

Howard League for Penal Reform's response to NHS England's refresh of the intercollegiate Healthcare Standards for Children and Young People in Secure Settings

4 December 2018

Summary

1. The refresh of the intercollegiate healthcare standards for children and young people in secure settings is welcome and timely: too many children are cooped up in unhealthy conditions across a range of secure penal establishments.
2. The Howard League especially welcomes the addition of guiding principles for healthcare standards for children and young people in secure settings.
3. The guiding principles should be underpinned and grounded in children's rights and acknowledge that healthcare for children is inextricably bound with living in a healthy environment.
4. Safeguarding standards should apply the statutory threshold that applies in any other setting where children are at risk of harm.
5. The proposed standards on isolation and restraint are welcome but they do not appear to take account of the ethical concerns about the role of healthcare staff in the process of isolation and restraint.
6. The new standard on equality and diversity is welcome but should be integrated into the body of the guidance.

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 custody.
- 1.4 The Howard League would welcome the opportunity to provide further information about any of the points below.

2. The guiding principles

- 2.1 The Guiding principles for Healthcare Standards for Children and Young People in Secure Settings are welcome.
- 2.2 The principles would be enhanced if they were underpinned by and grounded in children's rights including the right that any decision affecting a child must be made in the best interests of the child, the right to the best quality health care and the right to have a voice in decisions affecting them.
- 2.3 This ethos is reflected at point 14.10.1 where there is the welcome inclusion of training on young people's rights and legislation. However, it should be front and centre of the guidance.
- 2.4 The standards acknowledge that healthcare for children is inextricably bound with living in a healthy environment where children are able to access fresh air, exercise and positive activities that make them feel healthy, as well as feel safe and emotionally supported. For too long, health in the context of custody has been seen as an isolated service instead of a holistic need. We append our recent submission to the Health and Social Care committee inquiry on this topic.
- 2.5 The interplay between health and well-being is highlighted throughout the body of the document but should be enshrined in the overarching principles given the huge difficulties that children in prison face in leading a healthy lifestyle.
- 2.5 We welcome the numerous examples throughout the document which highlight the importance of a whole prison approach to promoting health and wellbeing. For example:
 - *5.1.1 Healthcare staff must work with staff within the secure setting to ensure care planning and whole-system interventions are based upon individual formulations as part of the Framework for Integrated Care.*

- *5.4 Children and young people receive prompt healthcare and intervention to improve their health and wellbeing outcomes.*
- *6.5 There is a comprehensive whole system approach to improving health and wellbeing across the secure setting, which includes a health improvement strategy.*

- 2.6 The standards should be more robust about what healthcare staff should do if secure setting policies are failing to promote health and wellbeing.
- 2.7 As an example, point 6.5.1 states that the health improvement strategy should ‘(f) *increase physical activity and time outside of the child or young person’s room*’. Yet the Chief Inspector of prisons (2017) found that boys in prison were spending too long locked in their cells.¹ Boys on the most restricted regimes could have as little as 30 minutes out of their cell each day for showers, telephone calls and exercise.
- 2.8 Point 6.5.4 states that ‘*Healthcare teams in collaboration with other staff review all the policies within the secure setting annually, and provide advice as to whether practices are adversely affecting the physical or emotional health and wellbeing of children and young people.*’
- 2.9 Rather than merely prompting healthcare staff to provide ‘advice’, the standards should encourage a more robust response to concerns about well-being, similar to those envisaged in the safeguarding standard which states that healthcare staff should ‘*feel competent, confident and safe to raise concerns*’ (see 2.3.3).

3 Safeguarding

- 3.1 Safeguarding standards for healthcare staff should be vigilant in applying the statutory threshold for safeguarding children which would apply to any other setting where children are at risk of harm. The proposed standard makes reference to both the statutory requirements and local policies but does not explicitly embolden staff to rigorously apply the statutory test, even where local practice may reflect a lower standard.
- 3.2 For example, there may be situations where a child may objectively be at risk of harm, such as where a child is placed in isolation for a long period of time, placing them at risk of a deterioration in health and wellbeing, but local practice is not to deal with it as a safeguarding issue.
- 3.3 Point 2.3.3 states ‘*all healthcare practitioners are aware of and act in accordance with current safeguarding statutory guidance and the security’s safeguarding policy and feel competent, confident and safe to raise concerns in confidence without prejudicing their position following local safeguarding partners’ policies and procedures.*’
- 3.4 The encouragement to staff to feel able to raise concerns is welcome but it is not clear how this will be achieved. It may help if healthcare staff can point to a requirement in the healthcare standards to apply the objective statutory test in line with their duties as a healthcare practitioners rather than only having a requirement to follow local policy.

