

Robert Neill MP  
Chairman  
Justice Committee  
House of Commons  
London  
SW1A 0AA

4 December 2017

Dear Robert Neill,

The Howard League for Penal Reform welcomes the opportunity to respond to this important inquiry on prison reform.

Founded in 1866, the Howard League is the oldest penal reform charity in the world. The Howard League has some 13,000 members, including prisoners and their families, lawyers, criminal justice professionals and academics. The Howard League has consultative status with both the United Nations and the Council of Europe. It is an independent charity and accepts no grant funding from the UK government.

The Howard League works for less crime, safer communities and fewer people in prison. We achieve these objectives through conducting and commissioning research and investigations aimed at revealing underlying problems and discovering new solutions to issues of public concern. The Howard League's objectives and principles underlie and inform the charity's parliamentary work, research, legal and participation work as well as its projects.

Due to the breadth of the inquiry, this submission does not attempt to answer all questions posed, but instead focuses on the areas in which the charity has the greatest expertise. The Howard League would welcome the opportunity to provide further information about any of the recommendations, points and examples below.

## **1. Where we are today**

### ***The current situation***

**1.1** The number of men, women and children in prison currently stands at 86,075 (as at 1 December 2017). It has more than doubled since 1992, when at one point it was reduced to 40,600 people. However, looking at the prison population on any one day disguises the even larger number of people who enter prison on remand or under sentence during any one year.

**1.2** As demand for prison places has been rising, the prison service's ability to supply resources has been put under pressure. By 'resources' we do not primarily mean prison places (which we discuss in para. 4.1) but staff and budgets for life behind bars. At June 2016, there were 14,689 frontline officers (full time equivalent) in England and Wales. This figure, down from 15,110 a year earlier, left prisons with barely more

- 1.3** frontline staff than the lows of 2014, which prompted the Ministry of Justice to embark on a major recruitment exercise. Moreover, the substantial proportion of new, inexperienced staff and the high churn of new staff place further strain on the system. The HMPPS workforce statistics bulletin shows that, as of 30 September 2017, the number of frontline prison officers with less than three years' service rose to 30%.
- 1.4** The combination of rising demand for prison places and increasing restrictions on resources supplied to prisons, has led to a crisis. In the year to June 2017 there were 41,103 recorded incidents of self-harm, up 12 per cent from the previous year. Assaults and serious assaults against both prisoners and staff are also at record highs.
- 1.5** This is therefore a very welcome inquiry, which addresses questions at the core of how we manage our prison system. For years now we have tolerated the unacceptable. We are already cramming over 20,000 men two to cells designed for one, while a substantial proportion of the roughly 82,000 men in prison spend around 23 hours a day locked in fetid cells with no access to work, education or exercise. In a civilised nation this is grossly uncivilised, and the damage both to individuals and to our reputation has been profound.

### ***Factors driving the rise in the prison population***

- 1.6** Looking to the past at trends in the creation of offences and in sentencing shows a striking pattern of increased criminalisation and sentence inflation. More people are being sentenced to prison for more reasons and for longer sentences.
- 1.7** Taking first the phenomenon of increased criminalisation: we are sending people to prison for a wider range of reasons than we used to. Between May 2010 and May 2014, 1076 new criminal offences were created in England and Wales, approximately two-thirds of which carry possible custodial penalties. There has also been an increase in the creation of Acts of Parliament which are law-and-order related. According to our estimates, a mere 11 law-and-order Acts were passed between 1980 and 1989, with another 11 passed between 1990 and 1999. 31 such Acts were then passed between 2000 and 2009, and so far since 2010 there have been 26. Unsurprisingly, there has been a dramatic rise in the number of prisoners sentenced to immediate custody. There were around 40,000 more prisoners serving immediate custodial sentences at 30 June 2016 than at 30 June 1993.
- 1.8** However, by far the biggest impact is due to the fact that sentences have become longer. Over the past ten years, average sentence lengths across the board have increased by 24 per cent. For certain offence types the rise in sentence lengths is particularly notable. For example: over the past ten years, average prison sentences for fraud offences have increased by 54 per cent; average prison sentences for miscellaneous crimes against society have increased by 45 per cent; average prison sentences for criminal damage and arson have increased by 118 per cent; and average prison sentences for robbery increased by 51 per cent.
- 1.9** Two other contributing factors are the increased use of both remand and recall. Since 1995 the number of people in prison due to recall has increased by approximately 4,000 per cent, from about 150 people on any given day in June 1995 to 6,186 people on 30 September 2017. We address remand and recall in more detail below.
- 1.10** A combination of disparate factors means we have a prison population which looks set to keep rising inexorably unless action is taken – and which, if this year's upward

revision of prison population projections is the start of a trend, may even start rising at a growing rate if the government does not act to manage prison numbers.

