

**Howard League for Penal Reform's response to the Ministry of Justice consultation on the complaints policy**

**22 October 2018**

**Summary**

1. The Howard League broadly welcomes some of the changes in the revised complaints policy.
2. The need for an effective complaints procedure that results in the right outcomes for prisoners is paramount. The policy should be strengthened to ensure this.
3. Procedural fairness is important and the policy ought to be strengthened to ensure this. For example, prisoners should be given a copy of their complaints and people who are currently disadvantaged by the complaints system should be assisted to participate effectively.
4. Prisoners with learning difficulties, literacy needs or English as a second language should get additional support.
5. Prisoners who cannot write in English should not have to wait longer for their complaint to be resolved.
6. The specific needs of children and young adults should be catered for.
7. The additional challenges BAME prisoners face in complaining should be recognised and steps taken to reduce the risk of bias.
8. The policy should explicitly acknowledge that legal representatives can make complaints on behalf of their clients and receive a response within the same timescale as a complaint submitted directly by a prisoner.

## **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 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 and young adults in prison, dealing with hundreds of requests for assistance every year. At the heart of our legal service is our free and confidential advice line that is available to young people in prison. Our legal team provides legal advice and representation 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. The Howard League regularly advises young people to use the complaints system and often makes complaints on behalf of young people who cannot do it themselves or are not getting anywhere with their complaints without assistance.
- 1.4 The Howard League would welcome the opportunity to provide further information about any of the points below.

## **2. Purpose of the policy**

- 2.1 The Howard League believes that there is a pressing need for an effective complaints procedure that results in the right outcomes for prisoners. The policy should be strengthened to ensure this outcome. At present, too many prisoners have no faith in the system and too few complaints result in a better outcome. What gets measured gets done. This is an opportunity to strengthen the system to measure tangible outcomes for prisoners and improve the system. While much of the new policy is welcome, it is not clear how it will guarantee an improved system.
- 2.2 A complaints policy is not merely a procedure, it is the very foundation of ensuring justice inside prisons. Prisons must be fair and be seen to be fair. Prisoners should feel that they are treated fairly and are able to raise issues of concern. They should feel that the complaints process is expeditious, appropriate and fair. Even when their complaint is not upheld prisoners should feel they have had a decent hearing. A good complaints policy is a sign that a prison is working well. It can maintain positive relationships between staff and prisoners and reduce conflict.
- 2.3 At a time when prisons are under stress it is important that the complaints policy and process is fair, consistent and non-discriminatory and it should be recognised that it underpins a well-functioning establishment.

### **3 Procedural fairness**

- 3.1 The policy refers to the need for procedural fairness, stating that ‘there is strong evidence that a complaints system that feels procedurally just leads to greater respect from prisoners for staff and authority, and less violence and misconduct in prison’ (paragraph 2.1). However, the policy is not robust enough to reduce that risk.
- 3.2 The policy ought to be strengthened to ensure there is an effective and transparent process. Prisoners ought to be provided with a copy of their complaints when they are submitted.
- 3.3 Paragraph 5.1 states ‘Prisoners must be provided with confirmation that their complaint has been received and is being processed. The detachable slip on page one of the COMP 1 must be completed and returned to the prisoner as soon as possible.’ This is welcome but insufficient.
- 3.4 In the Howard League’s experience, children and young adults in prison are not routinely provided with copies of their complaints and are therefore unable to prove what they have submitted, if the prison says the complaint has been lost. Whilst providing prisoners with a slip to confirm that their complaint has been received and is being processed is welcome, it would be better if prisoners could be provided with a full copy of their complaint. The Howard League’s legal team has come across instances where the PPO has refused to investigate complaints on behalf of young people because the prison had lost the complaint forms so there was not enough evidence that the whole complaints process had been followed. Therefore providing prisoners with a full copy of their complaint form is imperative. This includes prisoners who use an electronic complaints system which has been introduced in some prisons.

### **4. Prisoners with learning difficulties and those who are unable to read or write**

- 4.1 Paragraph 4.4 of the policy framework states  

‘To make sure that some people are not unfairly disadvantaged, all prisons must have arrangements in place that will allow a prisoner to make a formal complaint orally to a member of staff where the prisoner has difficulty doing so in writing. In such circumstances the complaint must be recorded and the written answer must be explained to the prisoner in the same time frames as for typical written responses.’
- 4.2 It is not clear from the policy what changes should be made in practice to ensure that prisoners who may find it more difficult to lodge a complaint in writing. It should be made clear whether a prisoner who submits a formal complaint orally will obtain a slip to confirm that their complaint has been received. It is recommended that they also receive a copy of the recorded complaint.
- 4.3 Prisoners with learning difficulties, low levels of literacy or those whose first language is not English will need additional support not just to make a complaint but also to understand the complaints procedure, to read the policy and know how to make a complaint. Statements saying prisons should have ‘additional arrangements’ or staff should provide prisoners with ‘necessary assistance’ are not enough.
- 4.4 The policy framework should include details about the types of arrangements and assistance that should be put in place.