¹ https://www.justiceinspectrates.gov.uk/hmiprison/wp-content/uploads/sites/4/2018/07/6.4472_HMI-Prisons_AR-2017-18_Content_A4_Final_WEB.pdf

4. Isolation

- 4.1 The proposed standards refer to the isolation or separation of children in some detail (points 6.8, 6.8.1, 6.8.2 and 6.8.3). This is welcome.
- 4.2 However, the standards do not appear to take account of the recent ethical concerns about the role of healthcare staff in the process of isolation and segregation. The standards ought to be reviewed in light of the recent joint policy statement by the British Medical Association, the Royal College of Psychiatrists and the Royal College of Paediatrics and Child Health on the medical role in solitary confinement.²
- 4.3 Given the ‘unequivocal body of evidence on the profound impact solitary confinement can have on health and wellbeing’ (BMA, 2018) point 6.8.1 should be strengthened to reflect the risks of separation to children’s health and wellbeing and enable healthcare staff to feel confident to raise concerns and speak out about the risks.

5 Restraint

- 5.1 Point 14.5 states ‘*All healthcare practitioners are trained in the principles of the method of restraint where relevant to the setting (for example Minimising and Managing Physical Restraint (MMRP) or Restrictive Physical Intervention Training (RPI)), to support clinicians to understand potential risks and injuries. Healthcare staff provide health advice only which may inform any decision around restraint, and are not involved in the decision of whether to undertake a restraint or not.*’
- 5.2 We question whether it is ethical to involve staff with providing health advice on the use of restraint, particularly if that advice is not about refraining from the use of force on a child.

6 Equality and diversity

- 6.1 We welcome the new section on equality and diversity (section 15) but consider that children at risk of discrimination would be better served if the ethos of equality and diversity was integrated into the body of the guidance.
- 6.2 There are examples of this in the body of the guidance. For example, points 6.1.5 and 6.1.6 refer to support for children who are lesbian, gay, bisexual or transgender. Point 6.1.7 gives examples of additional factors which may affect foreign national children
- 6.3 It would be helpful if there were examples throughout the guidance of the specific health needs which may affect BAME children, such as sickle cell disease.

The Howard League for Penal Reform

4 December 2018

² <https://www.bma.org.uk/collective-voice/policy-and-research/equality/the-medical-role-in-solitary-confinement/our-joint-position-statement-on-the-medical-role-in-solitary-confinement>

Howard League for Penal Reform response to the Health and Social Care Committee's inquiry on prison healthcare

21 May 2018

Executive summary

- Prisons are a public health issue
- Prisons must be seen as communities which promote health
- The culture and environment of prisons requires urgent change to ensure that prisoners and staff are able to live and work in a healthy community that promotes their physical, mental, intellectual, moral and social wellbeing
- The Ministry of Justice must focus on prioritising and promoting the health and wellbeing of all prisoners and staff in order to prevent ill health
- Prison health needs a whole prison approach. It is much more than providing medical treatment for individual prisoners.
- Systemic change is needed to ensure that the health and wellbeing of prisoners and staff is a primary consideration in all prison policy and practice
- The Prison Service has a responsibility to ensure all prisons promote health
- Prisoners and staff will not be able to stay fit and healthy in a prison environment that is filthy, dehumanising and dangerous

1. About us

1.1 Founded in 1866, the Howard League is the oldest penal reform charity in the world. We have some 12,000 members, including lawyers, politicians, business leaders, practitioners, prisoners and their families and top 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 aim to 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 work.

1.2 Since 2002 the Howard League has provided the only legal service dedicated to representing children and young people in custody. Our legal work began with a landmark case in 2002, brought by the charity in its own name, to successfully challenge the assumption that the protections of the Children Act 1989 did not apply to children in prison.

1.3 The Howard League for Penal Reform and Centre for Mental Health conducted a programme of work on preventing prison suicides. We looked at the impact of prisons on mental wellbeing

and made recommendations for change. Frances Crook, CEO of the Howard League is a member of the ministerial board on deaths in custody.

1.4 Our submission, drawing on our lawyers' experiences and our policy work, addresses the second point in the terms of reference of the inquiry; namely the safety of prisons and the impact of the prison environment on the physical, mental and social wellbeing of prisoners and prison staff.

