

Mother and Baby Units (MBUs)

SELF HELP TOOLKIT

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PRISONERS' ADVICE SERVICE

THE INDEPENDENT LEGAL CHARITY PROVIDING INFORMATION AND REPRESENTATION TO PRISONERS

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What is a Mother & Baby Unit?

Under Prison Rule 12(2) *'a woman prisoner may be allowed to have her baby with her in prison and, if so, everything necessary for that baby's maintenance and care may be provided there.'*

Prison Service Instruction (PSI) 49/2014 describes a Mother and Baby Unit (MBU) as:

'designated separate living accommodation within a Women's Prison, which enables mothers to have their children with them whilst in prison. It is a drug free unit where, in order to promote healthy child development, a calm and peaceful environment is required at all times'.

MBUs allow mothers to care for their children in prison up to the age of approximately 18 months.¹ They are staffed by suitably trained nursery nurses, usually in combination with suitably selected and trained prison officers. They are required to be registered with the Office for Standards in Education, Children's Services and Skills (OFSTED).

Not every woman's prison has an MBU. There are currently six prisons with MBUs:

- Bronzefield;
- Eastwood Park;²
- Styal;
- New Hall;
- Peterborough
- Askham Grange.

¹ There is some flexibility in this policy; there is the possibility of a longer stay in exceptional circumstances.

² Eastwood Park's MBU is currently inactive due to refurbishment; there is no known date for it to be reopened.

They are small units. Peterborough, Eastwood Park and Bronzefield each have 12 places and Styal, New Hall and Askham Grange each have 10.

What is the purpose of a Mother & Baby Unit?

MBUs are recognition of the fact that *‘two thirds of women sent to prison are mothers and over 17,000 children are separated from their mothers by imprisonment every year [and] imprisonment has a devastating impact on the life chances of these children...’* (Prison Reform Trust)

According to PSI 49/2014, the primary consideration for MBUs is to ensure the best interest and safety of your child. The Units are to provide *‘a comfortable, safe and stimulating setting suitable to the ages and stages of development of children.’*

The PSI says that an MBU is to provide an environment *‘which promotes care of babies and young children by their mothers. Mothers are enabled and encouraged to have their children with them in prison during the important period of bonding.... the service works for the best prospect of a successful resettlement of the mother and child in the community.’*

Am I and my child eligible?

On admission to prison you will be asked at reception (or at the earliest opportunity) whether you are pregnant or have children under 18 months old. If so, you will be eligible for a place on an MBU and you can request a place. You must then be provided with an information booklet, **‘All About MBUs’**, which is produced by the Women’s Team at Her Majesty’s Prison and Probation Service (HMPPS).

You are eligible for a place whether you are in prison on remand or have been convicted and sentenced. You do not have to be a British citizen.

Nevertheless, even if you are eligible, there is no right to a place for you and your child on an MBU. You must make an application. A rigorous selection procedure will then take place.

How & when can I apply for it?

Once you have requested a place, you must be referred, no later than seven days subsequently, to the Mother and Baby Liaison Officer at the prison. The Liaison Officer must provide you with advice about an application. She or he will also advise you about which is the most appropriate of the Units for you and your child. Of course you cannot apply for the unit at HMP Askham Grange if you are not yet sentenced because it is in an open prison.

The application procedure is started by you filling in an application form.

The application form:

- To apply for a place you must submit a formal application using a specific application form. The MBU Liaison Officer should supply you with this. If you are pregnant and already have another child under the age of 18 months, you must make separate applications for each one.
- The form itself requires detailed information about your child or children. You will also need to say what contact if any, your child has had with his/her father and if he supports your application. You will need to say: what, if any, special needs your child has; or if social services have been involved; or if your child is on the child protection register.
- You will need to set out in detail why you want your child to live with you in prison. It is very important when you fill in the form that you remember that the primary consideration of the assessment will be the best interests of your child.

At the same time, the Liaison Officer must also compile a dossier about your case.

The dossier:

- This dossier will contain at the very least the following:
 - a report from the Local Authority Children's Services;
 - a report from Adult Social Services – where appropriate;
 - a report from Security at the prison;
 - medical reports;
 - a report from your Personal Officer; and
 - a report from your Offender Manager in the community.
- You will have to give permission in writing for disclosure of any medical or other personal information about you. This will include: records from your GP (including hospital attendances); any mental health history and needs; any substance abuse history; any learning difficulties; etc.

Once the dossier and your application form have been completed they will then be sent by the MBU Liaison Officer to the MBU of your choice for it to be assessed.

Emergency applications can also be made - see below.

You can apply to have more than one child with you on the MBU. The application for each child should be considered separately, but it must take into account sibling attachment.

