Howard League for Penal Reform

1 Ardleigh Road
London N1 4HS
Tel: 020 7249 7373
Fax: 020 7249 7788
Email: info@howardleague.org
Web: www.howardleague.org

Howard League for Penal Reform's response to Ofsted's consultation on the proposed changes to joint inspections of secure training centres

14 August 2018

Executive Summary

1. The context of this consultation is the repeated failure of Secure Training Centres (STCs) to provide an adequate standard of care for children: the inspection regime has to date failed to prevent this failure. A robust inspection regime is required so long as STCs remain in operation.

2. The Howard League welcomes a child-centred approach that ensures children's voices are heard. Ofsted is urged to adopt a rights-based approach to make inspections meaningful.

3. Achieving consistency across inspection regimes for the secure estate for children is positive so long as it aims to raise standards.

4. The replacement of the term "young people" with "children" in the proposed inspection criteria is welcome. However, the Howard League is concerned that the new criteria do not focus sufficiently on the experiences of children and miss out some critical standards that STCs should be measured against such as resettlement.

5. A more robust approach where STCs are not performing sufficiently well is welcomed but more detail is required to ensure the stated aims are achieved.

6. The Howard League welcomes the intention to capture children's views at a certain point in time that is not necessarily within the inspection period but considers that a range of methods may be required to ensure children can meaningfully participate.

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 Our legal team works directly with children in Secure Training Centres (STCs)

1.4 The Howard League would welcome the opportunity to provide further information about any of the recommendations, points and examples below.

2. Background to the proposals

2.1 Paragraph two of the consultation document states that "no STC was judged as good or outstanding in 2017/18. Oakhill was judged as inadequate in October 2017, while Rainsbrook was judged to require improvement to be good in August 2017. Medway was given an overall judgement of requires improvement at its most recent inspection in March 2018 after being judged as inadequate at its previous inspection in March 2017."

2.2 Yet the joint report by HMIP and Ofsted published prior to the Panorama broadcast that revealed appalling abuse at Medway STC[1] found that the "overall effectiveness of Medway …STC… to meet the needs of young people is judged good with outstanding features" (HMIP and Ofsted, 2014).

2.3 It is imperative that inspections by Ofsted do not provide misplaced reassurances. They should play a robust role in uncovering failings so long as STCs remain in operation. Any proposals that aim to ensure this is welcome.

2.4 The current consultation makes three proposals:

- A revised judgement structure for joint inspections of STCs.
- A strengthened response to inadequate judgements of STCs.
- The introduction of a 'point-in-time' survey of children's views, replacing the current HMIP-led on-site survey undertaken during the inspection.

2.5 The consultation states that it is hoped that the proposals will (paragraph 7):

- ensure that children's experiences and progress are central to STC inspections - we will focus more on the difference that the centres make to children's lives, and less on processes and procedures
- bring a greater consistency to the way we look at the experiences of children in custody - these proposals, if implemented, will align STC inspections more closely

[1] http://www.bbc.co.uk/programmes/b06ymzly

to the methodology and principles of the SCCIF and, therefore, to the way we inspect secure children's homes.

2.6 But paragraph 8 states that they are “not designed to 'raise the bar' for good and outstanding judgements.” Given that Medway STC was inspected as good with outstanding features immediately before the Panorama broadcast, the Howard League is concerned that the consultation expressly states it does not intend to raise the bar in respect of these judgements. Consistency across the inspection regimes for all establishments holding children is welcomed, but only if it raises standards.

3. Children’s experiences

3.1 The Howard League welcomes placing children’s experiences and progress at the centre of STC inspections. The Howard League has a long-standing commitment to the benefits of a child-focused, participatory approach for children, developed during our U R Boss project.[2] Listening to children is the first and key step in making sure that they are not only kept safe but have the chance to develop. However, the Howard League’s legal work demonstrates that listening to children is most effective when it is in the context of a rights-based approach. This is reflected by Article 12 of United Nations Convention on the Rights of the Child (UNCRC), which provides that children should have the right to express their views freely in all matters affecting the child with support if necessary and is part of a web of rights all children should enjoy. With regard to children in trouble with the law, Article 40 of the UNCRC states that children need to be treated in a way which promotes their sense of “dignity and worth“. It also identifies the importance of ‘promoting the child's reintegration and the child's assuming a constructive role in society.’

3.2 In the Howard League’s experience, 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.

3.3 The Supreme Court has recognised the wider benefits to society of people knowing their rights and responsibilities (R (UNISON) v Lord Chancellor [2017] UKSC 51: para 71):

> “People and businesses need to know, on the one hand, that they will be able to enforce their rights if they have to do so, and, on the other hand, that if they fail to meet their obligations, there is likely to be a remedy against them. It is that knowledge which underpins everyday economic and social relations. That is so, notwithstanding that judicial enforcement of the law is not usually necessary, and notwithstanding that the resolution of disputes by other methods is often desirable.”

3.4 Using child-friendly methods to encourage and enable children to complain or report their concerns to regulatory bodies on the understanding that it is their right to do so can help to create a culture where it is recognised that children have inalienable rights and should be listened to.

