
## Justice for Young People:
15 years of successful legal work

# Howard League for Penal Reform

## Key points

- Fifteen years ago the Howard League introduced legal work to its approach to achieving less crime, safer communities and fewer people in prison
- The Howard League has transformed law, policy and practice for children and young adults in the criminal justice system. Our legal team has helped to achieve this through legal cases, tailored advice and participation work with hundreds of young people each year
- Our legal education work empowers young people and professionals to understand and use the law to improve outcomes
- The legal work began with a landmark case in 2002, which changed the law to ensure that the protections of the Children Act 1989 apply to children in custody
- We represent young people to establish and enforce local authorities' duties to support children, care leavers and vulnerable adults in and at risk of custody
- Our legal work reduces the intensity and duration of criminal justice system contact with young people. We have achieved this through legal challenges and participation work at all stages of the criminal justice journey, from sentencing to supervision on release
- We have enhanced fairness for young people in prison and the community by successfully challenging policy and practice, from solitary confinement and prison discipline to helping secure the right to an appropriate adult for 17-year-olds at the police station
- We have increased access to justice through our own work and our successful legal challenge to government legal aid cuts to prison law for children and adults

## The Howard League and its legal work

The Howard League has transformed law, policy and practice for children and young adults in the criminal justice system.

Our legal work began with a landmark case in 2002, brought by the charity in its own name, to challenge the assumption that the protections of the Children Act 1989 did not apply to children in prison. We won.

The case demonstrated that legal work can achieve change for children in the criminal justice system and supports the Howard League's vision for less crime, safer communities and fewer people in prison.

Since 2002 we have provided the only dedicated legal service for children under the age of 18 in prison in England and Wales. We expanded our service in 2007 to include young adults under 21, recognising that young adults are still developing and require specialist support.

At the heart of our legal service is our free and confidential advice line that is available to young people in prison. We receive more than 1,000 enquiries each year.

Our legal team provides casework on a wide range of issues, from parole, recall and criminal appeals against sentence, to help with resettlement into the community and treatment while in prison.

We undertake legal education and participation work to empower young people and professionals to understand, use and even change the law by providing a space for them to feed back their experiences of it. This involves direct engagement through interactive workshops, questionnaires and one-to-one work on issues brought to us by young people through our legal work.

We have changed the law through many cases in court. But we also use the evidence that arises from our legal and participation work to identify systemic issues and to achieve change through our policy work and campaigns.

## The Howard League Children Act case

**R (on the Application of the Howard League) v Secretary of State for the Home Department and the Department of Health [2003] 1 FLR 484**

We challenged the Secretary of State's policy on the treatment of children held in young offender institutions (YOIs), as prison policies had claimed that the Children Act 1989 did not apply to children in prison.

The court held that the duties owed under the Act by a local authority to 'children in need' and children at risk of serious harm do not cease merely because a child is in custody. This means that children in prison are entitled as a matter of law to support and protection under the Children Act 1989.

Mr Justice Munby summarised our evidence about children in prison in the judgment:

> *[Children in custody] are, on any view, vulnerable and needy children. Disproportionately they come from chaotic backgrounds. Many have suffered abuse or neglect. The view of the Howard League is that they need help, protection and support if future offending is to be prevented. Statistics gathered by the Howard League …paint a deeply disturbing picture of the YOI population. Over half of the children in YOIs have been in care. Significant percentages report having suffered or experienced abuse of a violent, sexual or emotional nature. A very large percentage have run away from home at some time or another. Very significant percentages were not living with either parent prior to coming into custody and were either homeless or living in insecure accommodation. Over half were not attending school, either because they had been permanently excluded or because of long-term non-attendance. Over three-quarters had no educational qualifications. Two-thirds of those who could be employed were in fact unemployed. Many reported problems relating to drug or alcohol use. Many had a history of treatment for mental health problems. Disturbingly high percentages had considered or even attempted suicide.*

While this description still sadly applies to children in prison today, there is far greater scope for them to secure help and support because the judicial review was successful.

If children appear to the local authority to be in need of help to prevent the further impairment to their health and development, it must assess them and ensure their needs are met. If there is any reason to believe a child is at risk of serious harm, the local authority is required to investigate this.

The case was a watershed moment, paving the way for children in penal and immigration detention to be treated first and foremost as children.

## Securing support for children and young adults

Building on the success of the Howard League Children Act case, the legal team brought a series of cases to establish and enforce local authorities' duties to support children, care leavers and vulnerable adults in and at risk of custody. This is critical to the charity's wider aim of creating safer communities by ensuring children and young people are not left to their own devices without support.

