When social workers assume that mothers do not have parental responsibility, they do not involve them in review meetings or discussions about their children, nor do they keep them informed about their child's education, health or wellbeing. If there is no additional safeguarding concern schools

should provide mothers with school reports, but if the school have been told by the father, social worker, or other parties that the mother no longer has parental responsibility, then the school do not provide information. These actions lead to mothers becoming less involved in their children's lives and even if they are then served with notice of proceedings, their false belief that they have lost all 'rights' may mean that they do not see any purpose in participating in the proceedings.

'It's really sad the number of women who have asked me questions like that. Even just in passing on the unit, "Do I still have parental responsibility? I'm still the mum, yeah?" They're being made to feel as if they don't because of being cut out of things. They're not being included in the debate. They're not being asked for their views on decisions that are being made for their children.' - Prison Social Worker

6. PREPARATION

Mothers in prison are unable to prepare for court proceedings in the way that a person would if living in the community. From the commencement of proceedings, they face obstacles related to their receipt, understanding and response to the proceedings, and they may not be able to obtain legal advice or representation. All of these difficulties affect their ability to prepare their case to be heard.

SERVICE OF PROCEEDINGS

When local authorities commence proceedings, they should be expected to make extensive enquiries to establish the whereabouts of all parties. This does not always happen and on occasion, women in prison are not served with notice of proceedings. It can be difficult to locate a person in prison, as there is no simple way to find out where someone is being held, but this difficulty does not remove the need to notify them of proceedings²⁹.

Once the mother's whereabouts has been established, the notice of proceedings must be properly served. Giving a notice to the officer on reception at a prison, or posting that notice to the prison, is no guarantee that the mother will receive it. The distribution of post within prisons is slow and unreliable and prisoners do not always receive letters addressed to them. Unless the local authority receive confirmation that the notice was received it should not be assumed that the mother has notice of the proceedings.

In interviews judges confirmed that they were aware of the difficulties of service, and that it did not always take place satisfactorily.

²⁹ There is the 'Find a Prisoner' service, but it is not widely known about and it can take some time to establish the whereabouts of an individual. <https://www.gov.uk/find-prisoner>



'I think one of the difficulties we have is trying to ensure that documents reach the prisoner.' - Judge

'I would have concerns. Because documents don't always get to prisoners.' - Judge

RESPONDING TO PROCEEDINGS

When a mother receives notice of proceedings, she may not understand the nature or scope of the legal proceedings, what is expected of her, or how she may or can respond to the notice. Prison staff are not trained in these matters and are unable to assist. In the community, if a person is served with notice of legal proceedings, they have a number of options available to them. They will be able to use the internet to find out more about the proceedings and what may be expected of them. They can search online for local solicitors with relevant expertise or who hold a legal aid contract and make an initial telephone or in-person appointment. Many solicitors give a free short call for initial advice. They will be able to access services such as Citizen's Advice Bureau, who will signpost them to appropriate services or solicitors. In prison, none of this is available.

If the prison has a social worker, then the mother may be able to request social work support³⁰. In other prisons a mother will be limited by the knowledge of staff and other prisoners, and it is likely that she will feel overwhelmed and daunted by the service of proceedings.

Prison Social Worker: *There's just reams and reams of paperwork coming through and it's terrifying. Absolutely terrifying. Mums are worried that they're missing something really important, or they're doing something wrong and it's going to mean that they don't see their children.*

SM: *What will happen for most who don't have a prison social worker?*

Prison Social Worker: *I don't really want to think about the ones who wouldn't have us. I would sit down with her and anything that came for them through the post, so like any orders we would go through with like a highlighter and sort of highlight what are the key points here, what are the key dates, you know, the deadlines and what is the salient information that you need to take from this. And what can I as a professional help you to understand, which is the stuff that you really need to focus on and perhaps what is the stuff that you don't need to focus on quite so much.*

Liaison with the prison around the service of notice and other evidence can be important, as often the information contained will cause distress to the mother, and the prison need to

³⁰ Since the conclusion of the Pact 'Together a Chance' Pilot, HMPPS has funded the continuation of the two Pact social workers and commissioned an additional two from Surrey local authority, one at HMP Bronzefield and one at HMP Downview.

keep the mother safe during her imprisonment. This can mean that women are not allowed to hold court papers in their cells. On other occasions the prison staff will determine when a woman will receive what is often regarded as ‘the difficult news’ of court proceedings. If it is decided that she will need the support of an officer or member of staff, then staffing and resource issues will impact on timing.

‘If I’m about to go and give a woman some news that I know is going to be particularly upsetting, I usually look for an officer there or like a member of staff on the unit that I can tell before so that I can say, “Look, I’m about to go and speak to this mum. I’m going to give her some really difficult news.” And likewise, afterwards, I might check in and be like, “She took it quite well and just to say she’s okay but she’d like someone to check in on her,” or, “I’m concerned about self-harm, I’m concerned about this stuff can you take this particular course of action.” But that communication’s really, really important in making sure the woman is really supported.’ - Prison Social Worker

These concerns are well founded as the latest Independent Monitoring Board report on HMP Eastwood Park found an increase in self-harm rates among the women of 128%³¹.

LEGAL REPRESENTATION

Most significantly, a mother’s ability to respond to the service of proceedings will be limited by her access to legal advice or legal representation.

In interview, some judges did not seem to have considered the difficulties a mother in prison would face when trying to obtain legal advice or representation. They assumed that as case management has moved to electronic systems, everyone has the same access to evidence and information.

‘Nobody who is in prison or sectioned is automatically disadvantaged, because [electronic communication means that] it’s much more of a level playing field than it used to be.’ - Judge

These assumptions about the ability to use electronic communication extended to the way in which a person in prison could find legal representation.

SM: Do you know how a woman in prison would find legal representation?

³¹ Levels of self-harm among women in prison are at their highest levels. The fears of staff that court proceedings may contribute to self-harm are well founded. See Independent Monitoring Boards (2024) ‘Annual report of the independent Monitoring Board at HMP/YOI Eastwood Park’ IMB; Bromley Briefings, Prison Reform Trust



Judge: I can't say that I do. I know that they have an ability to write out to lawyers and that happens....or I guess if they have access to the internet for any period of time that might be a way of finding [a solicitor].

