

**BEFORE THE INDEPENDENT INQUIRY
INTO CHILD SEXUAL ABUSE**

RE: Child sexual abuse in custodial institutions

WITNESS STATEMENT OF LAURA JANES

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I, Laura Janes, Legal Director of The Howard League for Penal Reform, 1 Ardleigh Road, London, N1 4HS shall state as follows:

1. INTRODUCTION

- 1.1 I am the Legal Director at the Howard League for Penal Reform. I was admitted as a solicitor in 2006 and have a professional doctorate in youth justice. My doctoral thesis concerned the experiences of children with histories of harmful sexual behaviour in the criminal justice system.¹ I have published articles in academic journals on this subject.² Since joining the Howard League in 2005, I have advised and represented children and young people in penal detention. I have conducted hundreds of cases. I have lectured and delivered training on the subject of children in detention to a range of professional audiences, including the International Association of Youth and Family Judges and Magistrates, the National Association of Youth Justice annual conference and the Parole Board for England and Wales.
- 1.2 As the Legal Director, I conduct direct case work and oversee the work of the legal department. I also oversee relevant policy and participation work for the organisation. For example, I am currently leading on a European project looking at the participation of children in monitoring and promoting their rights while detained.³
- 1.3 I am duly authorised to make this statement on behalf of the Howard League for Penal Reform. The contents of this witness statement are true to the best of my knowledge, information and belief.

¹ Available at <http://uobrep.openrepository.com/uobrep/handle/10547/622404>.

² See, for example, Janes, L. (2016) Is criminalising children's sexual behaviour counterproductive? *Child and family law quarterly*, 8 (3): 239-260.

³ For more information see <https://howardleague.org/legal-work/childrens-rights-behind-bars/>.

2. ABOUT THE HOWARD LEAGUE FOR PENAL REFORM

2.1 Founded in 1866, the Howard League for Penal Reform is the oldest penal reform charity in the UK and has over 12,000 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.

2.2 The Howard League works for less crime, safer communities and fewer people in prison. It aims to achieve these objectives through conducting and commissioning research, carrying out investigations aimed at revealing underlying problems and discovering new solutions to issues of public concern. The Howard League's wider policy work draws on more than 150 years of experience in the field of penal reform and involves working with policy-makers, representatives of Her Majesty's Prison and Probation Service, academics and international bodies concerned with penal reform.

Relevant publications

2.3 The Howard League has undertaken a considerable amount of policy and research work on the treatment and experiences of children in custody. Relevant publications within the last 10 years include:

2.3.1 The Carlile Inquiry 10 years on (2016):⁴ This report followed the Howard League's independent inquiry, chaired by Lord Carlile of Berriew QC, into the use of restraint, solitary confinement and strip-searching in penal institutions for children in 2006 including

⁴ Howard League for Penal Reform, The Carlile Inquiry 10 years on - The use of restraint, solitary confinement and strip-searching on children (2016). London: Howard League for Penal Reform. Available at <https://howardleague.org/wp-content/uploads/2016/06/Carlile-Inquiry-10-years-on.pdf>.

consideration as to the risks posed by the use of force to children who had previously experienced sexual abuse.

- 2.3.2 Healthy sexual development of children in prison (2015a):⁵ This briefing emerged from the Commission on Sex in Prison, established in 2013 by the Howard League for Penal Reform, to undertake the first ever review of sex inside prison. It explores how the institutional culture of prisons – including the overwhelming focus on security, the power dynamic between staff and children, the lack of physical contact save within the context of the use of restraint, and the tendency to punish, shame or view normal sexual behaviour (e.g. masturbation) as a risk factor or disciplinary measure – impedes healthy sexual development.
- 2.3.3 Use your situation to change your destination (2015b):⁶ This evaluation of the Howard League's participation project illustrates the impact of the Howard League's participation work in empowering young people to feel more confident, listened to and in control, showing that it is possible to empower young people to better speak out even within the confines of a penal setting.
- 2.3.4 Out of place: The policing and criminalisation of sexually exploited girls and young women (2012):⁷ This report by Professor Phoenix explores the unknown scale and hidden nature of sexual exploitation in local communities leading to the unnecessary criminalisation of girls.

