

Howard League for Penal Reform's response to the Commission on Justice in Wales

4 June 2018

The Commission on Justice in Wales has issued a call for evidence inviting written submissions from all interested parties on its terms of reference to review the operation of the justice system in Wales and set a long term vision for its future.

Summary of recommendations

1. Wales should have more power over its own prisons and probation system. Criminal justice issues and social issues are intimately linked and need to be considered together.
2. Wales should be able to shape a bold, distinctive Welsh approach to prisons and probation which rejects the failed policies being pursued by the Ministry of Justice. In particular, there should be no more prison places added in Wales.
3. Wales should invest in creative, locally customised community approaches instead of custody. This should include funding for women's centres in Wales to deliver tailored community sentences.

1. About us

- 1.1** 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.
- 1.2** 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.
- 1.3** 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.

2. Welsh solutions to Welsh problems: criminal justice devolution as desirable and possible

- 2.1** Reducing crime, promoting desistance and building safer communities is always most effective when agencies of the criminal justice system are co-ordinated with other public services. These should include health, education, housing and addiction treatment, with agencies held accountable at a local level. Devolution of prisons and probation is the best option available to create such a system.
- 2.2** The devolution of prisons and probation has worked well in other areas. Scotland has been able to take highly progressive steps through control of its own criminal justice system, closing its one women's prison and putting a limit on places, and introducing a presumption against custody for short sentences.
- 2.3** Work in Greater Manchester and London shows the benefits of the cross-agency collaboration enabled by devolution. A Memorandum of Understanding was published in March 2018 between the Mayor's Office for Policing and Crime, the Ministry of Justice and London Councils. This memorandum sets out an action plan enabling London to take on increasing power to manage its own criminal justice issues. If the Mayor can set out a path to greater devolution for London, then why should Wales not do the same?
- 2.4** Further devolution is particularly appropriate in the Welsh context. Criminal justice issues are intimately linked with social justice issues and the two need to be considered in tandem. This would allow the Welsh Government to make its own detailed, long-term plans for how to address issues such as substance misuse which could be seen within a health context with funding ring-fenced for specific activities.
- 2.5** The pressures facing prisons are not containable within prison walls and cannot be viewed in isolation. Like healthcare or housing, prisons need to be considered in the context of a broader system as people have different types of contact over time. The failure of Community Rehabilitation Companies (CRCs) is feeding the prison problem and this is particularly acute in Wales. This was highlighted in HMI Probation's recent thematic report which observed that "enforcement had the effect of compounding

rather than lessening the sense of a revolving door between prison and the community.”

3. A crucial decision point: the tide is turning against building in Wales

- 3.1** Building places does not solve the problems facing the prison system. Instead, the prison population tends to expand to fill the places often even before they are built in response to government announcements of an expansion programme.
- 3.2** The Howard League is delighted that the Welsh Assembly recognises the importance of resisting a ‘super-prison’ being built anywhere in Wales. To build a ‘super-prison’, a women’s prison or more residential blocks in Wales would be a flawed approach.
- 3.3** There is growing public awareness that expanding the prison estate and building super-jails are sucking resources from local services and local people. Big new prisons are not popular.

The problems facing Berwyn prison

- 3.4** Almost all research into the size of prisons concludes that smaller prisons have better outcomes than larger ones, both for prisoners and communities. The largest prisons in the estate are characterised by low staffing levels, high staff turnover, and inadequate levels of purposeful activity – prisoners are simply warehoused. The Howard League recommended against the building of Berwyn for all of these reasons.
- 3.5** The problems with ‘super-prisons’ are exemplified by what has happened at Berwyn. The prison is currently holding less than half the prisoners it is designed to hold but is fully staffed. However, recent reports by Her Majesty’s Inspectorate of Prisons and the IMB, as well as responses to Parliamentary Questions, have demonstrated that Berwyn prison is facing challenges with the costs falling on the community. Since it opened in Spring 2017, police have been called to the prison on average more than 13 times a month. There have been 626 adjudications and 17 fires. By the end of 2017, 27 members of staff had left. These problems occurred despite HMPPS learning certain lessons on the opening of Oakwood and slowing the introduction of prisoners to Berwyn.
- 3.6** Berwyn was built as a prototype for new prisons. It has activity spaces for only half the population. It forces men to share cells which contain an open toilet. There is little natural light or ventilation in the cells. There are few outdoor exercise facilities. Its design and construction contravenes the Nelson Mandela rules of the United Nations.