People in prison cannot use the internet, send messages on Whatsapp, or in most cases, even if there is a phone in their cell, make or receive phone calls at any time. An imprisoned person can only call numbers which have been pre-approved. The process of having a number added is a laborious one and can take several days, if not weeks. It is therefore impossible for a mother to find a solicitor without significant assistance from prison staff. A prison social worker explained the process she would go through with a mother who wanted to find a solicitor:

Prison Social Worker: Mum can't ring these numbers [solicitors' numbers] because these numbers aren't on her PIN. So to be able to call a number, you have to do an application to have it added to your PIN. And then once it's been approved, then you can ring it. So, she would have to add all of these numbers just to be able to ring to ask if they could represent her and it could be a few days, it could be a couple of weeks, depending on what pile of paper it goes in. It's an administrative thing and sometimes it happens really quickly and sometimes it takes a bit longer. So, yes, like these- generally speaking, what the mums need is someone- is a staff member who can use- like I can use my PIN and I can ring whatever number I want. So I'll sit down with Mum. That's what we'll do a little bit later today is we'll sit down in an office with a phone and I will ring all of these numbers. So that she can speak to them and try and get some representation.

SM: And if you weren't there, what would happen?

Prison Social Worker: I don't know. I mean, I would hope that someone else would be like, "We need help." But even getting this information through, like this information has come from the social worker who I reached out to and found and we had a call so, do you know what I mean? I don't even know- I guess this would probably have been sent to Mum in the post and then she would have had to ask someone if they could help her ring some places and maybe a member of staff would have some time and be able to do that with her. But it wouldn't really be any person's designated job role to do that.

The charity 'Not Beyond Redemption' (NBR), offers pro bono legal assistance in many women's prisons³². Women need to be referred to their services, but often the staff and women do not know that the service is available and referrals are not made. If a woman is eligible for Legal Aid, NBR will find her a solicitor. If she is not eligible for Legal Aid then NBR take the case pro bono. Even when Legal Aid is available it can be difficult for women in prison to complete the financial information forms, as they do not have access to their bank

³² For more information about Not Beyond Redemption visit their website: <https://notbeyondredemption.co.uk>

information, and due to the difficulties with electronic and telephone communication, they are reliant on staff assistance to obtain the required information.

'so that obviously becomes a whole separate issue of what information they're able to access. Proofs of ID, they have none. They don't have any. We've had it a couple of times in court when it's been really difficult to even get anything that can be accepted as ID for some of these processes.' - Prison Social Worker

Despite social workers and NBR clinics being present in both the prisons I studied, there were still many mothers who had no representation in court proceedings. Three of 16 cases in HMP Send and eight of 26 (30%) in HMP Eastwood Park. The case files provided insight into the difficulties faced by women who qualified for Legal Aid but were still unable to obtain representation in time for hearings:

'due to the short notice provided by the court of this hearing and our inability to obtain full and proper instructions from her and to reach an agreement regarding funding I will not be in a position to represent her at court tomorrow. Whilst I appreciate it is far from ideal and I have done everything possible to avoid this situation, Ms X will need to represent herself at the hearing tomorrow.' - Solicitor's letter to Prison Social Worker

'She has 1 bank account with 3p in it. She gave me a bank statement for this. She works in the prison and gets paid £8 per week. I asked her to write this down for me.' - Family Engagement Worker Case Note noting actions taken to try to assist application for Legal Aid

The difficulties in accessing legal advice or legal information, as set out above, make it extremely difficult for a mother to initiate court proceedings. A mother may have concerns about her child's wellbeing due to the care being given to them during the period of separation and may wish the court to intervene. A mother may want to apply for a Child Arrangements Order if the person caring for her children during their imprisonment is not supporting ongoing contact with her children. It is not in the best interests of the child that due to her imprisonment a mother is unable to bring these issues before the court.

DELAY

The difficulties, for courts, lawyers and other parties, of communication with a mother in prison, mean that women find themselves out of time for serving evidence or may find that hearings have taken place in their absence. The family court has strict time limits and a need to progress proceedings, but when a party is in prison there should be cognisance of the fact that parties may need more time in order to participate. The case files contained numerous accounts of proceedings starting without the mother's knowledge, and late service meaning that she was out of time for filing evidence.

Noted on Case File

27th February: Only received notification of hearing and directions and was already out of time for serving statement.

6th March: Statement served late.

7. PRESENCE

PRODUCTION ORDERS

To ensure equality of participation, it is fundamental that a party to proceedings is able to attend the hearing of those proceedings, if they wish to do so. When a person is in prison the actions of the court and the prison will determine whether the mother is able to attend. The woman herself has no agency in the process. If the court issues a production order or sends a CVP (video) link then the woman will be brought to court or to a video link suite in the prison. If the court does not ask for her production either virtually or in person, she will not be present at the hearing.

Judges were asked how much notice they believed a prison required to be able to produce a woman to court either in person or by video link:

	In person	Video
Judge 1	2 weeks	2 weeks
Judge 2	1 month	1 month
Judge 3	14 - 21 days	7 - 14 days
Judge 4	As long as possible	48 hours
Judge 5	Overnight	48 hours

The variability in judges' answers, as well as the unrealistic expectations they have, is significant. The prison social workers suggested a two week notice period should be given for video hearings and longer for in-person hearings if possible. Judges make assumptions about the availability of video suites and prison transport, and do not take into account the time it will take, and the importance for a mother to prepare legally, practically and emotionally for court hearings. These issues are discussed in the remainder of this section.

The reality is that often, very little notice is given to the prison.

'11:07 link sent to prison for an 11:00 hearing. Mother could therefore not attend' - Case File

'a rescheduled hearing is due to take place at 14:00 this afternoon with Ms P attending via video link from HMP.. It appears that the court did not send the production order with sufficient notice and the prison was unable to facilitate the time requested. This was communicated back to the court but Ms P was not informed and has only now become aware, causing considerable distress. The prison are able to facilitate a video link between 14:00 and 14:30 and so we are accepting this to enable Ms P to be as involved as possible. Could this information please be passed on to the necessary individuals so that the hearing can reflect the error and the fact that the mother of the children involved will not be able to stay for the duration.' - Letter from Prison Social Worker to Court

Although a video connection is immediate, and the person is within the prison and does not always need to travel³³ notice is required in order to book a video suite. Prisons have a very limited number of video suites available for court hearings, and criminal cases take priority over family hearings. If there are no suites available there is nothing the prison can do to facilitate attendance. In addition, giving notice of the hearing allows time for the prisoner to contact the solicitor, the solicitor to contact the prison to set up a video conference with their client, and the mother to prepare for the hearing.

'With the video link it's difficult because they just don't have the space. If the suites are booked, they're booked.' - Prison Social Worker

'So many times you'll look at the clock and say, "It's Thursday, four o'clock, we've just got a production order for someone to attend tomorrow at nine am." You think, "How is that? How do you want me to facilitate that?" So, there's only two rooms. The rooms are booked and that means you have an hour to make it happen.' - Prison Social Worker

'You could give us a production order now for court tomorrow and we would make it happen but then it's the prisoner that loses out on their chance for preparing for it which is not fair.' - Prison Social Worker

Producing a mother for an in-person hearing is more complex. Some judges assumed that the prisoner transport which brings women from prison to criminal courts is used for family courts, but it is not. If a production order is received from the court the Prison Governor has to decide whether or not to comply, and if they do, they must arrange separate transportation for the mother, at a cost to the prison. Geography and resourcing means that not all prisons

³³ Some prisons do not have video conferencing facilities and therefore a woman will need to move to a different prison to attend a court hearing via video link.

take people to and from court, so a woman may be moved to a different prison in advance of the hearing date in order to facilitate her attendance. If a woman has to move prison she will lose her room, her job, her education or training and any roles she has within the prison. Visits she has booked will be cancelled. Once she is transferred, she does not know if or when she will be returned to the original prison. It is therefore important that production orders are not made for administrative hearings, when the presence of the mother is less critical.

'They had to be produced in person which meant they lost their rooms, because we don't take anyone to and from court, so they had to go to a different prison to then be shipped off to court and then after court, go back to that prison and then back to ours. And then they lost their rooms. They could be stuck at the other prison until transport was ready to go. So just like practically, it was a lot to ask.' - Prison Social Worker

'25th February: Mother transferred to HMP X for court hearing

13th May: Mother returned to original prison.' - Case File

INEQUALITY OF PARTICIPATION: VIDEO LINK HEARINGS

'She was up on a wall. We were all in court. It just struck me as profoundly affecting her ability to participate... a lot of discussions are had by counsel, and shuttling back and forth between their clients, whether it's in private law or public law. So, somebody that's having to participate in the courtroom on screen but can't participate in any other way, they may well feel that they've been shut out.' - Judge

Since the Covid-19 pandemic, courts have become more accustomed to holding some hearings by video link. Due to the complexity of arranging for mothers held in prison to appear in court in person for family proceedings, and the increased provision of video suites in prisons, it has become more usual for mothers to participate in proceedings via video link. However, unlike hearings during the pandemic lockdowns when everyone was in court via video link, the mother in prison is the only party who is not in the court room. This inequality can reduce the effective participation of a mother in several different ways³⁴.

i) Communication with legal representative and other parties

The mother in prison will not be able to communicate with her representative during the hearing and may not have the opportunity to talk with them before or after the hearing. Although, as a judge shared in interview, some courts clear the court and allow the woman

³⁴ See also, Byrom, N. 2020, What we know about the impact of remote hearings on access to justice: a rapid evidence review. London: Nuffield Family Justice Observatory - https://www.nuffieldfjo.org.uk/wp-content/uploads/2021/05/nfjo_remote_hearings_vulnerable-groups_rapid-review_20200506.pdf

to talk with her lawyer either before or during the court hearing, this is exceptional rather than normal practice and is dependent on the judge.

'what I've done in my case is I've always told the prison that the link is going to start an hour before the hearing, and counsel for [the parent] comes into court, has the hour's conference before we have the hearing, because I know that that a legal visit sometimes is quite hard to arrange'. - Judge

If the woman is representing herself, she is precluded from the discussions between parties. Such discussions form a significant and important part of the proceedings, with matters being resolved or progressed through such conversations. If she is represented, she will be unable to give instructions as to how she would like the lawyer to progress matters on her behalf.

'I think, on the basis of whether they're prepared for the hearing, or whether they feel that they've had an opportunity to tell their representative everything that they want to, I'm not sure that the link gives them that opportunity in the same way.' - Judge

ii) Isolation and 'distancing' effect of video link

'A lot of them will kind of struggle. Like it's a lot to take in. They're in prison, they're now sat in a court through video with a bunch of court jargon that they don't understand. They don't know what it means'. - Prison Social Worker

A court hearing is a significant and often nerve wracking experience for a lay person, and it is usual for people to plan their attendance, often asking friends or family to accompany them for support. When that person is imprisoned, they may not even be told in advance that they will be taken to attend a hearing via video link. They will be collected by an officer from whatever they have been doing, whether spending time in their cell, in education, or work, and will be brought to a room, where they will sit by themselves with an officer outside the door. Even if the mother knows it is for a court hearing she may not understand the nature of the hearing, or her part in it. The screen will be turned on and she will find herself in court. There may be technical difficulties with sound or sight, and it is unlikely that the mother will have a good view of all parties in the court. If she does not understand either the proceedings or the things said, she may not have anyone in the room with her who she can ask to explain them to her. Some courts have a practice of muting the woman's audio feed, so even if she does try to ask a question, report a technical difficulty, or intervene, she will not be heard by the court. Women often feel confused and very uncertain about all that has taken place.

'An officer would be sat like outside. They could be sat inside the room. It kind of depends



on what the person wants. Some are a bit more vulnerable and would need a bit more support. Some feel more comfortable doing it by themselves if they've been through the process, you know, quite a few times.' - Prison Social Worker

'Hearing: Ms Y was unrepresented. She was clearly nervous and said that the hearing did not go well. The other party read out a seven page letter during the hearing making allegations against Ms Y. She did not recall much aside from this letter and that the next hearing is in November. She didn't know what the hearings were for, but hoped she'd get a letter.' - Case File

Women leave hearings and are escorted back to wherever they should be and have no opportunity to debrief with anyone after the hearing. If they have not understood the proceedings this can leave them very upset or at risk of harm.

'Padmate says Ms X didn't speak for 8 hours after her phone call with solicitor. Next day she is deflated and concerned.

Frustrated that during the hearing she couldn't speak because she had representation, and she was brought late to the hearing.

Court hearing. Ms X feels unclear about what it is for or what will happen. She is due to speak to her solicitor at 11. Ms X is anxious.

She didn't get to speak to her solicitor at the pre-arranged time but did speak to them just before court. She hadn't seen any of the reports.

Next day: Ms X has engaged in significant self-harm.' - Case Notes

iii) Difficulties for the Judge

Several of the judges interviewed had concerns about the equality of participation for anyone appearing by video link from prison when everyone else was present in court. Not all of the judges had experience of conducting such hearings with mothers in prison, although some had experience with fathers in prison. They recognised the limitations of the situation and knew that they were missing important non-verbal, and sometimes even verbal, information from the person on the video link.

'If you aren't able to develop a rapport with the judge, and you're sat in a cell, just practically speaking, having the confidence to butt in, where you need to butt in, feeling anything other than completely disempowered, and therefore not giving your best evidence or not giving your best account of yourself. I think it just did strike me that, how lonely that experience was for her to sit in that room day after day.' - Judge



Judges were aware of their inability to properly assess both the evidence given by the person in prison, and the imprisoned person's reaction to other evidence in the case. They also mentioned technical difficulties, and the practice of muting the person in prison due to background noise, which makes it difficult for the person in prison to attract the attention of the judge if they have a question.

'I think it's much more difficult to [gauge emotion]. Often, there's a lot of noise in the background from the prisons, so you might put the screen on mute whilst you're hearing what's going on in the courtroom. So you're always have to keep an eye on whether they're trying to attract your attention because it's something they need to say. If something arises, if it's not a practical point. Quite often you can say, well, I can rise for a few moments let you discuss it with the counsel, you can't do that quite as easily on the link. It takes up more time. And I wonder quite often whether that, the person on the other end of the link feels it's fair. Because there is that barrier. So whether their perception of it is that it's unfair.' - Judge

'I think we often have to remember that professionals engaging with each other through a screen or a judge, and advocates, we might be doing it fairly regularly. But for a lot of people, it's a one off. When they're looking at the screen, they are just staring... from the perspective of the judge I've sometimes likened a court hearing to being the conductor of an orchestra, you can see everything around, you can give visual cues, hand cues, nods, you can do that and everyone sees it. When someone's on a screen, you can't give that same attention to everyone at the same time. I do think it is not a positive experience in the main for litigants... I'm a great believer in eye contact, and getting people's attention, talking to them in a way that they feel they've been listened to, you don't always get that across the screen.' - Judge

'because the images are so small, you don't pick up reaction. A lot of people say body language is irrelevant, and people giving evidence, you should ignore their body language. But often it isn't the body language of the person speaking, it's the body language, and facial reactions of the person listening. That can't always be, some people are very good at exaggerated eye rolling and shaking of the head, to try and get your attention. But there are others that react naturally. Sometimes you can see a look of horror or a look of distress, that is spontaneous, which you can pick up if people are in front of you, physically, but not so much across the screen, because you can miss it. Because say you're having to look from one to the other, all the time, as opposed to having that field of vision.' - Judge

iv) Technical and Timing Difficulties

There are often problems with the quality of the video link, with either the court or the person in prison being unable to see or hear properly.

'Family Court hearing postponed due to poor reception on the video link.' - Case File

'There's technical points. Will it work? It's better than it used to be, it used to break down quite a lot. It's far more reliable.' - Judge

Prison video suites have set hours of operation, and these do not always coincide with court sitting hours. In particular, many prisons have a period of 'lockdown' over lunchtime, e.g. 12.30pm – 2pm during which all prisoners must be in their cells. This can mean that a woman has to leave a hearing at 12.20pm or earlier and will not be able to return until 2.15pm, whilst the court only breaks between 1pm and 2pm. The mother cannot resist the lockdown, and if the court sits in her absence she is disadvantaged through no choice of her own. Case notes recorded lawyers being caught out by this, and there is a risk that the mother's unavailability may be misinterpreted as unwillingness to attend or a lack of commitment to the hearing. The reality is that when mothers do miss parts of their hearings for this reason they are distressed by their exclusion. Better communication between courts and prisons would avoid this issue from arising.

Despite many judges recognising the disadvantages to a mother of participation via video link, some judges were unwilling to consider a mother attending court in person.

'I'm trying to think of reasons why I would produce an individual. In the family court, I can't think of why I would ever want that person in person. I can't, I don't think their evidence is any less valuable on the video link, especially these days. If that person was perhaps, had special needs, where they needed to be with all their legal team or the intermediary in person, it might be a reason why they need to be in person. But logistically, it would be a nightmare for the family court. It really would be.' - Judge

INEQUALITY OF PARTICIPATION: IN-PERSON HEARINGS

Given the difficulties faced by mothers using video links to attend court hearings, it might seem that the obvious remedy is to ensure women are enabled to attend hearings in person. However, even if a mother attends court there may be issues which limit her ability to fully participate in the proceedings.

i) Travel and Disruption

In order to attend a morning hearing, the woman may have a very early start to her day, as prison transport is unlikely to be direct from prison to court. Women are anxious about the transport and worry that they will not be brought to the right court or will be late for the hearing. The case notes recorded instances of women missing hearings because they

were delivered to the wrong court, or once at court being told they were not required for the hearing and not being produced, only to later discover that the hearing had taken place in their absence. As previously mentioned, the mother may be moved to a different prison in order to accommodate the hearing. If that happens she will experience significant disruption and uncertainty.

'when they're brought to court, there's always a problem that they may not get there on time, they may have to be on the vehicle in a circuitous route so they get dropped off later. So what that often means either they're late for the hearing or they're on time for the hearing, but they have a little time to speak to their counsel, that then makes them anxious. They might perceive that the system is against them, because they'd be placed in that particular position. So I can imagine it makes the hearing itself, for them, particularly stressful.' - Judge

ii) Implications of Dangerousness and Risk

Judges expressed concerns about women being in court in person, due to the security risks, but many women are in prison for non-violent crimes, so it is not always the case that women coming to family proceedings constitute a significant security risk to others. Family courts do not have 'docks' where a person would sit in a criminal court, and family court judges expressed concerns about not being able to separate and secure the woman in this way. However, the necessity of placing a woman in a 'dock' or keeping her handcuffed to her prison escort, should be carefully considered and should include consideration of the effect on both the mother and other parties, of attributing 'dangerousness' to her in that situation. Judges recognised the possible effect of this both on the other parties and on the mother.

'I think the opportunity of being able to address the court to be present, probably outweighs the negativity of having to be either handcuffed or at least accompanied by a security officer.' - Judge

'The only issue is really the fact that you've got the party flanked by, if not prison officers, the sort of third party security officers. It's not quite a relaxing, I mean, coming to court is never relaxed. But it does up the ante a bit in terms of the presence of others, and how comfortable people are with the process.' - Judge

Factors other than equality of participation override decisions about in-person attendance in some cases. One judge talked about the practical difficulties of having an imprisoned person in a family court, meaning that they would not feel their presence could be accommodated, even if the person said they felt disadvantaged by that exclusion. They highlighted that in another court forum (criminal) if a person said they felt unheard due to being present via video link they would be produced to the court.