⁵ Howard League for Penal Reform, Commission on Sex in Prison. (2015). Healthy sexual development of children in prison. London: Howard League for Penal Reform. Available at <https://howardleague.org/wp-content/uploads/2016/03/Healthy-sexual-development-of-children-in-prison.pdf>

⁶ Howard League for Penal Reform. (2015). Use your situation to change your destination: Evaluation of The Howard League for Penal Reform's U R Boss. London: Howard League for Penal Reform. Available at https://howardleague.org/wp-content/uploads/2016/03/use-your-situation_final.pdf

⁷ Phoenix, J. (2012) Out of Place: The Policing and Criminalisation of Sexually Exploited Girls and Young Women, London: The Howard League for Penal Reform. Available at <https://howardleague.org/publications/out-of-place/>

- 2.3.5 Life inside: a unique insight into the day to day experiences of 15-17 year old males in prison (2010):⁸ This policy report, produced as part of the Howard League's participation project, reveals day-to-day conditions of life in custody from the perspective of children involved in the project and includes recommendations to ensure children's voices are heard within the children's secure estate.
- 2.4 The Howard League has produced numerous other reports that are relevant to the risk of sexual abuse for children in prison prior to 2008. These included the original Carlile Inquiry (2006)⁹ and a report by Anthony Scrivener QC that examined the suicides of four young people at HMYOI Feltham (1993).¹⁰ The Scrivener report included a detailed examination of what happened to Lee Waite, an 18 year old on remand who committed suicide following a brutal sexual assault, which staff were unaware of. What happened to Lee Waite serves as chilling reminder of the horrific consequences of abuse in institutions.

The legal and participation work of the Howard League

- 2.5 In 2002 the Howard League challenged the legality of the Secretary of State's policy that the protections of the Children Act 1989 did not apply to children held in young offender institutions. This landmark case found that the Children Act applies to children in custody and led to a raft of child protection policies and procedures being introduced to prisons. Following that case, the Howard League established a legal department which provides frontline advice and

⁸ Howard League for Penal Reform. (2010). Life inside 2010: a unique insight into the day to day experiences of 15 - 17 year old males in prison. London: Howard League for Penal Reform. Available at <https://howardleague.org/wp-content/uploads/2016/05/Life-Inside-2010.pdf>

⁹ Carlile, A.C. (2006). The Carlile Inquiry: an independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children's homes. London: Howard League for Penal Reform. Available at <https://howardleague.org/publications/carlile-report/>

¹⁰ Scrivener, A. (1993). Suicides in Feltham: Report of an Inquiry into suicides of four young men between August 1991 and March 1992. London: Howard League for Penal Reform.

representation to young people in the criminal justice system aged 21 and under in relation to prison law and public law matters.¹¹

2.6 Young people and concerned adults are able to contact the legal team for free and confidential advice through the Howard League's access to justice service. This includes a hotline that young people aged 25 and under can call directly from prison, which is automatically available on the prison "pin" system. That means young people do not need to seek approval to call the number. In the past five years the Howard League's legal team has dealt with more than 5,000 new enquiries, and taken more than 20,000 calls from young people in prison. The legal team is most frequently contacted by, or on behalf of, young people who report having nowhere to live on release, need advice or representation for disciplinary hearings in prison or raise concerns about treatment and conditions. The team will identify additional legal problems that arise in the course of discussion. As well as telephone advice, the team represents individual children and young adults, providing a full legal service, often meeting clients face to face, representing them at prison disciplinary hearings, parole board hearings and bringing complaints and judicial reviews where appropriate. In the course directly representing young people, the lawyers in my team take great care both to build rapport with young people and to obtain and analyse as much documentary evidence to gain a deeper insight into their lives and experiences.

2.7 Participation has been a feature of the legal work since 2010 and has become embedded into the organisation. Alongside the direct legal work, we use a range of methods from child-friendly questionnaires to legal education workshops with children in custody to gather children's wider views and experiences. We are currently involved in an international project focused on empowering children in prison to realise their rights (Howard League, 2018).¹²

¹¹ For more information about the legal work of the Howard League see Howard League for Penal Reform (2017) *Justice for Young People: 15 years of successful legal work*. London etc. Available at <https://howardleague.org/publications/justice-for-young-people-2/>

¹² <https://howardleague.org/blog/enshrining-childrens-rights-in-policy-and-practice/>

- 2.8 The Howard League has a robust safeguarding policy. Whenever we are made aware that a child might be at immediate risk of harm to themselves or others, we will make a safeguarding referral. We made approximately 40 safeguarding referrals on behalf of children in prison in 2017.