Women’s imprisonment in Wales: proposing a new prison misses the point

- 3.7** There is no support for the idea of building new prisons for women. Ministers promised publication of a strategy for women offenders many months ago. It is generally accepted that Ministers have recognised that building new prisons or units for women would be counter-productive and dangerous.
- 3.8** Wales does not need a prison for women. While there may be issues with Welsh women being incarcerated far from home, a single women’s prison in Wales would compound this due to the distances involved.
- 3.9** Too many women in Wales are being remanded and sentenced to prison. To propose more prison places for women is to miss the point that the vast majority of women in

prison in Wales should not be there in the first place. The majority of women remanded to custody by Welsh magistrates courts do not subsequently get a prison sentence and so should not be placed in prisons in the first place. The evidence shows that many women in prison have complex needs and multiple vulnerabilities. Crucially, the vast majority of these women sentenced to prison are not convicted of serious or violent offences, with around 70 per cent of women entering prison sentenced for six months or less.

3.10 Short sentences do not allow for prisons to provide support or rehabilitation. Instead, going to prison disrupts often already precarious lives. After even a few weeks in prison, women are particularly vulnerable to losing their jobs, homes and children. Just nine per cent of women leaving prison secured employment, compared to 26 per cent of men, according to the government's 2012-3 Offender Equalities report. An estimated one in five female prisoners are currently released into homelessness.

3.11 Building a small women's unit attached to a men's prison in Wales would also be unacceptable. We know that attaching women's units to men's prisons does not work and leads to worse outcomes for women prisoners. The Peterborough inspection report published in January 2018 noted how the prison leadership was distracted by challenges in the men's prison, resulting in less focus on the women.

Adding prison places in Wales is not in Wales' best interests

3.12 Adding prison places in Wales is simply not in Wales' best interests. Building prisons located in Wales is no guarantee that these prisons will house Welsh prisoners. Recent developments at Berwyn prison demonstrate this. Six months after it opened, only 42 prisoners of a total 548 were from the region; the majority of prisoners were from England. As the prison has been filled with people, the number of English prisoners held in Wales has increased rapidly. Figures published in response to a Parliamentary Question in February 2018 showed that 1,256 prisoners with a recorded address in England were being held in Welsh prisons. Not only is Wales housing these people, but it bears the responsibility for providing resettlement services and support for prisoners on licence after their release. Building more prison places or a 'super-prison' would only compound this state of affairs.

3.13 The economic and employment benefits of prison-building, while often touted by misguided politicians, rarely materialise. When a new prison is built, local people receive a very small proportion of the jobs available and many of these are temporary. Several academic studies from the United States undermine the assumption that prison development in fact drives economic development, as outlined by Robert Jones from the University of South Wales in 2014.

3.14 There may be no other area of public policy where Wales is treated in such a high-handed manner by the UK government as in the operation of its penal system. Just as Wales never asked for the part-privatisation of its probation service, neither did Wales require the second largest prison in Europe, but Berwyn was built anyway. It is right for Wales to defend its own interests and resist the building of another 'super-prison' on Welsh land.

4. The answer: creative, local, supportive solutions in the community

The opportunity cost of prisons

- 4.1** The vast sums in the Justice budget allocated to building and running prisons, and paying for failing probation services, should instead be spent on community services located in and familiar with the Welsh communities they serve. Devolving control of prison and probation to Wales would enable this. It is now time to think creatively about what would be best-suited to particular communities, rather than simply doing things the way they have always been done.
- 4.2** The controversy generated by the proposal to build a prison in Port Talbot proves that local people would prefer the huge sums associated with prison-building to be spent on local need. The capital cost of building a new prison falls to the public purse and is in the region of £250million. Large prisons cost some £15million to £20million a year and are expected to last for at least a hundred years.
- 4.3** The need to do things differently is underscored by the government's failed Transforming Rehabilitation programme, which saw probation in Wales part-privatised by the Coalition. The Chief Inspector of Probation's most recent annual report heavily criticised these reforms and Wales is one of the areas failing to meet targets set by the Ministry of Justice in Whitehall. This is a clear indicator of what happens when Welsh policy is dictated from Westminster. Working Links, the CRC in Wales, has also now been taken over by the pan-European investment company Aurelius, which is publically listed in Germany. There is nothing local, or Welsh, about this company or its ethos.

Children and the criminal justice system

- 4.4** There is a history in Wales of a stronger focus on children's rights than in England. This is encapsulated in a longstanding exhortation to see children involved with the criminal justice system as children first and offenders second (a statement only recently adopted by the Youth Justice Board in England). There has also been a welcome focus in Wales on recognising the impact of Adverse Childhood Experiences (ACEs).
- 4.5** Evidence shows that it is often the same children who move between the two systems and between multiple agencies. For example, fewer than 1% of all children in England are in care, but they make up nearly two-fifths of children in secure training centres and young offender institutions.
- 4.6** The Howard League's work on the criminalisation of children in residential care highlights how easily children in care can get sucked into the criminal justice system. One young woman told us how as a child living in residential care she became frustrated by the comments of an uncaring manager. She threw a yoghurt over the manager, who called the police; the girl received a caution. We heard this story repeatedly – of the police being called by children's homes for incidents which would never prompt a police call from a parent.
- 4.7** When the same children who need welfare support come into contact with the criminal justice system, solutions are mandated centrally and often do not address the child's individual needs.
- 4.8** Full devolution of youth justice powers would better support existing multi-agency efforts to help vulnerable children in Wales. The Howard League has met with South Wales Police and heard about similar concerns around criminalisation and residential care for children in Wales. Thanks to the devolved context, Assembly ministers, Welsh

police forces and Care and Social Services Inspectorate Wales (CSSIW) have been able to focus on this issue.

4.9 Devolution would allow Wales to do things differently. The Youth Justice Board currently commissions places at Parc for young people, but it does not have to. The Board could choose to commission different services. These should be ones focused on supporting the vulnerable children and young people who end up in trouble with the law. As it stands, children in Wales whose welfare should be protected, can easily be pulled into the flow of a criminal justice process they may not understand.

Women's centres

4.10 There is a real opportunity for Wales to create a distinct system for women which is more effective, humane, and cheaper than currently exists. According to the response to a Parliamentary Question, on 30 September 2017 there were 227 women with a Welsh origin address serving a custodial sentence. This is a small, contained group, which means it is possible to try something new.

4.11 There is no women's centre in Wales that delivers court sentences and this should be rectified. A network of women's centres would reduce crime, protect victims, change lives and keep families together. It would also be good value for the taxpayer. The Ministry of Justice evaluation of women's centres in England shows that they reduce reoffending and support women into leading law abiding lives, employment and stable families.

4.12 The funding for delivering sentences should be diverted from CRCs to women's centres. HMI Probation's recent thematic report on enforcement and recall notes that CRCs have "very limited access to appropriate women-only provision". Focusing on helping women's centres to deliver sentencing could not only help to keep women out of prison, but it could also improve the quality of support received by women who are under supervision.

5. Conclusion

5.1 There is an opportunity to be bold and develop a distinctive Welsh approach which rejects the failed policies being pursued by the Ministry of Justice. As a nation with its own leadership and culture, Wales should be focused on developing Welsh solutions to Welsh problems.

5.2 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.