2. Prisons are a public health issue

2.1 Prisons are an urgent public health issue. Prisons are currently in a state of crisis that is deleterious to the health and wellbeing of prisoners and staff. Prisons are having a detrimental impact on the physical, mental, intellectual, moral and social wellbeing of prisoners and staff. Overcrowding, staff shortages, high levels of violence, poorly maintained buildings and infestations in prisons are damaging to health and wellbeing.

2.2 The high rates of violence, self-injury and suicide in prisons are an urgent public health issue which needs addressing. The Chief inspector of Prisons stated in his annual report (2017)³:

'Last year I reported that too many of our prisons had become unacceptably violent and dangerous places. The situation has not improved – in fact, it has become worse. There have been startling increases in all types of violence.'

In the same report he found that no prison holding children was safe.

2.3 Data from the Ministry of Justice in April 2018 showed that there were 29,485 recorded assaults in 2017 – a 13 per cent rise on the previous year. They included 8,429 assaults on prison staff – a 23 per cent rise compared to the previous 12 months. Incidents of self-injury rose by 11 per cent to 44,651 over the same period. Incidents of assault and self-injury are at their highest levels since current recording practices began in 1978. On average, an incident of self-injury in prison was recorded every 12 minutes and an assault was recorded every 18 minutes.

2.4 299 people died in prison custody in the 12 months to the end of March 2018, including 69 people who lost their lives through suicide. In the same period, there were five homicides. Since 1990, 4,727 people have died in prison⁴. In 2016, 122 prisoners took their own lives in prison, the highest number in a calendar year since current recording practices began in 1978.

2.5 The Inspectorate found insect and vermin infestations in prisons it inspected in 2016-2017. Living and working in such conditions is clearly detrimental to health and would not be tolerated in other communities.

3. Prisons must be seen as communities that promote health

3.1 Prisons need to look at health in a holistic way and address the entire spectrum of health and wellbeing needs. This requires a shift in focus and scope. Prison health is not merely about providing medical treatment for individual prisoners who are unwell, important though that is. Prisons must provide conditions which enable people to thrive, to stay healthy, improve their health and wellbeing and prevent the deterioration of their health.

3.2 Prisons must be designed and managed to ensure they promote health and prevent disease. Prisoners and staff must be able to maintain a good standard of health and be protected from

³ https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2017/07/HMIP-AR_2016-17_CONTENT_201017_WEB.pdf

⁴ <https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-december-2017>

threats to health. Prisons must ensure all who live and work there are able to make healthy choices to minimise the risk and impact of illness.

3.3 The introduction of smoke free prisons by the Prison Service is a good example of a public health approach that has improved outcomes of prisoners and staff. Alongside the ban on smoking, prisoners have been encouraged and supported to stop smoking. Smoke free prisons have improved the quality of life for those who live and work in prisons and undoubtedly prevented prisoners and staff from developing heart disease, lung cancer, strokes or other illnesses as a result of inhaling tobacco smoke.

4. The culture and environment of prisons requires urgent change

4.1 The culture of prisons in England and Wales does not encourage or promote a healthy lifestyle. The Howard League and Centre for Mental Health report on preventing prison suicides, published in 2016, stated that a prison regime should be built around a normal life. Prisoners should be able to get up, have a shower and breakfast, occupy themselves productively, socialise and exercise and go outdoors. Prisoners should be able to lead a good and useful life. The report found that prison life had become so divorced from this principle that 'both prisoners and staff were incarcerated in a filthy and frightening world that, at its worst, was killing people'.

4.2 The limited prison regime prevents prisoners and staff from making healthy choices to maintain or improve their physical and mental wellbeing. Across the prison estate, prisoners are spending hours locked in their cells each day being physically and mentally inactive. The Inspectorate reported that nearly a third of young adults (aged 18-21) held in adult institutions had told inspectors that they spent 22 hours or more a day in their cells (HMIP, 2017).

4.3 Prisons limit prisoners from making healthy choices. Prisoners have little choice over their diet and many prisoners eat their meals in their cells next to a toilet. Physical exercise is limited and access to the gym is restricted. Prisoners and staff spend little or no time outdoors. When prisoners do go outside, the surroundings are often bleak or for some prisoners in segregation, little more than an outside cage.