Who decides?

Ultimately, the Governor or Director of the prison will make the decision. However, he or she will rely on a recommendation from an Admissions Board. S/he will need to endorse their recommendation.

Once the MBU at a prison has received your application, it will convene an Admissions Board to assess your case. Having considered your written application (and the information in the dossier prepared by the MBU Liaison Officer) the Board will then hold a hearing.

The Admissions Board must be multi-disciplinary and will consist of:

- a Chairperson;
- the manager of the MBU at the prison to which you have applied;
- the line manager of the manager of that MBU; and
- your Offender Manager (in the community).

The Chair of the Board must be an independent person such as a person with a Children's Services or legal background. It is likely that a social worker from Children's Services will also attend the hearing to represent the interests of your child.

Your role

You must be able to participate in the hearing. If you cannot attend in person, a video or telephone link should be set up (if that happens, you must give your consent in writing). If you cannot attend even by a video or telephone link, you must be allowed to make a full written submission prior to the hearing date.

If you attend in person, you can ask whether you can be accompanied by your Personal Officer (or another appropriate person) for support. If your first language is not English you must be provided with translation services

How is the decision made?

When making its decision the Board must put your child's best interests first. However, it is also obliged to take into account the necessity to maintain good order and discipline on the Unit as well as the health and safety of other babies and mothers on the Unit.

The Board must conduct a '*rigorous and balanced evaluation of all available information*' paying particular attention to the evidence in your dossier and the verbal and written evidence you provide to the Board.

In addition, a decision cannot be made until the Board has considered a written report from the appropriate Local Authority's Children's Services. That report must state whether they are aware of any concerns that might impact on your ability to parent your child in an MBU. These concerns might include: safeguarding issues; previous legal proceedings related to this or other children; any assessments of your parenting; and/or any substance misuse known during pregnancy. It must also consider what alternative care arrangements could be made or might have to be made, if your child has to leave the prison before you are released.

The Board must also take into account the length of your sentence. In the majority of cases women will be released before their child is 18 months old. If your sentence is very long then the Board must consider the effect on your child of an inevitable long separation from you. It may decide that this separation should be earlier rather than later. However, the Board can still decide it might be in the best interest of your child to be admitted to the MBU for a short period before that separation.

Before your admission to the MBU is granted, the Board must be satisfied that the following criteria are met:

- that there are no concerns about your conduct and behaviour which might put you or other mothers and their children on the Unit at risk;
- you have passed a Mandatory Drug Test (MDT);
- you have confirmed you are willing to refrain from any substance misuse whilst on the Unit;
- you are prepared to sign a Compact tailored to your identified individual needs; and
- your ability and eligibility to care for your child is not impaired by poor health or legal reasons (such as if your child is in care or subject to a Child Protection Plan as a result of your treatment of him or her.)

The Units are drug-free. However, the Board must not exclude you from a place solely for the reason that you are on a prescribed Methadone or Subutex withdrawal/maintenance programme.

If there is a difference of opinion between the Board members, this must be recorded.

What happens next?

Once the Board has made its decision, it must inform the Governor of its recommendation within 24 hours of the hearing. Once the Governor has considered and endorsed the Board's recommendation, you will be notified of the

decision. You must be told within two working days of the hearing (unless there are exceptional circumstances). The decision will be in writing; you are entitled to written reasons. If you are not provided with these, you should submit an application straight away to request written reasons.

The Board can make five types of recommendation:

- Temporary admission;
- Emergency temporary admission;
- Full admission;
- Conditional refusal; or
- Full refusal.

What if my application is accepted?

Any offer is subject to a place being available on an MBU. If the MBU of your choice is full, you may be offered a place at another MBU.

If you are offered a place on an MBU, you have to sign a slip confirming that you have been given a copy of the decision. You will retain one dated copy.

What is Temporary Admission? If you are on remand, awaiting trial or have been convicted but not yet sentenced and are found suitable, you will be granted temporary admission. This is because your situation will change once you are sentenced (if convicted). The Board will reconvene once you have been sentenced. It will consider whether to confirm your place or whether you must be separated from your child.

What is Emergency Temporary Admission? If, for example, your pregnancy is at an advanced stage when you are remanded in custody, the Governor may allow you to be admitted to an MBU before a Board is convened. A full emergency Board will then sit as soon as possible. It will make its decision on the bare minimum of information. Your admission will then be reviewed after 28 days. An emergency admission does not guarantee you a long term place.

What is Full Admission? If your application is successful and you have accepted the offer of a place, you will be required to formally agree that you will comply with the MBU's regime. You will have to sign a Compact. This will include agreeing to address any areas or issues that were identified by the Admissions Board. If you do not agree to do so, the offer of a place will be withdrawn.

If you are still pregnant when the offer is made, you can go on to the MBU about six weeks before you are due to give birth (depending on the availability of places).

What if my application is refused?

If the Board refuses your admission on to the MBU, their decision must be based on evidence and recorded properly. As stated above, you must be given a copy of the written decision and the reasons for the decision. You are also entitled to the minutes of the Board meeting within 14 days of the hearing.

What is Conditional refusal? The Board may say that it would be prepared to recommend full admission if you can address certain issues it has identified. It will give you a specific period of time (which must be reasonable) to address these issues after which the Board will reconsider your case. If your application is refused for specific reasons that you can address, then your application will be reviewed.

What is Full refusal? If the Board refuses your admission outright and you were not present at the Board, either in person or via video or telephone link, then you can ask that the Board be reconvened so you can put your case in person.

If you are refused a place and you were present at the Board or you have had a second application refused (after initially having had a conditional refusal) you have a right to appeal against the decision via the complaints procedure. Your complaint will be forwarded to the Head of the Women's Team at Her Majesty's Prison and Probation Service (MPPS). Due to issues with the appeals process, we recommend you seek legal advice; **you can contact Prisoners' Advice Service for advice on a refusal.**

What if my appeal is refused?

If you are refused a place and your appeal has been unsuccessful, you may be able to challenge the decision in the courts. You should seek legal advice to see if you have grounds for a judicial review. **Prisoners' Advice Service can provide this advice or signpost you to prison law solicitors who can assist.**

If the decision is not challengeable in the courts, you must make arrangements for your baby to be looked after by family or friends. These arrangements have to be approved as suitable by Children's Services. If that is not possible, arrangements for local authority care will be discussed with you.

Who will be responsible for my child when we are on an MBU?

The Governor of a prison has a duty of care for both you and your child whilst you are in an MBU but if you accept a place on an MBU you will retain parental responsibility for your child. You will have primary responsibility for his or her care.

However, a Care Plan for your child will be drawn up by the prison once you are on the MBU. This must be done as soon as possible or at the latest within four weeks of your admission. You will be able to participate in the process. If your child has been assessed as a child in need by Children's Services in the community, your child will be given his or her own social worker, who will also be involved in the process.

The basic items necessary for you to care for your child will be provided, such as cots. However, you will have to provide any other equipment you or your child need. Since you will be entitled to Child Benefit whilst you are on the MBU, you will be expected to use this money to pay for such items. Some Units will have items that can be loaned to mothers whilst they are on the MBU. You are expected to buy food for your child (your food is provided by the prison). However, facilities to allow you to cook for your child should be provided.

The prison recognises a prison is not the best place to bring up a child. It must therefore ensure your child has access to other environments and experiences. This will include allowing your child to have contact with other family members and the outside world. You will be encouraged to maintain your child's links with family and community, your child can be taken out of the prison for visits and excursions.

On admission, you will be asked to nominate two individuals, whom you would like to care for your child if you send him or her out on visits or if/when separation takes place (such as if you will still be in prison after your child turns 18 months or if you are removed from the MBU). These nominated people will be checked by Children's Services for suitability. The Governor has a responsibility to ensure your child is only handed to people who are suitable and appropriate to care for your child. Anybody that you nominate to take your child out must be cleared by the Governor (including your relatives).

Of course if your family lives a long way away or you are a foreign national without any family in the country, you will not have relations to care for your child on a visit. Your child can then be taken out into the community by nursery staff. Further, if you are eligible for Release on Temporary Licence (ROTL) you can also take your child out into the community.

What is expected of me in an MBU?

Even if you are granted full admission, a place on an MBU is always somewhat conditional. As the MBUs exist primarily for the sake of children in their critical formative years, a high standard of behaviour is expected of all mothers on the MBU. The PSI states that your placement must be reviewed at least every eight weeks. You will be able to participate in the review. It is expected that whilst you are on the Unit, **you will ‘continuously demonstrate’ you are a ‘fit and appropriate person to remain there.’**

The regime inside MBUs is very different to that of the general prison: it is child focussed. You and your baby will not be locked in your room, but you may be required to be ‘behind your door’ by a certain time. Although the regime is more relaxed on the MBU, the requirement for discipline in MBUs is greater than normal. The PSI states that the MBU depends on all the mothers on it complying with the terms of the Compact they signed before admission. That includes proper consideration for each other and all the children on the MBU.

Although you will be living in this relaxed environment with your baby apart from the main prison, you are still expected to take part in the general regime and comply with your sentence plan. You will therefore be obliged to work and to continue to address your offending behaviour by taking courses and to educate yourself for resettlement on your release. Whilst you are absent from the MBU for any reason, for example at work or on a course, your child will be cared for by its trained staff.

You will be excused from work and from classes for a period for six weeks after the birth of your child (maternity leave). If you are then deemed medically fit, you will be required to re-commence work and attendance on courses.

How long can my child stay in an MBU?

The Care Plan, which is prepared for your child when you are first admitted to the MBU, will include consideration of his or her separation from you. Babies can stay on the MBU up to the age of 18 months. However, because the focus is on the best interests of the child, that timescale is a guideline only and there is a possibility of a longer stay in exceptional circumstances.

As explained above, your time on the MBU is regularly reviewed. Babies can stay up to the full 18 months where it is agreed that it is in the best interest of the child and the other children on the MBU. However, it may be that a review finds that it would be in your child’s best interest for him or her to be separated from you before 18 months. Alternatively, there may be exceptional circumstances, when it might be found that it is in the best interest of the child for him or her to stay longer. The PSI provides that there should be some flexibility (for example if the mother is due to be released within a few weeks of the child turning 18 months old).

Can I be removed from an MBU?

You can be removed from the Unit and separated from your child. Because your place on the MBU is reviewed every eight weeks, your progress will be regularly monitored against the agreed objectives of your Compact and your child's Care Plan. If you fail to comply with the Compact or Care Plan, or you provide a positive MDT, or are found guilty of a disciplinary charge, action will be taken – your place will be at risk.

In the first instance you would normally receive a warning. You could however be removed from the MBU. Emergency expulsion from an MBU is very much a last resort because of the effect it may have on your child. The PSI recognises that removal is a very serious step. It says that the decision to remove you must be proportionate to the seriousness of the issue.

When emergency separations are ordered, these will be temporary until a separation board can be convened to consider whether your place should be reinstated or the separation should be permanent.

If you are removed from the MBU, your place will not be kept for you. If, however, you can resolve the issue that led to your removal, then you can apply to be readmitted.

See below about how separations in general are managed.

What happens when my child has to leave?

Ideally, both you and your child should leave prison together. However, this is not always possible if your sentence is long. The preparation of a Separation Plan is a condition of admission to an MBU. It must be agreed by a multidisciplinary team and you must be involved in this process. The Plan will be continually reviewed as part of the general eight weekly reviews mentioned above.

The general idea is that the process of separation should be voluntary, gradually staged and conducted over a set agreed period of time. As stated above, although your child can stay on the MBU up to the age of 18 months, this timescale is not rigid. The main consideration will always be the best interests of your child.

As part of the Plan, you will have nominated two people, who will have been assessed as suitable to care for your child in the event of separation. If you are not able to nominate anybody at all or anybody who is considered suitable, then your child will be cared for by the Local Authority once separation has taken place.

Before the time for you to be separated (unless it is an emergency separation), a Separation Board will have to consider your case. If it is an emergency separation,

then a Board will sit afterwards to determine whether the separation will become permanent, as explained below.

What is a Separation Board and how does it make a decision?

Like an Admissions Board, a Separation Board must have an independent Chair. As a minimum it will also include: the responsible governor or MBU manager; a representative from Children's Services; and/or your Offender Manager in the community. You will also attend the hearing. You can have a friend or your personal officer with you for support.

The Board's main consideration is the same as the Admissions Board, the best interests of your child. It must take into account the following:

- your case history prior to your sentence;
- the reasons why separation is being considered;
- your child's best interests and the likely effects of separation on him or her;
- what, if any, alternatives there are to separation; and
- any issues of ethnicity or culture.

If there is a difference of opinion between the Board members, this must be recorded. You will be informed of the final decision in writing. However once the decision to separate is made, the separation must be carried out without unnecessary delay.

In some situations a separation may be done in an emergency. This may happen if, for instance:

- you become too ill to care for your child;
- your child is ill and requires hospitalisation;
- your child has a contagious disease; or
- when Children's Services have identified an imminent and serious risk of harm to any baby on the MBU.

As explained above, an emergency separation can also happen if you are removed from the MBU because of your behaviour. If a decision has been made to remove you from the MBU before a Separation Board can sit, your separation is considered to be temporary. A Separation Board must still consider your case. So before a decision is made to permanently remove you, you will have a chance to put your case.

Can I challenge a separation decision?

You can challenge a decision to be removed from the MBU and separated from your child. You can contest the decision using the complaint system. If you do, your case must be sent to the Head of the Women's Team at the National Offender Management Service (NOMS) to consider. You can also seek legal advice to see if the decision is challengeable in court. **Prisoners' Advice Service can provide this advice or signpost you to prison law solicitors who can assist.**

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PRISONERS' ADVICE SERVICE

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