

**Howard League for Penal Reform's response to Her Majesty's Inspectorate of Prisons
consultation on the expectations for children's young offender institutions (YOIs)**

5 July 2018

Summary of recommendations

1. Inspection expectations for children in YOIs must be enhanced and strengthened. They must not be diluted to facilitate the move towards greater governor autonomy. A robust inspection process is especially important to protect children and ensure consistently high standards in the wake of greater governor autonomy
2. All expectations for YOIs should reflect children's rights and must take account of what is important to children
3. The expectations should monitor the extent to which children's rights are embedded into YOI policy and practice
4. The expectations must measure YOIs against the highest standards of care and factor in what children believe makes a decent home
5. Expectations must focus on how the YOI meets the needs of individual children in line with the principle of the best interests of the child
6. Expectations should measure the extent to which YOIs listen to children and factor in their wishes and feelings in decisions that affect them.

1. About the Howard League for Penal Reform

- 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 policy work aimed at revealing underlying problems and discovering new solutions to issues of public concern, as well as through direct legal and participation work.
- 1.3 Our legal team works directly with children in YOIs.
- 1.4 The Howard League would welcome the opportunity to provide further information about any of the points below.

2. The purpose of the revised expectations

- 2.1 The introduction to the revised expectations states:

‘We hope these revisions will lead to more concise reports with fewer prescriptive recommendations and, where appropriate, will allow young offender institutions (YOIs) to be more flexible in how they respond to the needs of the children they hold. We expect this to lead to greater local accountability for the action plans that YOIs draw up in response to our reports and clear evidence of improvement when we return for our follow-up inspection.’

- 2.2 The Inspectorate’s expectations for children must be enhanced and strengthened. They must not be diluted to facilitate the move towards greater governor autonomy. A robust inspection process is especially important to protect children and ensure consistently high standards in the wake of greater governor autonomy.
- 2.3 Given the Inspectorate’s conclusion that not a single establishment it inspected in 2016-17 was safe to hold children, it is vital that inspection criteria are tightened to protect children as they are particularly vulnerable in prisons.

3. All expectations for YOIs should reflect children’s rights and must take account of what is important to children

- 3.1 The Cabinet Office has issued guidance on making legislation¹. Paragraph 12.29 of the guidance states,

¹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/645652/Guide_to_Making_Legislation_Jul_2017.pdf

"The Government has made a commitment to give due consideration to the articles of the UN Convention on the Rights of the Child (UNCRC) when making new policy and legislation."

3.2 The Inspectorate should adopt a similar approach in its expectations and give due consideration to the UNCRC throughout. The current expectations cross reference the UNCRC. However, the expectations should explicitly incorporate some of the principles into the revised wording. As a minimum, articles 3, 37 and 40 of the UNCRC should be included and reflected in a number of the key expectations.

4. The expectations should monitor the extent to which children's rights are embedded into YOI policy and practice

4.1 Inspectors must monitor the extent to which children's rights are given due consideration by YOIs and are embedded throughout the prison regime.

4.2 Inspections should monitor whether prison staff take a pro-active approach to inform all children of their legal rights. This must mean more than just saying children are able to pursue their legal rights (point 36); children need to be told what their rights are in the first place in order to know they can pursue them. At present, Barnardo's advocates have a contractual obligation to take a rights based approach. However, this will only be meaningful if prison staff also take a positive and proactive approach to children's rights.

4.3 The Howard League's legal and participation work with children in detention has shown that children in prisons are often not aware that they have legal rights. Children are unlikely to question or speak out about their treatment or conditions in prison if they do not know about their legal rights. A rights based approach can help to prevent abuse because it empowers children to recognise it. Failure to recognise abuse as such is a fundamental barrier preventing children from speaking out about the harm they have suffered. For example, the Howard League has worked with young people who have been abused in restraint situations, who have said they did not recognise the situation as abusive or potentially illegal before obtaining legal advice: they did not think they could complain or raise their concerns.

4.4 Fundamental to a rights based approach is that children know complaints will be taken seriously. Expectations should monitor and analyse rates of complaints. The annual HMIP/YJB survey found that one in ten of the boys in prison said that they had felt too scared or intimidated to make a complaint. Low rates of complaints could be an indicator that children do not have enough knowledge of their rights rather than children have nothing to complain about.

5. The expectations must measure YOIs against the highest standards of care and factor in what children believe makes a decent home

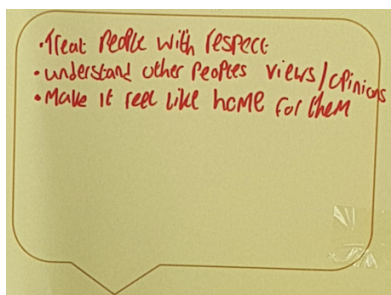
5.1 While children are detained in prison it is their home. Yet for many children, the experience of prison is a travesty of what a home should be.

5.2 Our participation and legal education work has enabled us to consult children in detention about what matters to them. As part of our participation work with children in detention and in care, we consulted around 100 children about what a home meant to them. Our report, *More than a roof overhead*², published in May 2018, included the

² <https://howardleague.org/publications/more-than-a-roof-overhead/>

views of children about what they thought was important in a good home. Children said that that what mattered most to them was love, happiness, caring, safety, food and drink, warmth and comfort.

- 5.3 The Howard League for Penal Reform organised a participation session at a secure children's home in June 2018 in order to consult young people in custody about their views on inspections. The boys were asked to tell us what rules they would like to be in place if they were in charge. One young person summarised the sentiment of the group when he chose treating people with respect, understanding other people's views and opinions and making it feel like home.