4.4 The punitive prison regime does not promote health and wellbeing. Instead, it places restrictions on factors such as physical activity, social interaction, visits and phone calls. Prison punishments deprive prisoners of healthy lifestyle choices. Exercise, showers, family contact and recreation time are all used as rewards for good behaviour or sanctions that can be taken away when behaviour is poor. A recent report published by the Inspectorate on incentivising and promoting good behaviour among children and young people in prison found that some young people were deprived of showers, outside exercise and access to telephones as a sanction for poor behaviour (HMIP, 2018)⁵.

4.5 Prisons should promote and enable prisoners to make healthy lifestyle choices. They should not deprive prisoners of factors that enable people to thrive. Choices about health and wellbeing should not be luxuries that prisoners have to earn.

4.6 The physical environment in which prisoners and staff live and work is damaging people's health. Prisoners are currently held in cramped, overcrowded and filthy conditions. Almost 60 per cent of prisons are holding more prisoners than the certified normal accommodation (CNA). Wandsworth is the most overcrowded prison, holding 1,373 men in a prison certified to accommodate a population of 841. Berwyn prison, opened in 2017, is designed to force two prisoners to share each cell with a toilet in the cell at the head of the bed, contrary to the UN

⁵ https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2017/11/6.3903_HMIP_Children-in-Custody-2016-17_FINAL_WEB_221117.pdf

standard minimum rules for the treatment of prisoners that state 'it is not desirable to have two prisoners in a cell or room.'⁶

4.7 In our experience of visiting almost every prison in the country over the past two decades, it is rare to find a whole prison environment that promotes health and wellbeing. Prisoners and staff should as a minimum have access to fresh air, natural light, a healthy diet, physical exercise, mental stimulation, peace and quiet and kindness.

4.8 Increasing the use of punishments for the challenging behaviour of prisoners does not address the underlying causes of that behaviour. In many cases, a punitive approach exacerbates levels of violence and is deleterious to prisoners' mental and physical wellbeing.

4.9 Other jurisdictions have recognised the importance of promoting health and wellbeing in prison and making them integral to the prison environment. Prisons in Norway have been built to allow every prisoner to have their own cell with a clear view of trees, the outside world and natural light. Communal areas, access to fresh air and outside spaces are part of this prison design and as a consequence the prisons do not experience the conflict and violence of our system.

5. The Ministry of Justice must prioritise and promote the health and wellbeing of prisoners and staff

5.1 Most prisoners come from deprived communities and many enter prison with poor health, drug and alcohol addictions, a history of mental ill-health and consequently are already likely to face premature mortality.

5.2 Discussion of prison healthcare has traditionally focussed on the need to provide improved individual treatment and whilst this is critically important, poor mental and physical health has been medicalised when better environmental conditions would obviate the need for medical interventions.

5.3 Secondly, it must be remembered that staff are incarcerated too. Their working conditions are cramped, fetid and unhealthy and would be vastly improved by a whole-institution approach to creating a healthy environment.

5.4 Much conflict could be prevented if prisoners and staff were existing in a healthy establishment that allowed for exercise, fresh air, decent food and better human interaction. Reduced violence would lessen the need for the repair of damaged bodies.

6. Prison health needs a whole prison approach.

6.1 'Health in prisons is too important to be left solely to the health team'.

The World Health Organisation⁷

6.2 NHS England's strategic plan for health services in the justice system 2016-2020 stated that it wishes to 'narrow the gap between those in criminal justice and detained settings and the rest of the population in terms of health and care outcomes'. The health and wellbeing of prisoners will not improve if health is not seen as a whole prison issue. The Ministry of Justice, the Department of Health, governors, prison officers, healthcare staff and prisoners must all work together to promote health.

⁶ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx>

⁷ http://www.euro.who.int/__data/assets/pdf_file/0005/249188/Prisons-and-Health.pdf?ua=1

6.3 The concept of a healthy prison is not a new idea. It was first set out by the World Health Organisation in 1995 and has been adopted by Her Majesty's Inspectorate of Prisons as part of the criteria for inspection.

6.4 The whole regime in prisons must be geared promoting health and wellbeing. Prisons should as far as possible replicate the environment and services of the community but in a secure setting.

7. The health and wellbeing of prisoners and staff must be a primary consideration in policy and practice

7.1 Health outcomes for prisoners are below that in the wider community. A report by the Prisons and Probation Ombudsman in 2012 found that the average age of male prisoners who had died from natural causes was 56, while for female prisoners the average was 47⁸. In the UK, the average age of death is 79 years for men and 83 years for women. Given that many prisoners will enter custody in poor health (WHO)⁹ it is essential that the health and wellbeing of prisoners is prioritised.