References

- Daily Post (2017) 'HMP Berwyn has more English than Welsh prisoners figures reveal' <https://www.dailypost.co.uk/news/north-wales-news/hmp-berwyn-more-english-welsh-13644690>
- Department for Education (2015) *Children looked after in England year ending 31 March 2015*. London: DfE
- Her Majesty's Inspectorate of Prisons (2016) *Children in custody 2015-16*. London: HM Stationery Office
- Her Majesty's Inspectorate of Prisons (2009) *The prison characteristics that predict prisons being assessed as performing 'well': A thematic review*. London: Her Majesty's Inspectorate of Prisons.
- Her Majesty's Inspectorate of Probation (2017) *2017 Annual Report*. Manchester: Her Majesty's Inspectorate of Probation
- Her Majesty's Inspectorate of Probation (2018) *Enforcement and Recall*. Manchester: Her Majesty's Inspectorate of Probation.
- House of Commons (2018) Response to a Parliamentary Question: <https://www.theyworkforyou.com/wrans/?id=2018-02-01.126186.h>
- House of Commons (2017) Response to a Parliamentary Question: <https://www.theyworkforyou.com/wrans/?id=2017-11-22.115125.h>
- House of Commons (2017) Response to a Parliamentary Question: <https://www.theyworkforyou.com/wrans/?id=2017-12-12.118800.h>
- House of Commons (2017) Response to a Parliamentary Question: <https://www.theyworkforyou.com/wrans/?id=2017-10-20.108875.h>
- Howard League for Penal Reform (2017) '2017 Community Awards Winners', <https://howardleague.org/community-awards/2017-community-awards-winners/>
- Howard League for Penal Reform (2018) 'Listening to children about what's going wrong and what needs to be done to make things right' <https://howardleague.org/blog/listening-to-children-about-whats-going-wrong-and-what-needs-to-be-done-to-make-things-right/>
- The Independent (2018) 'How a £250m super prison has made a North Wales industrial estate into UK's 'centre of incarceration' <http://www.independent.co.uk/news/uk/home-news/wrexham-super-prison-north-wales-industrial-estate-justice-ministry-plaid-cymru-liz-saville-roberts-a8197171.html>
- Mayor of London's Office for Policing and Crime, Ministry of Justice and London Councils (2018) 'Working Towards Justice Devolution to London: Memorandum of Understanding Between the Mayor's Office for Policing and Crime, the Ministry of Justice and London Councils' https://www.london.gov.uk/sites/default/files/london_justice_mou_final.pdf
- Ministry of Justice (2015) *Justice Data Lab Re-offending Analysis: Women's Centres throughout England* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/427388/womens-centres-report.pdf

Ministry of Justice (2018) *Payment by results statistics: January to March 2017*
<https://www.gov.uk/government/statistics/payment-by-results-statistics-january-to-march-2017>

Office for National Statistics (2015) *Population Estimates for UK, England and Wales, Scotland and Northern Ireland, mid-2014*, Table MYE2. London: ONS

Prison Reform Trust (2007) *Titan Prisons: a gigantic mistake*. London: Prison Reform Trust.

Professor Kevin Haines and Dr Stephen Case for the Centre for Crime and Justice Studies (2013) 'Children first, offenders second' <https://www.crimeandjustice.org.uk/resources/children-first-offenders-second>

Jones, Robert (2014) 'Wrexham's new jail under the spotlight'
<http://www.clickonwales.org/2013/11/wrexhams-new-jail-under-the-spotlight/>

Wales Governance Centre, Cardiff University (2017) 'Data shows significant surplus prison places in Wales for Welsh prisoners' <http://sites.cardiff.ac.uk/wgc/2017/03/22/news-data-shows-significant-surplus-prison-places-in-wales-for-welsh-prisoners/>

Wales Online (2018) 'Welsh super-prison plan for Baglan is blocked by the Welsh Government'
<https://www.walesonline.co.uk/news/local-news/welsh-super-prison-plan-baglan-14650724>