- 4.5 The section on guidance states: ‘Prisoner representative associations can also be an effective way of providing additional support to prisoners who have difficulty making a written complaint.’
- 4.6 It is not clear from the policy who prisoner representative associations might be. There is also an issue of confidentiality and it may not be appropriate for other prisoners to offer support for certain complaints or the prisoner may not wish to share this with others.

## **5. Prisoners whose first language is not English**

- 5.1 Para 4.5 states ‘Prisoners who do not have a good grasp of the English language must be allowed to submit a complaint in their own language if they wish’.
- 5.2 However, Annex B states that ‘a longer timescale will be needed where the complaint is made in a language other than English.’
- 5.3 Prisoners who speak English as an additional language should not have to wait longer for their complaint to be resolved.

## **6. Low level of complaints received by young people**

- 6.1 There is already a low level of complaints among particular groups of prisoners. For example, the latest annual report by the PPO published in October 2018 notes that complaints from young people under the age of 21 accounted for just 35 of the 2,480 complaints investigated. In 2017, the PPO published a learning lessons bulletin<sup>1</sup> which showed the PPO received a disproportionately small number of complaints from young people in prison<sup>2</sup>.
- 6.2 Children often have little faith in the complaints system. In some instances, even if children want to complain they are prevented from doing so on a number of levels. Children with learning difficulties or mental health needs may find it hard to write or articulate their complaints. A system that was recently introduced in one YOI requires children to submit complaints through a computer terminal on the landing, which requires the child to be let out by staff. This not only compromises confidentiality but means that children are dependent on staff at times when the prison service states it has staffing issues in children’s prisons.

## **7. Additional challenges faced by BAME prisoners**

- 7.1 The Howard League is not aware of any data about the difficulties children from BAME backgrounds face in complaining. However, almost half of children in prison are from BAME backgrounds. The Lammy Review, citing recent research, noted a particular problem in respect of discrimination complaints among adult prisoners (Lammy,

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<sup>1</sup> PPO (2017) learning Lessons Bulletin: complaints from young people in custody. Available at: [https://s3-eu-west-2.amazonaws.com/ppo-prod-storage-1g9rkhjkhjmgw/uploads/2017/02/PPO-Learning-Lessons-Bulletin\\_Young\\_people\\_in\\_custody\\_Feb17\\_Final.pdf](https://s3-eu-west-2.amazonaws.com/ppo-prod-storage-1g9rkhjkhjmgw/uploads/2017/02/PPO-Learning-Lessons-Bulletin_Young_people_in_custody_Feb17_Final.pdf)

<sup>2</sup> PPO (2015) Why do women and young people in custody not make formal complaints. Available at: [https://s3-eu-west-2.amazonaws.com/ppo-prod-storage-1g9rkhjkhjmgw/uploads/2015/03/Why-do-women-and-young-people-in-custody-not-make-formal-complaints\\_final.pdf](https://s3-eu-west-2.amazonaws.com/ppo-prod-storage-1g9rkhjkhjmgw/uploads/2015/03/Why-do-women-and-young-people-in-custody-not-make-formal-complaints_final.pdf)

2016).<sup>3</sup> Given what we know about how children are far less likely to complain than adults, it is fair to assume that the same lack of confidence in the complaints procedure applies to BAME children. In the Howard League's experience, prison complaints rarely result in positive outcomes and as a result children regularly tell us that they do not think there is any point in making complaints.

- 7.2 The revised complaints policy should recognise the additional challenges BAME children face and monitor and guard against the risk of bias. The quality and analysis of data regarding outcomes and disproportionality or concerns raised by BAME and other prisoners or staff will be crucial in monitoring and preventing disproportionality in the complaints procedure.

## **8. Complaints on behalf of prisoners**

- 8.1 Solicitors and legal representatives are legally entitled to make complaints on behalf of their clients and receive a response within the same timescale as a prisoner complaint. However, in the absence of anything in the policy to confirm this is the case, legal representatives are regularly told that complaints submitted by them on behalf of clients will be dealt with as "correspondence" and dealt with under a longer time frame. This is unfair. There is no legal aid for complaints and legal representatives usually only assist with complaints when prisoners are struggling to navigate the system themselves. The complaints may be about serious issues. For example, children and young people held in isolation may be unable to effectively use the complaints process due to restrictions on their regime. It is difficult for adults outside of the prison to assist in these situations.
- 8.2 The policy should explicitly clarify that complaints sent on behalf of a prisoner by a legal representative should also receive a response within five working days. This should also apply to the time limits for receiving a response to a COMP 1A form and receiving a response to complaints to the PPO.

## **9 Accessibility of the policy**

- 9.1 All the paragraphs and bullet points in the policy framework should be numbered in order to make it accessible to prisoners and to enable advocates to support prisoners who wish to make a complaint.

The Howard League  
22 October 2018

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<sup>3</sup> Lammy D (2016) The Lammy Review. Available at:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/643001/lammy-review-final-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf)