

To mark International Women's Day 2021, and this year's theme 'Choose to Challenge', members of Carmelite Chambers have contributed articles highlighting and challenging an aspect of the Justice System that impacts women's rights and welfare.

Mothers in prison

Chris Henley QC, Head of Chambers

Much of the focus of International Women's Day, from a legal perspective, will be on the achievements of the many amazing women in law. There must also be a renewed and energetic focus on the collective action urgently needed to bring about authentic gender parity at every level of our legal system. This is still too far off. It is not only the inequalities within the professions and judiciary that need to be challenged: the welfare of women facing criminal proceedings also requires attention. Here, I look at one important aspect.

The criminal justice system impacts on women in many different ways, but it is hard to imagine a greater impact than giving birth, sometimes even whilst in prison, and then being separated almost immediately from your very young child.

20 years ago, almost to the day, I was at Southwark Crown Court representing a 19-year-old woman, JS, on very serious charges who had recently given birth to her first child. I was being led so the primary legal responsibility wasn't mine, but I got to know her very well. I had successfully applied for bail in the Magistrates Court and having also become a parent for the first time that January, we talked a lot about how we were finding things. I was struck by how determined JS was to get as much as possible brand-new for her baby, despite her limited means. This was going to change her life for the better.

But her terrible cries of anguish seared through me when she was convicted and remanded into custody. She had been bringing her baby to court with a friend and breastfeeding in the breaks. Suddenly her baby was gone from her. I have often thought of that moment over the years since, and wondered where life's journey has taken them both.

JS' solicitor had made discreet but persistent enquiries with HMP Holloway during the trial to find out whether it might be possible for JS to have her baby with her there for any period of time if the worst happened. The prison said that an application could only be made after JS had arrived at Holloway, that only then would an assessment be made and that there were only six places available in the Mother and Baby Unit, all of which were currently taken.

The system can be bleak and pretty brutal for young families. 17,000 children between the ages of 1 and 16 are separated from their mothers each year. The long-term cost and indirect social consequences of this must be considerable.

After three weeks JS was reunited with her baby, thanks entirely to the persistence of her excellent solicitor, and JS was able to keep her until she reached 18 months.

It is sometimes said, usually by a man, that pregnant female defendants have somehow contrived to conceive in a transactional attempt to avoid custody. I find this attitude deplorable. The truth, in my experience, is that these often-desperate individuals are trying to live their lives with misplaced optimism that the dreaded day will never come. With the appalling delays in bringing criminal cases to trial we are likely to see an unprecedented number of mothers being separated from their very young children, and young pregnant women being taken into custody. The normal cycle of their lives, involving relationships and babies, inevitably continues until the criminal justice system finally finds a slot to deal with them.

Facilities are immeasurably better than they were. There are more Mother and Baby Unit places in more prisons than 20 years ago, but so much more needs to be done. Organisations such as the wonderful and heroic charity [Birth Companions](#), formed in 1996 provide invaluable practical and emotional support, and expert volunteers to pregnant women and new mothers in prison. They have published a Birth Charter for women in prisons in England and Wales to promote the standards of care that should be the invariable norm.

The [Prisoners' Advice Service](#) has produced a useful 'Self Help Toolkit' guide to Mother and Baby Units in prison and how they operate.

The [Howard League](#) and [Prison Reform Trust](#) continue to shine a bright light on these and other related issues such as self-harm and mental health.

Now would be the perfect time for a radical review of the way our system approaches the issue of how to sentence women with young children. The needs and interests of the child should receive the highest priority other than in the most exceptional circumstances. It will very rarely be in the child's interests to be separated from their mother, or taken into care, and very rarely in society's longer-term interests either.

These are amongst the greatest challenges a sentencing tribunal will ever have to confront. Should they be blind to these issues? Does anyone still think that? What they need is a new statutory framework to operate within, which provides realistic and comprehensive support for vulnerable young mothers, limits their freedom if necessary but with a strong presumption that this will be in the community wherever possible, and provides the most stable and consistent environment to the child. Blind punishment and inadequate support combined are likely to prove to be much more costly both in financial and human terms.

Chris Henley QC

Carmelite Chambers will be making a modest donation to Birth Companions. If you would like to do the same please visit the donation page of their [website](#).