Information used to inform this statement

- 2.9 In order to inform this statement, I have considered the enquiries made to the Howard League service and logged on our confidential case management system over the past five years. In addition, I have reflected on my own experiences representing children and young adults, as well my knowledge through supervising work within the team, and have reviewed case files. I have discussed my preliminary views with colleagues at the Howard League and with young adults who have themselves been children in prison. I have also considered the relevant policy work of the Howard League. Where applicable, case studies have been anonymised to protect the identity of those involved.

3. OVERARCHING OBSERVATIONS

- 3.1 The starting point is that prison is inherently risky and it will be impossible to eradicate the risk of sexual abuse for children in penal detention. The Howard League has long advocated for a penal policy that detains only a very small number of children who genuinely cannot be managed safely in the community and then only in small local authority secure children's homes (LASCHs).¹³ That view is well-documented elsewhere and not repeated here. In order to provide constructive comment on issues that might be of relevance

¹³ For more information see for example Howard League for Penal Reform. (2012) Future Insecure: Secure children's homes in England and Wales. Available at <https://howardleague.org/what-you-can-do/transform-prisons/children-and-young-people/> and Howard League for Penal Reform (2015) Letter to Secretary of State for Justice. Available at https://howardleague.org/wp-content/uploads/2016/04/Letter_to_Michael_Gove_-_youth_justice.pdf

to the Inquiry's recommendations, I have focused on the reasons why sexual abuse might be so rarely reported and features of the environment that may increase the risk of children in custody being sexually abused, as well as identifying hurdles to making effective complaints and preventative measures.

Rarely Reported

- 3.2 As the Rapid Evidence Assessment (REA) from the Independent Inquiry into Child Sexual Abuse (IICSA) (IICSA, 2018, p.111) acknowledges, the available literature suggests that children in the secure estate rarely report abuse.¹⁴ This accords with my experience: the Howard League has become aware of a small handful of instances in the last ten years where children have reported any form of sexual abuse. Young adults, aged 18 to 25, have more frequently reported sexual abuse to the Howard League legal team, which suggests at best that children are either less likely to be abused or, at worst that they are less likely to report it.¹⁵
- 3.3 Research suggests that in the community the reported prevalence of sexual abuse suffered by children is likely to be an underestimate: much sexual abuse in the community goes unreported or is not recognised or dealt with as sexual abuse. For instance, a prevalence study of child maltreatment in the UK by Cawson et al (2000)¹⁶, found that around 16% of young people surveyed had been abused under the age of 16 and that three quarters of this abuse was unreported at the time. Studies also show that a high proportion of sexual abuse suffered by children involves child perpetrators. For example, an NSPCC study of child maltreatment in the UK found that 65.9% of contact sexual abuse experienced by children is perpetrated by under 18s (Radford et

¹⁴ IICSA (2018) Child sexual abuse in custodial institutions: A rapid evidence assessment. Available at <https://www.iicsa.org.uk/document/child-sexual-abuse-custodial-institutions-rea-full-report>, p.111

¹⁵ While the experiences of young adults in the secure estate is outside of the Inquiry's remit, based on the research for this statement it would appear that young adults are at particular risk of sexual abuse in custody (see paragraph 5.2).

¹⁶ Cawson et al (2000) Child Maltreatment in the United Kingdom: a Study of the Prevalence of Abuse and Neglect, NSPCC.

al, 2011)¹⁷. This finding may be relevant when considering the situation of children in custody where children are forcibly confined together. There is the further complication that sexual behaviour between children that they may consider consensual is in fact unlawful due to their age. Around one fifth of children in prison are below the legal age of consent (Ministry of Justice, 2018).¹⁸

3.4 The fact that sexual abuse is rarely reported by children in the secure estate cannot be said to indicate the extent to which it is prevalent. As the REA (IICSA, 2018, p.12) indicates, there is very little information about how prevalent sexual abuse is in custody.¹⁹ The Howard League's Commission on Sex in Prison found that neither the National Offender Management Service nor the Youth Justice Board (YJB) were able to supply information on the number of official complaints of sexual abuse in custody or the number of investigations, criminal charges or convictions following a complaint.²⁰

3.5 What we do know is that when unearthed, years later, sexual abuse is often closely interwoven with violence, as it was in the tragic case of Lee Waite (see paragraph 2.4) and Medomsley Detention Centre.