- 5.4 We discussed the HMIP expectations with the children and asked them what they thought was important under the following headings:

- Feeling safe
- Feeling cared for
- Having things to do each day
- Plans for release

- 5.5 Children told us that feeling safe meant having the chance to speak to people like a key worker or other staff members and knowing you can speak to someone. It meant being looked after and making sure that people gave attention to others.

- 5.6 Children said they felt cared for when people listened to them and understood what they were going through. They valued staff who gave attention to all young people, not just to a select few. They thought it was important for someone to show empathy towards them. Children said feeling cared for meant 'getting noticed' and 'getting supported'.

- 5.7 The children we consulted wanted a range of planned activities to occupy them during the day, including education and music. They wanted staff to involve all children in the activities, not just a select few.

- 5.8 Children thought it was important to know where they would be going on release and what they would be doing. They wanted to know where they could get information about help. They thought it was important to have staff who worked with children and supported them in planning for release.

- 5.9 The focus for inspectors must be on ensuring the highest standards of care and support for each individual child. There must be no watering down of expectations for the standards of care when a child is held in a YOI.

- 6. Expectations must focus on how the YOI meets the needs of individual children in line with the principle of the best interests of the child**
- 6.1 Expectations should ensure that every aspect of the YOI regime is in a child's best interests in accordance with Article 3 of the UNCRC which requires that "*in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*" Expectations out to measure the extent to which YOIs are responding to each child as an individual, just as if they were parents and in line with the recently published corporate parenting principles (Department of Education, 2018).³ The child should be at the centre of what is provided in a YOI. Expectations must ensure that the care, education and activities a child receives is in their best interests; there must be no one size fits all approach.
- 6.2 The cohort of children in detention has changed. The number of children sentenced to custody has fallen by 74 per cent in the last ten years and the average sentenced population is 870 children. The average monthly remand population is 180 children. Two thirds of the children on remand will not go on to receive a custodial sentence. 85 per cent of custodial remands end within three months. Almost half of all children in YOIs are from BAME backgrounds.
- 6.3 Children sentenced to custody for indictable offences are serving much longer sentences: the average length of a custodial sentence for an indictable offence has risen from 11 months to 16 months in the last ten years. Eight per cent of the custodial episodes for children last more than a year.⁴
- 6.4 Inspectors must monitor whether every child is receiving a good education. Expectations must ensure that YOIs provide teaching for students studying GCSEs and A levels when it is in their best interests. Staff at one STC told us they had allowed a parent to send in A level text books for a child because they could not teach to that level and we have rarely known children in YOIs to be able to complete A-levels. Students should be taught by an appropriately qualified teacher and not be expected to source their own book, teach themselves or undertake repetitive courses at the convenience of the prison.
- 6.5 Expectations on the quality of care should take into account the views of children. Around one quarter of children and young people we consulted about home said caring was important. One young person told us 'When someone cares about you, you feel happier'. One child wanted to live in a home with 'good and caring staff' and 'people who get people'. Inspectors must monitor whether there are enough staff, with the right mix of skills and experience, to support children 24 hours a day. Children do not stop wanting or needing help at the end of the working day.
- 6.6 Inspectors must continue to ensure they cast an independent critical eye when conducting inspections to ensure that prisons meet the high standards outlined in the expectations. It is the role of the inspectorate to report on what they see, not to encourage prisons or the Ministry of Justice to do better in achieving the expectations. If a prison falls short of the expectations, this must be made clear.

³ <https://www.gov.uk/government/publications/applying-corporate-parenting-principles-to-looked-after-children-and-care-leavers>

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/702361/length-of-time-spent-youth-custody-2016-17.pdf

7. Expectations should measure the extent to which YOIs listen to children and factor in their wishes and feelings in decisions that affect them.

- 7.1 Inspections should monitor whether all children are able to actively participate in the regime and to what extent they are involved in decision making. In order to evaluate the extent to which YOIs listen to children and consider their wishes and feelings, inspectors will need to ask the children themselves about their experiences.
- 7.2 Our participation session with children in secure custody asked for their views on consulting children as part of an inspection process. The children were shown examples of the surveys given to children in YOIs as part of the inspection process and asked for their views. Their comments showed the need for a range of techniques to consult children as part of the inspection process.
- 7.3 One child told us the HMIP survey looked like a bank form to him. However, two young people said they preferred the tick box questionnaire to a more typically “child-friendly” format. One boy, who had had recent experience of talking with Ofsted inspectors, said this had made him feel awkward. He told us ‘sitting and ticking boxes is a lot easier than telling someone how you feel’.
- 7.4 The range of responses of the children, with different experiences and differing levels of educational needs, showed there was no one size fits all approach to gathering their views. Inspectors need to recognise that many children in detention, even those who appear the most confident, can feel awkward talking to adults and may not feel comfortable speaking openly about their conditions and treatment in detention.
- 7.5 It is equally important for inspectors to consider how they communicate the expectations to children in YOIs. When the conditions and treatment of children fall short of the expectations, children can feel let down by adults who are there to ensure expectations are met. For example, expectation 59 states: ‘Children spend at least 10 hours out of their cell during the day, including at least one hour in the open air’. The 2016-17 annual survey by HMIP and the YJB stated that nearly half the boys at Wetherby and 40 per cent of the boys at Feltham were locked up during the core day when they should have been in education and training. Children will rightly question the purpose of inspections if their experiences do not match the expectations set out by the Inspectorate and there appears to be little redress for prisons who fail to meet the expectations.

8. Conclusion

- 8.1 The Howard League considers welcomes the concept of revising the expectations for children in YOIs to enable the Inspectorate to provide rigorous and child-centred expectations for the children in our prisons. We would be happy to discuss this important task further.

**The Howard League for Penal Reform
5 July 2018**