## **2. Women in prison**

**2.1** The vast majority of women entering prison under sentence have committed non-violent offences. Theft offences accounted for 48% of all custodial sentences given to women in 2016 (based on the MoJ December 2016 criminal justice statistics quarterly). As a result, women usually serve very short sentences: 70% of sentenced women entering prison in the year to December 2016 were serving six months or less. Women tend to do better on community orders than men and can suffer particular anguish and distress when imprisoned due to separation from their children, since women are more often the primary care-giver. However, despite these and other striking features of female imprisonment, we keep locking women up and are now doing so at an increasing rate. The MoJ's prison population statistics show a 3 per cent rise in the female prison population between 30 September 2016 and 30 September 2017, from 3,843 women to 3,957 women.

**2.2** Against this backdrop, the government has promised to publish a strategy for women in prison. It is essential that the recommendations of this report are consonant with the findings of the Corston Report. Ten years ago, Baroness Corston's detailed review outlined what is now common knowledge, namely that women prisoners have different backgrounds and needs from male prisoners but are contained in a system created by men, for men. The government's strategy needs to address this. The Howard League recommends that women's prisons are closed, that a limited number of secure places are created across the country and that the majority of women are managed in the community.

**2.3** Scotland is already moving towards a model of limiting the number of secure beds available to the courts and creating small, regional units for women. Women in prison are overwhelmingly not dangerous, but have often had chaotic lives including experiences of disadvantage, abuse and violence. For example, a 2012 MoJ report on prisoners' childhood and family backgrounds noted that 53% of women in prison reported experiencing emotional, physical or sexual abuse as a child (compared to 27% of men). That we imprison women at all should be a cause for debate and concern; imprisoning often extremely vulnerable women without offering substantive support arguably constitutes further victimisation of these individuals.

## **3. Children in prison**

**3.1** The number of children in custody has fallen dramatically. The Howard League is pleased to have contributed to the reduction in child custody through its work with the police that led to a two thirds reduction in child arrests, a consequential reduction in prosecutions and therefore fewer children sentenced and incarcerated. In September 2007, there were 3,010 children in custody; a decade later there are 880 children in custody, according to Youth Justice Board data. This is a great success, but we can go much further. The chief inspector of prisons and Ofsted have pointed out that no young offender institution or privately run secure training centre inspected in early 2017 was safe for children. The only safe environments for children are the small, locally run secure children's homes.

**3.2** The Howard League's legal team takes calls relating to about 1,000 children and young adults a year and we have been delivering a legal service representing children in prisons for 15 years. Over the years we have worked intensively with many hundreds

of children. We have no evidence that their characteristics have changed. The children who enter prison have been failed by parents and a string of authorities. They have always presented with a range of mental health problems arising from a history of abuse. Ofsted and HMIP inspection reports over the past decades have told the same story about the characteristics of the children. These children have always been challenging, it is just that now there are now fewer of them. As such, there is no convincing reason why we cannot continue to reduce the number of children being held in these fundamentally unsafe institutions.

#### **4. Routes forward**

**4.1** As we have seen in recent decades, building places does not solve the problem. Instead, the prison population tends to expand to fill the places available, often even before they are built but in response to government announcements of a building programme. Even where new prisons are intended as a replacement for old prisons, by the time they are available both are over capacity. The recent decision to keep Hindley and Rochester open illustrates this. Michael Spurr's recent ruling out of any prison closures over the next five years reflects the failure of a plan which erroneously assumed that capital investment in expanding the prison estate could be a means of managing an ever-growing prison population. However, the answer to this rapidly worsening crisis is not to build more prisons, it is to reduce the prison population. Put another way, trying to manage only the supply to prisons will not work. Indeed, it is through cutting supply without addressing demand that the current crisis has arisen. We now need to manage demand.

**4.2** Things do not have to be the way they are. The Howard League believes that the prison population should be controlled and prisons closed. This approach to managing demand is not untried or untested. Alberta, Canada reduced its prison population by a third in response to budgetary pressures in the late 1990s and early 2000s (see Webster, C. and Doob, A., (2014) Penal reform 'Canadian style': Fiscal Responsibility and Decarceration in Alberta, Canada' Punishment & Society 16(1)) The rest of the country then followed suit. It did this by introducing a presumption against short-term sentences, encouraging diversion at every level of the criminal justice system and introducing early release programmes. England and Wales currently has a much more bloated prison system than that which existed in Canada in the mid-nineties, we could therefore go much further.

**4.3** The need to reduce the prison population is especially pressing in the current financial climate and given the recently confirmed cuts to the MoJ's budget. Everything suggested in this consultation document will help the MoJ to meet the spending cuts of around 10 per cent outlined in the recent Budget whilst alleviating the prison safety crisis.

#### **5. Remand and recall: two areas requiring urgent attention**

**5.1** Two issues currently placing substantial strain on prisons relate to how people come into and leave the prison system, namely remand and recall. We propose two changes which could help to reduce the prison population and that would improve safety.

##### ***Remand***

**5.2** The use of remand is growing. The most recent MoJ population projections predict a prison population of 87,400 in June 2021. This 2017 projection is higher than the 2016 projection, which the report notes is driven not only by increased in custody rates and

sentence lengths for indictable offences, but also in part by the growth in the remand population above expected levels. As such, the figures forecast the remand population reaching 9,900 in June 2018 and remaining there. However, since this report was compiled we have seen the remand population exceed 10,000 (on 31 August 2017). In the year to 30 September 2017, the remand population increased by almost four per cent.

**5.3** This means that currently, on any one day, between 9,000 and 10,000 people in prison have either not been found guilty of an offence or have not yet been sentenced. Whilst remand is a necessary tool when there is evidence a person is a danger to public safety and a flight risk, it is used far too often, particularly for those charged with misdemeanours. In the twelve months ending June 2017, magistrates remanded 57,603 people to custody (according to the Criminal Justice Statistics quarterly update for that month). Few people appearing before a magistrates' court will present a level of danger that cannot be managed on bail and even fewer will be a genuine flight risk. The overuse of remand is highlighted by the fact that 70 per cent of people remanded by magistrates will not go on to receive a custodial sentence either because they were found not guilty or, in the majority of instances, the offence was not serious enough to warrant a prison term. We therefore recommend introducing stronger restrictions about the use of remand in order to reduce its use.

### ***Recall: the general problem***

**5.4** The use of recall has been growing and is one of the main drivers of our ever-growing prison population. Increased recalls have also further destabilised prisons and produced a sense of injustice. Untested and rushed changes to the probation system since 2015 had an immediate impact on the recall population. In our 2013 submission to the Ministry of Justice on the Transforming Probation proposals, we warned that recall to custody would increase. The response to a Parliamentary Question (House of Commons 2017b) revealed that since the Transforming Rehabilitation (TR) reforms became operational in 2015, recalls to custody have indeed increased dramatically. There were 17,701 recalls to custody in the year 2014/15 – increasing to 22,412 in 2015/16 and 21,721 in 2016/17.

**5.5** The impact of TR on recall is escalating. Between April and June 2017, there were 2,212 recalls of those released from a sentence of less than 12 months, an eight per cent increase compared with the same period in 2016, and a six per cent increase compared to the previous quarter. As of 30 September 2017, 1,088 prisoners were recorded as being in custody following a recall under the Offender Rehabilitation Act (ORA) 2014 – representing 18 per cent of the total recall population (Ministry of Justice 2017).

**5.6** We recommend refining the reasons for which people can be recalled to custody. Most recalls to prison are for technical breaches of licence conditions, not the commission of new crimes. For example, in the 12 months ending September 2016, 7,798 people were recalled back to prison for 'failing to keep in touch' and a further 5,228 were sent back for 'failing to reside' at a particular address. Sending someone back to prison for a technical breach of their licence conditions is unjustified and unjust, and places unnecessary strains on prisons for no good reason. Instead, these kinds of breaches should be dealt with in the community. If someone commits a further offence while on licence, it should be investigated and prosecuted like any other.