Barriers to reporting and features of the custodial environment that may increase the risk of abuse

3.6 In my view the reluctance to report sexual abuse is not surprising. Factors may include the nature and culture of the environment, high levels of sexual frustration combined with the stifling of normal sexual development, the embarrassment often caused by the issue of sexual abuse, fear of reprisal and

¹⁷ Radford et al (2011) Child abuse and neglect in the UK today, NSPCC. Available at <https://www.nspcc.org.uk/globalassets/documents/research-reports/child-abuse-neglect-uk-today-research-report.pdf>

¹⁸ Ministry of Justice (2018) Youth Custody Data. Available at <https://www.gov.uk/government/statistics/youth-custody-data>

¹⁹ IICSA (2018) Child sexual abuse in custodial institutions, 12.

²⁰ Howard League for Penal Reform (2015) Healthy Sexual Development of Children in Prison.

the responses that children experience when they report other forms of abuse. Sometimes children do not recognise that they are being abused or badly treated as they may have low expectations, limited education and life experience, a distorted view of what is normal or feel too embarrassed.

- 3.7 In the context of the secure estate, in my experience, situations that indicate that sexual abuse may have occurred tend to arise in the context of formal behaviour management processes, such as the use of force or the disciplinary process.
- 3.8 Even if sexual abuse in prison is as rare as suggested by the self-report surveys gathered by HM Inspectorate of Prisons (HMIP)²¹, in order to reduce the risk of such abuse, it is necessary to consider the structural and cultural features of the children's secure estate that enable it to occur at all. Research suggests that sexual abuse is more likely to occur in environments where the culture is punitive rather than rehabilitative, 'closed', hierarchical and 'macho' (IICSA, 2018, p. 13).²² If this is correct, the current conditions within the secure estate for children are precisely the kinds of places where abuse may occur. Children are locked up for excessive periods, exposed to excessive violence and not provided with sufficient access to education, social activities and emotional and mental health support. Levels of bullying, racism and homophobia in custody are high.

Hurdles to effective redress and measures that may prevent abuse

- 3.9 Children have little faith in complaints and child protection processes to remedy these problems for a number of reasons. As a consequence, children are unlikely to have the self-esteem and self-confidence to be able to speak out about it. That means that if sexual abuse occurs, it is more likely to

²¹ HM Inspectorate of Prisons (2017) Children in Custody 2016-17: An analysis of 12-18-year-olds' perceptions of their experiences in secure training centres and young offender institutions. Available at <https://www.justiceinspectorates.gov.uk/hmiprison/inspections/children-in-custody-2016-17/>

²² IICSA (2018) Child sexual abuse in custodial institutions, 13.

happen with impunity unless urgent steps are taken to deal with these issues. There are also a number of features of the children's secure estate that in my view are important to safeguard to ensure that abuse is prevented in the first place, including the permanent presence of external and independent persons who have a focus on children's welfare and rights.

4. DEFINITION OF CHILD SEXUAL ABUSE

- 4.1 In the preparation of this statement, I have borne in mind the definition of child sexual abuse adopted by the Inquiry based on the definitions used in guidance issued by the Department of Education, as confirmed at paragraph 3.1 of the Interim report:

"Child sexual abuse

Sexual abuse of children involves forcing or enticing a child or young person to take part in sexual activities, whether or not the child is aware of what is happening.

The activities may involve physical contact, including abuse by penetration or non-penetrative acts (such as masturbation, kissing, rubbing and touching outside clothing). They may also include non-contact activities, such as involving children in looking at, or in the production of, sexual images, watching sexual activities, encouraging children to behave in sexually inappropriate ways, or grooming a child in preparation for abuse including via the internet. Child sexual abuse includes child sexual exploitation.

Child sexual exploitation

Child sexual exploitation is a form of child sexual abuse. It occurs where an individual or group takes advantage of an imbalance of

power to coerce, manipulate or deceive a child or young person under the age of 18 into sexual activity (a) in exchange for something the victim needs or wants, and/or (b) for the financial advantage or increased status of the perpetrator or facilitator.³¹

The victim may have been sexually exploited even if the sexual activity appears consensual. Child sexual exploitation does not always involve physical contact, it can also occur through the use of technology.”²³

- 4.2 It is important to reflect at the outset whether this definition is sufficiently clear or even accessible to children, as it is imperative that children understand what sexual abuse is if they are to be in a position to report it or prevent it from happening (see paragraph 6.1 below).