We have developed legal education to empower young people and professionals to seek appropriate support on release from prison.

*The need for children leaving care to have a detailed operation plan*

**R(J) v Caerphilly County Borough Council [2005] 2 FLR 860**

We represented a boy who was a care leaver in a case against Caerphilly County Borough Council. He required a meaningful assessment and plan but did not have one. The judgment made it clear that care plans should contain a detailed operational plan of who will do what and by when and how. The judgment warned local authorities that even where a child does not cooperate, the local authorities' duties are not negated: they must do their best. The judgment also confirmed that assessments that do not meet these standards could be challenged through the courts.

This case has been helpful in making sure that young people get the support they need.

*Assessments of need for children leaving prison*

**R(K) -v- Manchester City Council [2006] EWHC 3164 (Admin)**

We brought a case on behalf of a 14-year-old boy in a secure children's home who was eligible for release by the Parole Board. The problem was that he had no home to be released to. We asked his home local authority, Manchester City Council, to assess his needs with a view to providing accommodation and support on release. The council argued that it only had to assess his current needs, all of which were met in detention. The court disagreed and clarified that a local authority assessment of a child in custody must examine not only their current circumstances but must also look to imminent changes in those circumstances.

We have used this case many times to remind local authorities of their duties to plan for children's future needs.

*Children in need and requiring a home must be helped by children's services*

**R (M) v Hammersmith and Fulham London Borough Council [2008] 1 WLR 535**

We represented a girl who we believed required support as a care leaver. Her local authority, Hammersmith and Fulham, tried to accommodate her under the Housing Act. In 2008 her case was considered by the House of Lords (the predecessor of the Supreme Court). The judgment established that where a child appears to need accommodation, that child must be referred to children's services for an assessment of their needs, even if they initially present to the council's housing department.

Following the case, the government issued guidance aimed at ensuring that there were "no gaps" between housing services and children's services. This is crucial because it helps ensure all children, not just children leaving prison, get support from children's services to meet their needs.

*Duty to plan for the transition to adulthood*

**R (on the application of D) v Cardiff City Council [2015] EWHC 3146**

In 2015 we challenged Cardiff Council's failure to plan for transition to adulthood for an extremely vulnerable young woman who had spent years in care and in custody. This failure to prepare her for transition from the care of children's services as a care leaver towards adulthood put her wellbeing at significant risk. We took the council to court and secured an order requiring a detailed assessment and care plan.

*Legal education on safe resettlement*

We published a guide to resettlement law and best practice after becoming aware that changes in the law on the rights of children and young people in the criminal justice system to accommodation and support were not always understood by professionals working in the sector. We also worked with young people to develop child-friendly materials setting out their rights and how they should expect the process to work. We hold workshops on resettlement, and other legal issues, for professionals and young people in the criminal justice system.

## Reducing system contact with young people

Research shows that the most effective way to reduce crime is to reduce the contact the criminal justice system has with young people (McAra and McVie, 2010).

A major Howard League campaign to reduce the number of child arrests in England and Wales has proved successful, with the number falling by 64 per cent in six years – from almost 250,000 in 2010 to fewer than 90,000 in 2016. This has led to a similar reduction in the number of children in custody.

The legal team has worked alongside this achievement by seeking to reduce young people's contact with the system at every stage of the criminal justice journey. We have done this through legal challenge, advice and representation for individual young people, as well as direct participation work.

*Challenging sentencing*

We have brought a number of appeals on behalf of vulnerable children and young people. We have successfully challenged the imposition of indeterminate sentences on several children, leading to them being substituted for fixed-term sentences by the Court of Appeal.

**R v M.J. [2007] EWCA Crim 1999**

We challenged the sentence imposed on an unaccompanied child who had arrived on a false passport. The child had been given four months' detention even though adults were typically getting three months' imprisonment for the same offence. The case led to a change in practice so that children are no longer imprisoned for this offence.

Our legal education and participation work with young people influenced the revised Sentencing Council guideline on the overarching principles for children and young people, issued in 2017. The guidelines now refer to children as "children" rather than "youths" and also include the need to factor in the particular disadvantages faced by children from Black and Minority Ethnic (BAME) backgrounds.

The Howard League has extended this work by arguing that the Sentencing Council should develop formal sentencing principles for young adults, similar to the principles that are in place for children.

In 2017 we analysed 174 court judgments in cases involving young adults, focusing on how judges considered the concept of maturity. We found that the age and maturity of young adult defendants were not sufficiently considered by the courts. Our research shows that where a young adult's immaturity is raised by professionals, the courts are well placed to factor it in to achieve better outcomes – and more likely to do so if sentencing guidance encourages it.