3.5 The Howard League therefore considers that a child-focussed, rights-based approach is the most appropriate way forward and we would be happy to discuss this further.

[2] See for example, https://howardleague.org/publications/embedding-participation/

4. Consistency

4.1 The Howard League notes the intention to bring a greater consistency to the way Ofsted looks at the experiences of children in custody, but believes this must be combined with a desire to raise standards. This intention is welcome in principle but the Howard League is concerned that §8 states that they are "not designed to 'raise the bar' for good and outstanding judgements." Consistency is only a benefit to children if it is designed to consistently raise standards.

5. Proposal one: a revised judgement structure for joint inspections of secure training centres

5.1 It is proposed to reduce the headings for inspection as follows:

Current	Proposed
• Overall effectiveness, taking into account: • the safety of young people • promoting positive behaviour • the care of young people • the achievement of young people • the health of young people • the resettlement of young people • the effectiveness of leaders and managers.	• The overall experiences and progress of children and young people, taking into account: • how well children are helped and protected • the quality of education and related learning activities • the quality of health care • the effectiveness of leaders and managers.

5.2 We welcome the change in language from "young people" to "children" as we hope that will assist seeing children in secure settings as children first. However, the new criteria appear to be less focused on the experience of the child. For example, measuring "the quality of healthcare" is very different from measuring the "health of children". The service can appear adequate if one looks at how it deals with the matters brought to it. But that does not necessarily translate into healthy children within the institution. Children in custody will not be healthy if they are not getting fresh air and nutritional diets. Yet the "quality of healthcare" may not measure this.

5.3 The absence of resettlement as a specific criterion for inspection is concerning, notwithstanding the stated commitment Ofsted has to this area of work elsewhere in the report. It is well known that what gets measured gets done. The Howard League receives calls from children who are due to be released from STCs without suitable accommodation and support in place and is concerned that this is a key indicator for any secure establishment. While the active resettlement of a young person is not within the complete control of an establishment, key steps can and must be taken to ensure that resettlement plans progress in a timely fashion, including, if necessary, that children are assisted in securing independent legal advice if there is no clear plan in place weeks before release. The importance of finding a home for children on release from custody, rather than just a roof overhead, is critical to the overall aim and functions of the criminal justice system for children (Howard League, 2018).[3]

[3] https://howardleague.org/events/more-than-a-roof-overhead/

5.4 It is also important that the new criteria include sufficient detail to ensure that establishments can be held properly to account for their performance.

5.5 The Howard League urges Ofsted to reconsider the criteria including introducing a rights based framework for the reasons set out above.

6. Proposal two: to reinforce the inspection response to inadequate judgements

6.1 It is proposed that:

- an urgent review meeting should always be held with the MoJ to determine the most appropriate action to take following an inadequate judgement
- agreed action will always involve some inspection activity (usually within eight weeks) to ensure that children are safe, either as a monitoring visit or a full inspection.

6.2 The Howard League agrees that a more proactive approach is required where STCs are deemed to be inadequate. The question for us is whether the proposed action goes far enough and will result in the significant improvements required. At this stage it is not clear that this will achieve the desired outcome or how the actions will actually ensure children are kept safe. More information is required.

7. Proposal three: that the HMIP on-site survey of young people at STCs becomes a 'point-in-time' survey

7.1 The Howard League does not object to the survey preceeding the inspection unless the survey becomes effectively a significant advance warning of an impending inspection. It might be sensible for the surveys to take place at a set date each year to avoid this.

7.2 In June 2018, The Howard League for Penal Reform conducted a participation session with children in a secure children's home to consult with them about inspection processes and how children could give their views to inspectors.

7.3 The different responses from the children we worked with showed the need for a range of ways of consulting with young people –it is not one size fits all. Some children told us they liked filling in surveys but one boy who had special educational needs said surveys looked like a bank form to him.

7.4 Inspectors and adults who consult children need to recognise that many children in detention, even those who appear the most confident, can feel awkward talking to inspectors and other adults and may not feel comfortable speaking openly about their opinions or experiences.

7.5 Effectively capturing the views of young people is crucial to ensure a child-focused inspection regime and suggest that the methods of collecting views are sufficiently varied and adapted to ensure all children can effectively participate.

7.6 It is not clear to whom three days' notice is to be given so it is not possible to comment on that proposal.

7.7 In order to ensure that all concerns about the care of children in STCs form part of the inspection process, it may be worth considering how the views of parents, carers and other concerned adults (such as Youth Offending Teams, social workers or youth workers) can be captured.

8. Conclusion

8.1 The Howard League considers that as a regulatory body with wide-ranging powers, it is imperative that Ofsted ensures that STCs are held to high standards and firm action is taken when they fail to provide good enough care for the vulnerable children placed there. A rights-based approach would also assist in ensuring meaningful and robust inspections.[4]

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[4] For more information about the Howard League's views in respect of the benefits of a rights based inspection approach, see Howard League response to HMIP consultation on expectations for children's YOIs available at https://howardleague.org/wp-content/uploads/2018/07/Howard-League-response-HMIP-expectations-YOIs.pdf