5. RARELY REPORTED – CHILDREN’S VOICES

- 5.1 In my experience, it is rare for a child to raise concerns about sexual abuse in prison. From an analysis of more than 800 enquiries and case files, I have identified only a small handful of concerns raised by or on behalf of children. These include:

- 5.1.1 A complaint by a 17-year-old boy in a Young Offenders Institution (YOI) about a female member of staff engaging in a sexual relationship with him;
- 5.1.2 A complaint by a 17-year-old girl in a YOI about being inappropriately touched by an escort driver while on temporary release;
- 5.1.3 A complaint by a 17-year-old boy in a YOI who alleged he was slapped on his bottom in the course of a restraint;

²³ Department of Education (2018) Interim Report of the Independent Inquiry into Child Sexual Abuse. Available at <https://www.gov.uk/government/publications/independent-inquiry-into-child-sexual-abuse-interim-report>

- 5.1.4 Concerns about a 17-year-old in a YOI with learning difficulties who alleged he was sexually assaulted as part of an attack by four other young people;
 - 5.1.5 A complaint by a 15-year-old about inappropriate use of force in an Secure Training Centre (STC) that he said involved “play fighting” and inappropriate behaviour by staff in that he complained of being restrained on his bed; and
 - 5.1.6 A 15-year old-child who had been age-assessed as being four years older than his claimed age and was placed in an adult prison where he alleged he was subjected to a physical assault and an attempted rape in the showers.
- 5.2 In only three of these instances did the child explicitly raise concerns about sexual abuse directly with the Howard League. In the other cases, the alleged inappropriate sexual behaviour was either raised by a third party or emerged in the course of considering other issues on behalf of the child. In each of these cases, where we have had sufficient information to do so, we have taken active steps to ensure the relevant authorities are aware of the concerns, and where appropriate we have progressed complaints on behalf of the child concerned. To the best of my knowledge, none of these have resulted in any recommendations or sanctions to prevent such abuse occurring in the future. In most cases, even where the child has been engaged in trying to seek an investigation or remedy at the outset, the relevant processes have taken too long to be meaningful for the child. For example, the case referred to at paragraph 5.1.5 took seven years from the incident until the final investigation by the Prisons and Probation Ombudsman (PPO). By the time this conclusion had been reached, the young person was an adult. In discussion with three young adults I represented as children in custody, all three were absolutely clear in their view that if sexual abuse were to occur, as children in prison they would have found it extremely difficult to report it.

5.3 In contrast, the Howard League has received a number of allegations of sexual abuse from young adults over the years. The analysis of enquiries and case files prepared for this statement suggests that young adults aged 18 to 25 are more likely to report serious sexual abuse. Concerns raised by young adults to the Howard League have included deeply disturbing allegations, such as the rape of a learning disabled young adult by his cell mate described in the judgment of His Honour Judge Mackie QC in *R(NM) v the Secretary of State for Justice* [2011] EWHC 1816 (Admin) at paragraphs 4 to 14. In the context of this inquiry, it may be instructive to consider the differences in the experiences and arrangements for young adults compared to children in prison with a view to determining the features of the children's estate that may reduce the risk of abuse (see paragraph 7.5 below). In his context, it may also be instructive to consider the experiences of those children who are deemed to be adults, and are therefore detained in adult penal establishments.²⁴

6. BARRIERS TO REPORTING SEXUAL ABUSE AND FEATURES OF THE CUSTODIAL ENVIRONMENT THAT MAY INCREASE THE RISK OF SEXUAL ABUSE

Lack of understanding what sexual abuse is in context

6.1 In my discussions with young people about sexual abuse, the lack of understanding about what it is, when it falls short of what the young person perceives to be non-consensual sexual violence, is a common theme. For example, it is not immediately obvious to children that exposure to sexualised behaviour, even in the form of relentless exposure to verbal sexualised language by other children could arguably fall under the definition of abuse.

²⁴ The case of *R(GE) v Secretary of State for the Home Department and Bedford Borough Council* [2014] EWCA Civ 1490 held that a child's age is objective for the purpose of Children Act duties.