'I mean, a parent might say, well, I feel less heard because I'm not in the room with everyone else. The links would be so that they could see the whole courtroom and the whole courtroom could see them. I would reassure that person that they certainly are playing their part and their voice will be heard...So I will do my best to reassure them. Would I then say, okay, well, if you don't feel like you'll be heard, I'll bring you into court? Not really, I wouldn't, because as I say, it would just be a nightmare, that person to be here. If that person insisted and made an application to be produced, I'd have to give it some very, very serious consideration. Because by allowing that person to come into court, I've got to think about the rest of the court users and whether the risk assessment of that person being in court has been completed by this court building, it's not for me to carry out that risk assessment, it is whether HMCTS have carried out a risk assessment in the particular building we're in, on that day for the duration that this person wants to be. Because, as I say, little things like they need a comfort break, how is that going to happen? They need to go and get some lunch, they need to have a walk, they need to clear their head, where and how is that going to happen? So for that reason, it would be a logistical nightmare. In a criminal court, it would be taken as read that the person would be there, if it was a day that they were giving evidence, and they said they didn't feel heard or listened to, it'd be taken as read that they would be in court.' - Judge

It is worth noting, for judges assessing risk and dangerousness, it has been the practice of the prison social workers to occasionally bring women, from prison to court in their cars³⁵. This practice is an indicator that women may constitute a very low risk and has been approved by the prison.

8. PRISONER IDENTITY

Although many mothers in prison have been sentenced for crimes which had nothing to do with their children, or their parenting, it is often assumed there is a connection between imprisonment and poor parenting. It is perhaps based on the false premise that people in prison have committed serious and violent crimes. In England and Wales, 69% of women in prison have been convicted of non-violent offences, with around 70% sentenced to less than two years, meaning they spend only 12 months in prison. Fifty three per cent are sentenced to less than six months, meaning they spend only 3 months in prison³⁶. These short sentences reflect less serious offending, but have extremely disruptive consequences. It is also important to recognise, as the Sentencing Council has, that women's paths into offending are complex:

³⁵ This has happened when women are at a stage in their sentence when they can leave the prison during the day. In these cases, prisons have declined to provide transport for the woman to court, as they have taken the view that she can get there by herself. This is not possible due to time, distance and financial constraints and the prison social workers have driven women to ensure they can attend court. In one instance the social worker drove the woman to Newport Family court as that was where the paperwork said the hearing was being held, only to discover it had been moved to Cardiff Family court, 13 miles away, and at least one hour's journey by public transport.

³⁶ Offender Management Statistics, Ministry of Justice, (London, 2022)



*'Female offending is commonly linked to mental health, substance-misuse, or financial and homelessness issues, and female offenders are more likely than male offenders to be victims of domestic abuse or have experienced emotional, physical or sexual abuse as a child. Female offenders sentenced to custody are much more likely than male prisoners to suffer from anxiety or depression or attempt suicide.'*³⁷

When a mother in family proceedings is in prison, she may find that even when the barriers of preparation and presence are overcome, and even when she is represented, she still may be unable to achieve equality in the proceedings, due to a number of marginalising processes which have their roots in her prisoner identity. It is understood by professionals that it is in a child's best interests, in accordance with section 1(1) of the Children Act 1989, for a parent to be involved in proceedings concerning their child. When the local authority institute care proceedings and the parents are in the community the local authority maintain contact with the parents, invite them to case review meetings, keep them informed of upcoming court dates and endeavour to ensure that they are present at court hearings should they wish to be. However, due to the lack of understanding many social workers have about prisons and the people in them, there is a widely observed pattern of local authority social workers failing to apply the same diligence in engaging with parents in prison. This lack of understanding about criminal offending, sentencing and imprisonment, leads to a number of problematic practices during proceedings. The first of these is the exclusion of mothers from the usual meetings and involvement with social workers, and the unwillingness of social workers to engage with mothers in prison. The second is the lack of opportunity given to mothers in prison to evidence change.

EXCLUDED MOTHERS

Judges referred to the local authority's unwillingness to think about the mother's future relationship with their children:

'I think the system in terms of favourable outcome is hugely and possibly disproportionately weighted against women in prison. It doesn't look at why they're in prison. It just looks at the fact that they're off the scene.' - Judge

'There's certainly, it seems to me, no appetite to front load with anticipation of what is likely to happen in, you know, in a matter of time.' - Judge

Women in prison are assumed to be 'out of the picture' for their child's care, even when serving a relatively short sentence. Care proceedings are supposed to be completed within 26 weeks and this places pressure on the court to make decisions about a child during the period of a mother's imprisonment. This has implications for professionals' communication

³⁷ Sentencing Council, 2024, [Community and Custodial Sentences Guideline](#)

with mothers, their support of contact between mothers and children, and their attitude towards pregnant women³⁸.

Due to the complexity of arranging to talk to or meet with mothers in prison, imprisoned mothers are often not included in local authority meetings about their child, to which they would otherwise be invited. The case files of the prison social workers recorded that despite telling local authorities that the platform Teams cannot be used in prisons, by either staff or prisoners³⁹, meetings about children continued to be held on Teams, therefore excluding the mother and the prison social worker from participation. The use of Teams and other forms of communication is restricted due to security concerns and is just one example of how the security priorities of prison can further exclude women from proceedings.

If a child is in the care or under the supervision of the local authority, there is often reluctance to support the child to maintain contact with their mother during her imprisonment. Assumptions are made by a social worker that prison is not a suitable place for a child and mother to see each other. These assumptions are made by people who have not visited the prison and who do not understand the work which prison governors, officers and outside agencies put into creating positive family visits for children and their mothers. The lack of contact between mother and child, if not supported by the local authority, may then be used as a reason not to re-instate contact when the mother is released. The prison social workers worked very hard to try to encourage the local authority social workers to engage with mothers in prison. In the worst examples seen, the local authority failed to enable court ordered contact between the child and the mother.

'Only received copy of the order from that hearing more than 2 months later and found that contacts, assessments, evidence hadn't happened as per the order.' - Case Notes

One of the key roles undertaken by the prison based social workers is to act as a bridge between the prison and local authority social workers, to challenge some of the biases. This has been successful:

'I've had comments from social workers [in the community] saying "Oh, I wasn't expecting her to be this nice and lovely because her [crime] is a violent one, so I was expecting a horrible person".' - Prison Social Worker

'I think it really challenged my views on people who are in prison, you know, obviously I see the mother in a completely different light and it's quite strange.' - Community Practitioner⁴⁰

³⁸ The power or duty to postpone proceedings if a woman is being held on remand or has received a short prison sentence could be a matter for consideration by the Family Justice Council.

³⁵ This was the case at the time of the research. In some prisons staff members can now use Teams but the women still cannot.

⁴⁰ This quote is taken from Rees, A., Waits, C., Bezedcky, Z. (2024) 'Together a Chance: Evaluation of the Social Worker for Mothers in Prison Pilot Project, 2021-2023. Final Report'. Wales, Cascade.

Women who are pregnant in prison are also excluded from motherhood when the local authority social worker does not support their application for a place on a prison Mother and Baby Unit (MBU). MBU placement decisions are made by a lay panel, rather than a judge, and are heavily reliant on a social worker's report and recommendation⁴¹. By writing a report which does not support such a placement, the local authority can achieve the separation of a mother and baby without the oversight of court process. It is very concerning that these reports are sometimes written without the local authority social worker meeting the mother.

'She had her baby on the 6th January and was rejected for a place on the Mother and Baby Unit. This decision was made the day that she went into labour, and she wasn't made aware of the decision until she was due for discharge from hospital. I have read through the reports from social work and a lot of their decision has been based on evidence from 2009 when L had her first child, she was 16 and was living a chaotic lifestyle. The social worker hasn't met with L face to face at any point when making this decision. L now seems motivated to turn things around and is in the process of appealing the decision for the MBU.' - Notes from Case File

EVIDENCING CHANGE IN PRISON

It is difficult for a mother in prison to evidence change. Parents in the community are offered interventions and assessments during the course of court proceedings, for example supported contact or parenting assessments. These are not available to mothers in prison, and professionals, including Cafcass officers, are reluctant to consider their relationships with their children when they are released.

'she's ruled out from having all the assessments that anyone else would have. However, no matter how bad a parent [in the community] is, how hopeless they are, they will have a full assessment. A good parent who happens to be serving two years, which means you'll do a year, is ruled out of being considered to care for the child.' - Judge

It is very difficult for mothers to evidence change from within prison, and this is exacerbated when professionals, both social workers and Cafcass guardians, do not meet or talk to mothers prior to writing assessment reports about them. The prison based social workers can gather information from all the services the mother has engaged with during her sentence, including addiction, mental health, and parenting courses, to present as evidence to the court. However, when a social worker is not within the prison the external agencies do not make those efforts, and often take the view that they will see how the mother is when she comes out. This approach fails to recognise the work that some women put into improving their lives for the future benefit of their children.

⁴¹Trowler, I. (2022) 'Applications to mother and baby units in prison: how decisions are made and the role of social work: A case review of social work decision making (2017-2021)' - https://assets.publishing.service.gov.uk/media/637e1e2ed3bf7f153c5175fc/Applications_to_mother_and_baby_units_in_prison_-_how_decisions_are_made_and_the_role_of_social_work.pdf



'CAFCAS report completed without any input from the mother. 70 page Report written about why mother unsuitable without ever meeting or talking to the mother.' - Case Note

Judges were aware of this difficulty for mothers:

'I think it's difficult to persuade a local authority, in the first instance, to get them to do a parenting assessment of somebody that's in prison. I think it's more often the case that if you've got a Guardian that's pretty robust, they are the ones that are usually saying there should be an assessment done, now regardless of incarceration. But I think local authorities tend to think well, you're in prison, therefore, that's it. When you come out, depending on the outcome of the proceedings, we can assess you then. But I'm not sure that really helps, because it prevents somebody having a route map. It prevents somebody then putting that forward as part of their release provisions, and those kinds of things.' - Judge

'I think there are more proactive local authorities that will do at least a broad brush, parenting assessment, which can have some recommendations saying, well look, in the event that the mother was to be considered as potential caregiver, she would have to be able to satisfy A, B and C. And the way that she can do that is by doing D, E and F. But I think in my experience, it's difficult to get social workers enthused enough to be able to do that. I think it can save time, I think it can provide an important roadmap, even if it's unachievable, it provides something for a mother to think about, to be able to work towards and to be measured against.' - Judge



Part III: Reflections, Conclusions and Recommendations

9. THE VALUE OF PARTICIPATION

The judges who participated in the research interviews were asked if they had a view as to whether an imprisoned mother's participation in proceedings was in the best interests of the child. They were unequivocal in their belief that it was in the child's best interests for their mother to participate in proceedings.

'Where it does help the child particularly is meeting the child's needs further down the line. So, are you talking about meeting the child's needs six months down the line, two years down the line? It could have an impact there. There's also the issue as well, I think, that if a child has been placed for adoption, it's really important that when the child comes to want to know more, as an adult, that they can be told, every opportunity was afforded.' - Judge

'Absolutely. It can only be. I can't see any reason why it would be otherwise. It's no different for them as it is for any other party in any case.' - Judge

'Yes, yes. Because everything we do is for the welfare of the child.' - Judge

'Course it is. Course it is. It's in the best interest of the child that anyone who couldn't otherwise participate should be able to do so. For all the reasons that they are, they didn't not get to have an opinion or play a part, because circumstances, it's not a punishment system. And it's for the child's sake so that the child would know, when they grew up, when they can access their files, etcetera, they will know that nobody abandoned them.'
- Judge

Perceptions of procedural justice have been found to influence people's feelings about justice processes. People may not have the outcome they hoped for but if they perceive the proceedings as fair, they are more likely to retain faith in the justice system. Social workers reported this to be the case for mothers in prison:



'If people come away from it feeling, okay, it didn't go the way that I wanted it to go but I can accept that. I think that process is a lot easier to go through. Otherwise, women just seem to get stuck on the sense of injustice that they feel. Even when the outcome is not the outcome that they wanted to happen, where they are involved and included and where they understand what has happened, if nothing else, they feel like it was fair. And fairness is really important in the justice system. Do you know what I mean? It's a huge part of it.' - Prison Social Worker

'If you go through these processes, you want to feel that what happened was fair and, you know, you've had your shot. You know, you were able to give your views and your opinions and make your wishes and feelings really clear. You were able to advocate for yourself or you were appropriately advocated for. You knew what was happening and, okay, despite that you didn't get the outcome that you wanted, but you know that all that stuff was taken into consideration. You know that you also had the opportunity to kind of have your case put forward and to know what was going on. But I think where that doesn't happen, where women feel like they don't understand what's happening, that their views weren't properly communicated, things that have happened are inaccurate—the way things were recorded as having happened is not accurate or is not fairly represented, where you don't have that, they feel that what happened is not fair.' - Prison Social Worker

Due to all the difficulties mothers in prison face when trying to participate in proceedings, there are significant physical, emotional and psychological costs to them of taking part in these court cases. Adjournments, delays, a lack of clear explanation as to progress, and being disregarded in assessment processes, when experienced in the isolation of a prison cell, can be overwhelming. Despite wanting to do all that they can for their children, some women take the difficult decision to withdraw from proceedings because it is taking too great a toll on their health. It is the experience of the court proceedings, rather than the decisions made, that causes these harms to them.