7.2 Prison service policies should acknowledge and consider the potential impact on health. Policies which are likely to have a negative impact on health and wellbeing should be changed. As an example, the revised incentives and earned privileges (IEP) scheme which came into force in 2013, failed to take into account the known vulnerabilities of prisoners in the early days in custody, particularly the high risk of suicide (see PPO Learning Lessons bulletin¹⁰). The revised IEP introduced Entry level for prisoners in the first two weeks following sentence, placing restrictions on prisoners' access to coping mechanisms including family contact, physical activity and personal possessions.

7.3 Prison policies and practices, such as control and restraint and segregation, have the potential to damage the health and wellbeing of all prisoners. The effects are known to be more harmful to prisoners who have poor mental and physical health. Howard League research on preventing prison suicide found that prisoners who were struggling to cope in prison and most at risk of suicide were more likely to be placed in solitary confinement. A study by the Prisons and Probation Ombudsman published in 2015 found that prisoners in segregation were at high risk of suicide. Of the eight prisoners who had killed themselves in prison segregation units, four had been assessed as at risk of suicide and self-harm. The Committee on the Prevention of Torture (CPT) has referred to evidence that solitary confinement can have an extremely damaging effect on the mental, somatic and social health of those concerned'. Despite the known risks to health, the use of segregation in prison is widespread.

7.4 In May 2018, the BMA published a statement, jointly with the Royal College of Psychiatrists and the Royal College of Paediatrics and Child Health, stating that solitary confinement should be banned for children who are locked up in the UK. The BMA statement refers to the unequivocal evidence of the 'profound impact' of solitary confinement on the health and well-being of young people, such as increased risk of suicide and self-harm'.

7.5 A healthy prison must recognise the damage prison policies and practices are inflicting on prisoners' often fragile mental and physical health.

8. The Howard League legal advice service for children and young people in prison

⁸ https://s3-eu-west-2.amazonaws.com/ppo-dev-storage-4dvljl6iqfyh/uploads/2014/07/learning_from_ppo_investigations-natural_cause_deaths_in_prison_custody.pdf

⁹ http://www.euro.who.int/__data/assets/pdf_file/0005/249188/Prisons-and-Health.pdf?ua=1

¹⁰ https://s3-eu-west-2.amazonaws.com/ppo-dev-storage-4dvljl6iqfyh/uploads/2016/02/PPO-LearningLessons-Bulletin-Fatal-incidents-issue-10-early-days-and-weeks-in-custody_Final_digital-1.pdf

8.1 Prison staff have a responsibility to ensure prisoners are able stay healthy, manage their own physical and mental wellbeing and stay fully informed about their health. It is our experience that in some prisons, barriers have been put in place that prevent prisoners from receiving the care they need.

8.2 In the 12 months leading up to March 2018 the Howard League legal advice line received over 180 calls raising concerns about their healthcare in respect of children and young adults in prison.

8.3 Young people have complained about lack of information about their own health treatment. Howard League lawyers represented a young adult prisoner who did not have a working hearing aid for weeks. Even after the Howard League took court action to ensure he would get a new hearing aid, he was still denied information about when his appointment was for this to be rectified. Another young person complained that she was denied access to letters from the hospital about follow up treatment for a serious and lifelong inherited health condition.

8.4 The Howard League has received a number of calls on behalf of children being denied their medication. For example, a 15 year old boy with ADHD on a restricted regime that meant he was locked in his cell for over 22 hours a day told us he had not received his medication. The Howard League lawyers contacted the prison to ensure he received it.

8.5 Children with serious mental health problems have told us they are receiving inadequate healthcare. For example, a 17 year old boy called the Howard League advice from prison and told us he had depression, was hearing voices and had diabetes. He had put in several complaints to the prison to get the medical attention needed but had not received any response. Instead he had been told to take his medication and drink fluids to make him feel better.

8.6 Children, young adults and carers tell us they are not taken seriously when they raise concerns about health issues in prison. Many young people struggle to raise concerns about health, especially if they might consider the issues embarrassing. It is essential that young people are actively encouraged to look after their health and wellbeing.

8.7 Prisoner/staff relationships are important in promoting health. Staff need to be able to build positive relationships with prisoners in order support their physical and emotional wellbeing.

8.9 Prisoner health and well-being is not a luxury; it is a legal entitlement.

Frances Crook
CEO

The Howard League for Penal Reform
21 May 2018