- 6.2 There is very little written about the language used in YOIs to the best of my knowledge, but from my experience of being on segregation units waiting for adjudications to take place or reading reports documenting children's behaviour, it is common to hear sexually explicit and sometimes violent language such as "suck your mum" or "stab your mum in the vagina". As children in YOIs spend a lot of time locked behind their cell doors, this is often shouted out through the doors, so it is heard by anyone within ear-shot. From my experience, I doubt that any young person would consider exposure to constant sexualised language as abusive to the extent that they would consider themselves a victim and no young person has ever raised that with me. If a child in any other setting was exposed to a constant barrage of highly sexualised language from which they could not remove themselves, I suspect that would be considered a child protection issue.²⁵
- 6.3 What children themselves consider to be sexually abusive has to be considered in the context of what has been described as the hyper-sexualised culture in society at large.²⁶ It also needs to be considered in the context of children's secure establishments where there are high levels of sexual frustration. The lack of opportunities for ordinary sexual development, including the freedom to develop one's own sexual identity without fear of reprisal is barely covered in the literature, save for the Howard League's 2015 briefing on the subject.²⁷ The reality of most teenage boys aged 15 to 17 in any setting is that they experience particularly high levels of arousal. As one young adult who spent most of his teenage years in custodial establishments told me, "at that age you want to shag anything that moves".
- 6.4 One young adult told me that he believed the high levels of violence in the children's secure estate are attributable, at least in part, to high levels of

²⁵ The REA refers to the concern that children with histories of sexually harmful behaviour may be more likely to be victims of sexual abuse in custody (IICSA, 2018, pages 58 and 59). In my experience, children who are convicted of sexual offences are at particular risk of being called names as "nonces" or "paedophiles" but I am yet to read of any working definition of child sexual abuse that would consider such victimisation as sexual abuse in itself, as opposed to bullying.

²⁶ Papadopoulos, L, (2010) Sexualisation of Young People Review, Home Office. Available at http://www.ncdsv.org/images/Sexualisation-of-young-people-review_2-2010.pdf

²⁷ Howard League for Penal Reform (2015) Healthy Sexual Development of Children in Prison.

sexual frustration. In an article by Amelia Gentleman, written after she spent three days in HMYOI Ashfield, which held around 300 children aged 15 to 17 in 2011, one child is reported as saying "We fight because they don't keep you occupied. Or because we are sexually frustrated".²⁸ Latest data from the Ministry of Justice shows a steady increase year on year in the rate of assaults per 100 children or young people in custody from 9.8% in 2012 to 19.5% in 2017.²⁹ This is coupled with an increase in the use of restrictive physical intervention ("RPI"), from 25.1% in 2012 to 32.1% in 2017.³⁰

6.5 Even where sexual behaviour is more obviously abusive, children may still feel confused about whether or not they are the perpetrator or the victim. In the words of one young adult who was detained in custodial institutions from the age of 15 until adulthood and beyond, "they are self-conscious and not sure if it is them who have done something wrong". I am of the view that having been removed from the normal course of adolescent sexual development and having no authorised healthy outlet to express themselves, it becomes even harder for children to know what is "normal", especially if their early childhood experiences have been abnormal. In my own doctoral research on children with histories of harmful sexual behaviour, several of the children had distorted views of what was sexually appropriate. For example, one young person I interviewed explained that his first exposure to sex was through porn, such that he thought sex was supposed to hurt; another's first exposure to sex was being raped, although he did not know what that word meant until he was charged with it himself (Janes, 2013).³¹

6.6 Understanding what is and is not acceptable is critical to understanding the prevalence and extent of abuse, because children cannot report something if

²⁸ Gentleman, A. (2011) 'Life in a young offenders' institution' *The Guardian*. Available at <https://www.theguardian.com/society/2011/nov/21/young-offenders-institution-ashfield>

²⁹ Youth Justice Board (2017) Youth Justice Statistics 2016/2017. Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/676072/youth_justice_statistics_2016-17.pdf

³⁰ *Ibid.*

³¹ Janes, L. (2013) 'Children, sex and the law'. Professional Doctorate in Youth Justice thesis. University of Bedfordshire Available at <http://uobrep.openrepository.com/uobrep/handle/10547/622404>

they do not know what it is. Many of the children in prison have missed out on school and therefore are highly likely to have missed out on sex education in the community. To the best of my knowledge, sex education in prison is patchy at best, notwithstanding that standards from the Department of Health (2012)³² state that all people in prison should have access to a social and life skills module on sex and relationship education (Howard League, 2015a).³³