*Securing release before the Parole Board*

The Howard League has transformed the parole experience for both children and young adults. Our lawyers represent children and young people before the Parole Board, often securing progression or release at the earliest opportunity. We have used our casework to secure change in Parole Board policy.

**K v Parole Board, [2006] EWHC 2413 (Admin)**

We represented a vulnerable 14-year-old boy placed in a secure children's home. The Parole Board was considering him for release but rejected his case without having a hearing. The Howard League challenged the decision to refuse him an oral hearing before the Parole Board and won.

The court's decision underlined the importance of oral hearings, especially where children are concerned. We used this case and our wider legal work to produce a report on why children require a different approach before the Parole Board.

As a result of our work, in 2010 the Parole Board introduced a policy for all children to have an automatic right to an oral hearing if they are not released following a paper review.

In 2017 the Parole Board introduced a presumption that young adults aged 18 to 21 will have an oral hearing if they cannot be released after a paper review. This is an important step to make sure that young adults are given the best opportunities to demonstrate their suitability for safe release.

*Working towards proportionate community supervision*

Through our legal work we came across children who were released from prison on electronic tags, given curfews and required to engage in intensive programmes of up to 25 hours a week. There is no similar provision available for adults. We represented a number of children who were then sent back to prison when they failed to comply with the tough conditions.

We conducted research and published a report into inappropriate tagging revealing the nature and extent of this problem.

After we lobbied for change, new guidance was issued to ensure that this practice only happens in cases where there is evidence that it is both necessary and proportionate.

## Case study: Kevin

Kevin was a child in care with a poor school history and significant mental health problems, including severe ADHD. Kevin spent two spells in the community under the intensive supervision programme and two periods in jail – all for the one offence.

Kevin was vulnerable, having experienced a significant bereavement and witnessed domestic violence and alcohol abuse within his family.

He was given a Youth Rehabilitation Order (YRO) with intensive supervision for his original offence but found it difficult to keep up with all his appointments on the programme. He was breached and taken back to court, which imposed a prison sentence.

In recognition of his vulnerability, he was sent to a secure training centre for young or vulnerable children. At the centre, medical staff observed the extent of his mental health problems.

Shortly before release at the end of his punishment term, he was told that he would again be placed on intensive supervision with a tag. Kevin was extremely distressed by this and felt it would be very difficult for him to cope on the programme. He felt he had served his punishment term and it was not fair.

The same local authority that demanded he be released on to the programme failed to tell him where he would be living until just before his release.

Instead of preparing for a positive release under supervision he was filled with fear and anxiety, living in an unknown location with intensely restrictive conditions: he felt he was being set up to fail.

Kevin was released under intensive electronic supervision and subsequently breached for a second time. A court returned him to jail to complete the remainder of his sentence in custody.

*Challenging discrimination against women leaving prison*

**Coll v Secretary of State for Justice, [2017] UKSC 40**

We intervened in this case to provide the Supreme Court with evidence about the problems faced by women required to live in approved premises.

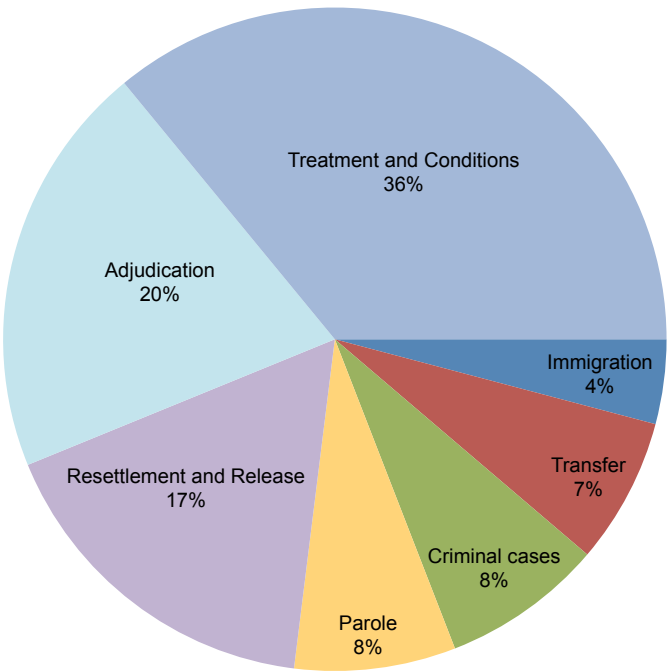
The Court ruled that the distribution of approved premises discriminates against women. The case was an important step in bringing the rights under the Equality Act 2010 to life for people in the criminal justice system.

Approved premises are all single-sex establishments. There are 94 premises for men, located throughout England and Wales, with several in London. There are only six for women, and none in London or Wales.

This means that women are much more likely than men to be placed in premises that are far from their homes and families. They may suffer long-term disadvantages in terms of accommodation, rehabilitation and employment, as well as in re-establishing their relationships in their community after release.

While this case concerned an adult woman, its implications affect young adult women too and complemented the wider work of the charity to tackle the distinct difficulties suffered by women in the criminal justice system.

## Calls to the Howard League advice line



## Enhancing fairness in prison and in the community

We have used our legal work to enhance fairness for young people in prison and in the community by successfully challenging policy and practice, complementing our wider policy work.

We have challenged swingeing cuts to legal aid for prisoners, and changed law and practice around how children are treated, solitary confinement, complaints processes and prison discipline.

Following the Howard League Children Act case, we have taken a series of cases which have clarified the law and established that the needs of children and young people should always be prioritised.

*Ending mixing*

**DT (1) -v- SSHD [2004] EWHC 13 Admin**
The Howard League challenged the placement of a girl aged 16 at Eastwood Park, a prison for adult women.

Following this case, the government ceased the practice of placing girls in adult women's prisons.

*Developing the investigative duty towards children at risk*

We brought a series of complex cases on behalf of children whose safety was at risk, either because they were self-harming so prolifically or the state was failing to provide adequate care and support.

We secured two independent investigations to ensure lessons were learned for the future.

*Changing the landscape of prison discipline*

Any prisoner, including a child, who is accused of breaking a prison rule can be tried and, if proven guilty, punished through the internal disciplinary system or by an external district judge. The hearings are called adjudications.

Following a rise in calls to our legal advice service, we published three reports into the increasing use of additional days of imprisonment as an ineffective response to prisons in crisis.

Our research revealed that prisons are increasingly using draconian punishments, with the number of additional days imposed on prisoners rising by 75 per cent in two years. BAME prisoners are more likely to be punished with additional days.

We are working to abolish the use of extra days, but, as long as they remain, our legal work emphasises the need to ensure that they are conducted fairly. Representation at adjudications is vital for ensuring that prisoners get a fair hearing.

**R(M) v The Chief Magistrate [2010] EWHC 433 Admin**

We challenged the decision of an independent adjudicator to impose extra days on a child for breaking prison rules. The extra days meant that the child would not be released in time to accrue rights as a care leaver under the Children Act 1989.

The High Court quashed the decision on the basis that denying the child this opportunity to get additional support from social services until he was 21 years old (at least) contravened the welfare principle. The Court also emphasised the importance of children being actively encouraged to get legal representation at disciplinary hearings where extra days can be added.

The legal team also secured change to prison governors' practices around discipline through complaints to the prisons ombudsman. One such challenge, on behalf of a child with a learning disability, resulted in all children being offered additional support when facing disciplinary proceedings before governors.

We successfully challenged a young adult prison's draconian 'three strikes rule'. The rule had meant that, if anyone was alleged to have broken three prison rules, their third alleged breach would be referred to the Independent Adjudicator, putting them at risk of extra days.

*Challenging the use of segregation and solitary confinement*

The UK is out of step with a growing international consensus that children should never be placed in solitary confinement. De facto segregation is also rife. The most recent inspectorate report on Feltham prison revealed that almost one-third of the children were spending at least 22 hours a day in their cell.

The concerning practice of isolating young people for long periods of time was the subject of the Carlile Inquiry, a policy review commissioned by the Howard League.

The legal team has brought a number of cases challenging practices and policies around the use of isolation.

*Legal challenges on the use of isolation*

**R (on the application of SP) v Secretary of State for the Home Department [2004] All ER (D) 352**

This case led to changes in the Prison Service policy of placing children in segregation or solitary confinement, requiring the prison to allow a child to explain why he or she should not be isolated before it happens.

**MA v Ashfield prison, the Independent Adjudicator and the Secretary of State for Justice, [2013] EWHC 438**

We challenged the treatment of seven children in HMYOI Ashfield, a privately-run prison. This case highlighted serious flaws in the disciplinary process in the prison, as well as finding that the prison engaged in unlawful practices of isolating children without regard to their own rules.

**R (on the application of Bourgass) v Secretary of State for Justice, [2015] UKSC 54**

We intervened in a landmark Supreme Court case that considered the lawfulness of solitary confinement in prison. We provided expert evidence and legal argument to assist the court with the wider picture of prison conditions and the use of segregation, and to make the case as to why safeguards are so important when a prisoner is segregated.