10. CONCLUSIONS

Imprisoned mothers face numerous barriers when participating in family court proceedings, from biases and assumptions to systemic barriers which exist due to the logistical challenges of being held within the prison system. The procedures of the family courts in England and Wales are intended to provide procedural justice, but despite a more recent attempt to ensure equal participation for 'vulnerable' litigants, people who are in prison during proceedings do not seem to have been considered when providing for 'equality of arms' with regard to participation. Unless the inequalities are addressed, the Article 6 rights of people in prison involved in family proceedings, are not being upheld. In addition, the full and proper participation of parents in Children Act proceedings is in the best interests of

the child, and as the underpinning principle of the Act it is right that it should be reflected in the procedures and practice of the court. Addressing these challenges requires better communication and coordination between the courts, prisons, and support services, as well as a more informed approach to the constraints prison places on mothers.

Despite the Family Court's intention that parties to proceedings can participate on an equal footing, the reality is that mothers in prison are currently excluded from equal participation. The judges I interviewed were conscious of this and many suggested that the provision of Legal Aid to people in prison involved in family proceedings, would alleviate many of the difficulties faced by these mothers. However, in the absence of an increase in Legal Aid provision there are a number of actions which could improve the access to justice and participation in family court proceedings for imprisoned mothers.

It is my hope that the information contained in this report will enable social workers, lawyers, judiciary, prison staff and governors, those who set policy for Legal Aid, and those who run court administration, to see the changes they could implement to ensure procedural justice for mothers in prison. Responsibility for improved practice is shared between a number of organisations, including the Ministry of Justice, HMPPS and HMCTS, and progress will require joined up working across the criminal and family justice systems. I invite the relevant professional groups and organisations to develop their own good practice recommendations from the report.

There are other groups of people who are affected by a lack of procedural justice when separated from their children, for example, fathers in prison, people held in mental health detention, or undergoing treatments for addiction. I hope that the report will also be a catalyst for removing the barriers to participation in court proceedings which they too face.

11. RECOMMENDATIONS

There are four key areas where collaborative change is necessary to address the current barriers to participation in family court proceedings for mothers in prison. Improved practice will ensure that the best interests of children are served in family proceedings involving imprisoned parents.

COMMUNICATION (RECOMMENDATIONS 1-3)

Miscommunication, re-scheduling hearings and administrative errors can amplify harm and hardship to mothers in prison. The consequences of poor communication are not merely administrative but lead to severe emotional and psychological pain because of the context of imprisonment. All those involved in case management need to understand the cost of administrative error or oversight.

TRAINING (RECOMMENDATIONS 4-5)

Barriers to participation exist because the professionals involved do not understand the regime and restrictions of prison, nor the experience of a person who is held in prison. Social workers, lawyers and judiciary should pro-actively ensure that they have training available for members of their professions whose responsibility includes people held in prison.

It is essential that prison staff and local authority social workers understand that parental responsibility can only be removed from a mother by order of the court, and that mothers in prison will (in all but exceptional circumstances or if their child has been adopted) retain parental responsibility for their children.

LEGAL REPRESENTATION (RECOMMENDATIONS 6-10)

The lack of legal information, advice and representation for women in prison causes profound disadvantage and reduces the likelihood of 'equality of arms' between parties in family proceedings.

CASE MANAGEMENT (RECOMMENDATIONS 11-13)

Practice varies between courts and is dependent on the knowledge and understanding of individual judges. Standardised procedures across the Family Court would ensure equality of participation for all mothers in prison. It would be helpful for there to be clarity on issues such as production orders, extended time frames for filing evidence, expectations of assessments of mothers in prison, management of hearings when a mother is taking part from prison when everyone else is in court, and the considerations to be balanced when requesting imprisoned mothers to attend court in person.

RECOMMENDATIONS FOR ACTION

1. Embed social workers in every women's prison.
2. Establish clear and efficient communication channels between prisons, courts and local authorities.
3. Review and improve the system for providing court documents to people in prison.
4. Develop and require the completion of training for all those who interact with mothers in prison in connection with family law matters. Such training should increase understanding of the specific challenges and needs of imprisoned mothers, to reduce biases and improve support.
5. Inform prison staff of the existence of the Family Law Advice booklets for women, and the key tenets of parental responsibility.
6. Extend Legal Aid without proof of financial circumstances for parents in prison who are parties in family court proceedings
7. Establish regular family law clinics in all women's prisons, jointly funded by the Legal Aid Board, the Ministry of Justice and HMPPS.
8. Grant applications for McKenzie Friends, with permission for the McKenzie Friend to be either in court or in prison with the mother if the hearing takes place by video link.
9. Attach the details of Not Beyond Redemption to all notice of proceedings served to women in prison. The NBR information should be in all women's prisons, and the service should be mentioned in induction information for women.
10. Make available on all internal electronic systems in women's prisons the Family Law Advice booklets created by Prisoners' Advice Service/ Rights of Women. Hard copies of the advice booklets should be held by Family Engagement Workers, prison social workers, chaplains and OMUs.
11. The Family Justice Council to lead the development of a Practice Direction on equal participation in family proceedings for people in prison, ensuring that the unique barriers and particular vulnerabilities of this group of people are properly considered in all relevant proceedings.
12. Provide an exception to the 26 week timeframe for care proceedings when a mother is in prison, to allow for proper participation.
13. The Judicial College to amend the Equal Treatment Bench Book to include participation from prison in the vulnerability assessment.

Appendix A: Data Sources

The data on which this report is based comes from three primary sources:

1. Social work case files of mothers in prison involved in court proceedings in the Family Court of England and Wales. From an original sample of 20 mothers in Prison A and 36 in Prison B, the sample was reduced to 16 from Prison A and 26 in Prison B to only include mothers whose proceedings were active during the period of their imprisonment.
2. Interview with the social worker in HMP Send.
3. Interview with the social worker in HMP Eastwood Park.
4. Interviews with five judges of the Family Court in England and Wales.

The case files of 42 imprisoned mothers involved in court proceedings were analysed for this research. The mothers were held in two prisons.

Prison A

Five of the mothers were involved in private family proceedings (no local authority involvement) and 11 were involved in public law care proceedings (proceedings initiated by the local authority).

Five of the 11 cases ended with the adoption of a child or children.

Thirteen of the mothers were represented by a lawyer at some point in proceedings.

Three mothers had no legal representation at any point.

In nine of the cases the charity Not Beyond Redemption supported women either through representation (if they did not qualify for Legal Aid) or by finding them a Legal Aid solicitor to represent them.

Prison B

Six of the mothers were involved in private family proceedings (no local authority involvement) and 20 were involved in public law care proceedings (proceedings initiated by the local authority).

Seven of the 20 cases ended with the adoption of a child or children.

Seventeen of the mothers were represented by a lawyer at some point in proceedings.

Eight mothers had no legal representation at any point.

In two cases the prison social worker acted as a McKenzie Friend for the mother.

In two cases the charity Not Beyond Redemption supported women either through representation (if they did not qualify for Legal Aid) or by finding them a Legal Aid solicitor to represent them.



Appendix B: Sample Prison Social Work File Case Notes

A

27th Feb 2022	Mother received notification of the hearing and directions for serving evidence. The date for service of her statement had passed.
6th Mar 2022	Statement served late.
21st May 2022	Notice that hearing has been adjourned.
5th Jun 2022	Court sends production order for hearing 18.6.
18th Jun 2022	The mother was not produced for the hearing.
22nd Sep 2022	Letter received from social worker saying adoption order has been made.

B

8th Sep 2022	Mother remanded in pre-trial custody.
9th Sep 2022	Family court hearing takes place. Care proceedings against a background of domestic violence. Mother attends via video link.
11th Oct 2022	Mother does not understand the purpose of the care proceedings or her role in them.
3rd Nov 2022	Mother is suicidal after seeing her daughter as she thinks her daughter doesn't need her anymore.
14th Nov 2022	Mother is brought to court in error and consequently missed contact with daughter.



8th Dec 2022	Sentencing hearing postponed due to misinformation and belief the mother wasn't engaging with mental health workers: <i>'judge read the psychiatrist report which stated he would recommend Ms X receiving a suspended sentence and the judge said "no one should be telling me what to do."</i> Judge postponed to 12.1 and said he didn't believe she had been engaging in support in prison and that she was 'lying'.
12th Jan 2023	Sentencing hearing adjourned for 4 weeks. Although judge said would have ordered 2 year suspended sentence and mental health rehab order if report presented today.
27th Jan 2023	Solicitor contacts prison social worker to say family court hearing listed same day as the mother's postponed sentencing hearing on 2.2.
1st Feb 2023	Mother is told that the family court hearing has been vacated. No reason given.
20th Feb 2023	Given a suspended sentence and released.

C

28th Sep 2022	Prison social worker contacted by prison officer as mother <i>'was very upset due to believing that she was due to be in a family court hearing now.'</i> Prison social worker contacted solicitor who had sent a letter but it had not been received. Teams hearing underway. Court hearing underway on Teams, but Teams cannot be used in prison so mother unable to attend.
3rd Nov 2022	Hearing – mother was unrepresented <i>'clearly nervous and said that the hearing did not go well. The other party read out a seven page letter during the hearing making allegations against the mother. She did not recall much aside from this letter and that the next hearing is in November. She didn't know what the hearings were for, but hoped she'd get a letter.'</i>
16th Nov 2022	<i>'Mother has still not received the order or the papers. Does not know what the next hearing is for. Is not represented and hasn't been able to get representation. Advised her to ask for an adjournment.'</i>



18th Nov 2022 *'Mother informed me that the hearing had not gone well. There is another hearing on 25.11. The mother did not request a delay to allow her to get representation. She has not received any documents from the family court.'*

22nd Nov 2022 *Mother received letters from the court proceedings. 'does not feel able to open them alone. We will read them together on Thursday before the hearing.'*

25th Nov 2022 *'Mother is feeling highly anxious about the hearing and not having legal representation. Mother is feeling torn about what to do as she does not want it to seem that she does not care (by asking for adjournment) but I explained the concerns about the impact of proceedings on her whilst in custody. Mother agreed to ask for delay and wrote a statement of her feelings with my help, asking the court to reconvene in the new year when she has representation.'*

26th Nov 2022 *'The mother did not feel able to ask for the delay. She was exhausted after this process which had escalated and moved quickly and felt she needed time to rest and grieve.'*

D

'I have read through the reports from the social worker and a lot of their decision has been based on evidence from 2009 when the mother had her first child. She was 16 at the time and living a chaotic lifestyle. The social worker hasn't met with the mother face to face at any point while making this decision. The mother now seems motivated to turn things around and is in the process of appealing the decision for the mother and baby unit.'

E

'The prison was informed that the hearing was vacated due to lack of judicial time. The mother became extremely upset and distressed, shown by her crying. She went to her room saying, "I'm going to kick off." I informed the wing staff and then checked on her five minutes later. She came out of the bathroom and sat crying on her bed.'



F

Local Authority make an application to remove a baby at birth from the mother. The mother has applied to the Mother and Baby Unit in the prison. Governor supports her application. Chair of the MBU panel does not, citing problems with the mother's attitude. The prison social worker explains to the panel that this is an unplanned pregnancy and the first following a stillbirth. It is the mother's first time in prison, and she is very stressed.

At court the *'judge didn't find reasonable ground for removal'*

G

On one occasion the mother is taken to the wrong court and is not produced for her hearing. On the next occasion the video link failed.

H

20th Mar 2022 *'Mother has court in April. She doesn't know any more. She doesn't know solicitor details.'*

23rd Mar 2022 *[Mother is] 'very distressed. ...had received a letter on wed evening (22.3) informing her that the hearing had been brought forward from April to next Monday (27.3) and was not clear as to why. Mother was more anxious as she has still not had any contact with her solicitor and does not know if they are even aware of the hearing.'*

25th Apr 2022 *Court hearing takes place. 'Mother feels unclear about what it is for or what will happen. She is due to speak to her solicitor at 11. Mother is anxious. She didn't get to speak to her solicitor at pre-arranged time. Did speak to them just before court.*
She attended the hearing but hadn't seen the reports that were referred to.
She reported that the hearing went ok. Mother had a copy of the assessment in her possession but agreed to give it to me and that we will go through it together in the morning as it would likely upset her to read it alone this evening.'



26th Apr 2022

Note on file from prison psychologist: *'I have heard from one of the orderlies in Safer Custody that the mother has gone downhill considerably and is convinced the case has been determined and that Mr Y will get all the children. Apparently she self-harmed a lot earlier today.'*

Response from prison social worker: *'My understanding was that the judge was recommending to start with supervised contact for Mr Y with the children, and to wait for the section 37 assessment and then to reconvene on the 22nd May to see how things are going. Nothing more than that.'*

I

'Mother has so far been unable to secure legal representation via legal aid due to her bank not being able to send her copies of her bank statements which are required for this process. I advised that we will contact the bank together via telephone to see if anything can be done.'

J

'Around 10:15am I was made aware by OMU [Offender Management Unit] staff that mother was not yet here for her court hearing and we had not received her production order. I contacted her solicitor who advised me that she needed to be present for court. As mother had not made me aware she did not want to attend and I was under the impression she would be attending, I contacted the kitchens and asked her to come to the OMU. When she got here, she told me she did not want to face it. I asked if she was ok proceeding and told her that I could sit with her. She told me she could do this and would attend if I would sit with her. I proceeded and sat with her during court.'



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OXFORD

Contact us

Broad St, Oxford OX1 3AZ

01865 270 000

www.ox.ac.uk