**5.7** We recommend making people who have been released after a short sentence ineligible for recall altogether. Recalls to custody under the ORA 2014 should be

scrapped by the Ministry of Justice. These recalls have failed to provide support to people with chaotic lives and have instead exacerbated injustice, punitivity and dysfunction. Our recent response to the inquiry on the government's TR programme gives more detail on the many issues with TR.

### ***Recall: a particular issue with regard to IPP sentences***

**5.8** The problem of recall is acute for IPP prisoners. Recent high-profile public concern about this issue is welcome and the Parole Board has been working to clear the backlog to initial release: there were 3,162 IPP prisoners as at 30 September 2017 which represents a decrease of 18 per cent in the last 12 months.

**5.9** However, progress risks being undermined by the high rates of recall seen among IPP prisoners. Since 2011, there have been 1,670 recalls of people serving an IPP. Those released from IPP sentences are now being recalled at almost the same rate as they are being released: for example, in January to March this year, 153 IPP prisoners were released but 124 were recalled. Indeed, the MoJ's own prison population projections acknowledge the likely recall of some IPP prisoners to custody.

**5.10** The Howard League has been working with cross party peers and legal experts to draw up an amendment to the legislation to scrap the lifetime supervision of IPPs and replace it with a short, fixed term period of support. People released from an IPP have often originally committed serious offences, following which they have spent years in prison, often many more than expected. Given this, and the likelihood they may have complex needs made worse by the nature of the prison experience, they may need a period of supervision and support to help them to resettle safely. However, technical or administrative breaches during this period should be dealt with in the community. Of course, if someone commits a further offence while on licence, it should be investigated like any other. The current prevalence of administratively motivated recalls of IPP prisoners needs to end.

## **6. Re-considering sentencing: a longer term view on addressing the prisons crisis**

**6.1** The changes outlined above would be ways of relieving the pressure in the short-term on a system in crisis. However, a broader consideration of sentencing principles is crucial due to the injustice of sentencing inflation and increased criminalisation. We are sending more people to prison for longer, for a wider range of offences. Averting the rising trend in our prison population will not be possible until we acknowledge and address behavioural trends arounds sentencing.

**6.2** The current habit of creating ever more criminal offences and reasons to put people into the criminal justice system must be curbed. The increased criminalisation described in section 1 is driving up the prison population, with an acceleration since 2000 in the creation of new law-and-order acts. Furthermore, far too many offences carry potential custodial penalties. Several offence types which together comprise a substantial portion of convictions every year (fraud, criminal damage and theft offences) are non-violent and non-sexual. Prison should not be the default option for perpetrators of these types of offences; community options should be considered first.

**6.3** To counteract this trend of unnecessary criminalisation, the Ministry of Justice should undertake a review of legislation with the aim of making a sizeable proportion non-criminal. A further review should examine those offences which attract a potential custodial penalty with a view to restricting prison sentences to serious offences.

Decreasing the number of criminal offences and the proportion which attract a custodial sentence could reduce the daily prison population by several thousand.

- 6.4** The most fundamental underlying driver of the size of the prison population is sentence inflation. The dramatic rises in sentence lengths were neither intentional nor evidence-based and they have had no discernible impact on reoffending. They have had the effect of incrementally pushing up the prison population over time. We believe it is time to stop regarding prison as a 'free good'. It is not appropriate that sentencing bodies can continue to raise the demand for prison services without justifying the appropriateness, proportionality and effectiveness of this or considering the cost.
- 6.5** The Justice Committee has been extremely successful at shining a light on crucial aspects of our justice system and holding the government to account. While we recognise the vital role of the Committee in doing this, we think it might consider the need for a more comprehensive look at the system that could include a fundamental review of the purposes, principles and outcomes of the criminal justice system. It has been fifty years since the last Royal Commission on the penal system, it might be time to set up another one.
- 6.6** The Howard League is happy to provide further detail on any of the points above and would welcome the opportunity to submit additional evidence as the inquiry progresses.

Yours sincerely,

Frances Crook

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