The Supreme Court ruled that prison governors who keep prisoners in solitary confinement for longer than 72 hours without external authorisation are acting unlawfully.

**R (AB) v Secretary of State for Justice, [2017] EWHC 1694**

We successfully challenged the isolation and lack of education provision for a boy in Feltham prison. The court found that his isolation was in breach of Article 8 of the European Convention on Human Rights as it was not in accordance with the law.

This case had a substantial impact even before the judgment was issued: the Ministry of Justice is reviewing all of the policies and procedures in relation to keeping children in solitary confinement and reviewing the provision of education for children who cannot attend mainstream classes.

*Complaints to the Prisons and Probation Ombudsman (PPO)*

We have brought many complaints on behalf of young people, often securing change to policy and practice. Our work is routinely highlighted in reports by the PPO, which publicise changes that have taken place as a result of complaints being brought to the ombudsman's attention. This demonstrates our commitment to using every available avenue to pursue justice for children and young people. This flexible approach allows us to avoid lengthy court proceedings where there are other ways to bring about change.

A notable success was our role in securing changes to the process around strip-searching. Our legal team's complaints complemented the wider work of the charity in bringing an end to the routine strip-searching of children and achieving changes to the process for determining the appropriate security category for a young person being transferred to the adult estate.

We successfully challenged the Ministry of Justice to extend the remit of the PPO to include complaints from children in secure training centres. This was an important change because until then there was no clear independent arbiter of complaints brought by children in these privately-run jails.

*Securing appropriate adults for 17 year olds at the police station*

We intervened in a case brought by Just for Kids Law about the rights of 17-year-olds to appropriate adults at the police station.

Before this case, children aged 17 were dealt with as adults, which meant that they did not automatically receive the support of an appropriate adult to help them through the legal process. In many cases, parents were not even told that their son or daughter had been arrested.

**R (on the application of HC) v Secretary of State for the Home Department, [2013] EWHC 982**

The case concerned a 17-year-old boy who was held in a London police station for 12 hours overnight on suspicion of robbery. The boy, who had no previous convictions, was not allowed to call his mother to explain where he was or ask her to come to the police station. He was not offered the services of an appropriate adult. He was released without charge, but his family had been worried as he had been missing for several hours and they had not been told about his detention.

We provided detailed submissions on why fairness required 17-year-olds who were arrested and taken into police custody to have an appropriate adult.

This landmark judgment was a major milestone in the campaign to remove an anomaly in the Codes to the Police and Crime Evidence Act (PACE) 1984. The law was out of kilter with domestic and international provisions, which recognise 17-year-olds as children.

*Ending warrants for the arrest of children for non-payment of fines*

We encountered two children under the age of 16 who had been fined in the criminal courts. When they failed to pay the fines in full, magistrates' courts issued warrants for their arrest so they could be returned to court. Both children were detained overnight at the police station. The law does not permit the arrest and detention of children for non-payment of fines. We issued a judicial review against the magistrates' courts on behalf of one of the children, which resulted in guidance to prevent this happening to other children.

*Increasing access to justice*

**R (The Howard League and the Prisoners' Advice Service) v the Lord Chancellor, [2017] EWCA Civ 244**

In 2013 the Ministry of Justice removed legal aid for a wide range of problems affecting people in prison. The Howard League and the Prisoners' Advice Service launched a judicial review of the decision.

The Court of Appeal upheld three key areas of our legal aid challenge to cuts affecting prisoners. It ruled that cuts to legal aid for prisoners were unlawful because they were inherently unfair.

The ruling marked an important step forward in making sure that people in prison move through the system safely and efficiently. We estimate that about 85 per cent of the original cuts introduced in 2013 have either been restored within the scope of legal aid or declared unlawful by the court.

Since cuts to legal aid for prisoners came into force, violence and self-injury in prisons have risen to record levels. Calls to our legal advice line have increased by more than 50 per cent.

## Reference

McAra L. & McVie, S. (2010) 'Youth Crime and Justice: Key Messages from the Edinburgh Study of Youth Transitions and Crime', *Criminology and Criminal Justice*, vol. 10, no. 2, pp. 179-209.

## About the Howard League for Penal Reform

The Howard League is a national charity working for less crime, safer communities and fewer people in prison.

We campaign, research and take legal action on a wide range of issues. We work with parliament, the media, criminal justice professionals, students and members of the public, influencing debate and forcing through meaningful change.

The Howard League has produced publications to accompany and explain much of its legal work and the policy implications. These are available on our website.

LOTTERY FUNDED

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