6.7 I am not aware of any standardised sexual education, let alone sexual legal education, across the secure estate for children. The only time I have come across children in prison being provided with in-depth work around sexual behaviour, consent and what is and is not appropriate, is when they are being “treated” for their own sexually harmful behaviour. Since the Lucy Faithfull Foundation did not have its contract to provide specialist interventions for children with harmful sexual behaviour renewed, there has not been a single standardised service even for such children throughout the children’s secure estate. Work is tailored to individual children and can take a very long time to be provided. This is disappointing given that, in contrast to recent concerns about the evidence base for the efficacy of the adult Sex Offender Treatment Programmes (Ministry of Justice, 2017)³⁴, there is evidence that interventions with children such as the Lucy Faithfull Foundation’s work based on the Good Lives model is effective in reducing the risk of reconviction for sexual offending (Rich, 2011).³⁵

6.8 As children approach adulthood, they are exploring their relationships with others, developing intimate relationships and learning about issues such as equality, respect, sexuality, gender identity and sexual consent (Howard

³² Department of Health (2012) Public health functions to be exercised by the NHS Commissioning Board, Service specification No.29: Public health services for people in prison or other places of detention, including those held in the Young People’s Secure Estate. Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/213171/29-People-in-prison-specification-121025.pdf

³³ Howard League for Penal Reform (2015) Healthy sexual development of children in prison.

³⁴ Ministry of Justice (2017) Impact evaluation of the prison-based Core Sex Offender Treatment Programme. Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/623876/sotp-report-web-.pdf

³⁵ Rich, P. *Understanding, assessing, and rehabilitating juvenile sexual offenders* (Wiley, 2nd edn, 2011).

League, 2015a).³⁶ Children in prison will be going through this process of transition while in custody. They have very little control over their physical appearance in contrast to teenagers in the community – it was only recently that the last children's prison agreed that children could wear their own underwear. Further, they have little or no contact with their families and no physical contact with teenagers with whom they are able to form sexual attachments. One young adult who entered prison at the age of 15 put it well when he told me "everybody knows you stay the age you come in at". I regularly talk to young adults in the community who spent prolonged periods of their teenage years in prison and are now engaging in relationships for the first time. They are struggling with 'first experiences' when their partner is expecting a greater level of maturity: such young people will simply never be able to get back having those experiences at that time. So long as children in prison are deprived of appropriate education, guidance and opportunities to learn about healthy sexual development it will be inevitable that their understanding of what is and is not acceptable will be distorted or inadequate.

Children from certain backgrounds may be at increased risk

6.9 It is well established that children who end up in the justice system come, in the main, from the most disadvantaged families and communities, whose lives are frequently characterised by social deprivation, neglect and abuse. Despite looked after children accounting for less than 1% of the total population, 37% of 15-18 year old boys held in YOIs and almost two-fifths of children held in STCs during 2015-16 had been in local authority care at some point (Howard League, 2016).³⁷ In the Howard League's Children Act case in 2002, Mr Justice Munby said:

³⁶ Howard League for Penal Reform (2015) Healthy sexual development of children in prison.

³⁷ Howard League for Penal Reform (2016) Criminal care: Children's homes and criminalising children. Howard League for Penal Reform. Available at <https://howardleague.org/wp-content/uploads/2016/02/Criminal-Care.pdf>

'[Children in custody] are, on any view, vulnerable and needy children. Disproportionately they come from chaotic backgrounds. Many have suffered abuse or neglect...they need help, protection and support if future offending is to be prevented. Over half of the children in YOIs have been in care. Significant percentages report having suffered or experienced abuse of a violent, sexual or emotional nature.' (*The Queen (on the Application of the Howard League) v Secretary of State for the Home Department and the Department of Health* [2003] 1 FLR 484, para 10)

6.10 As the REA notes, children from certain backgrounds may be at greater risk of sexual abuse in the prison estate (IICSA, 2018, p. 59).³⁸ In my view, these features ought to be considered as potential warning signs that a child may become a victim of sexual abuse. In respect of some of these backgrounds, I make the following observations:

6.11.1 **Gender:** Although the evidence from international studies cited in the REA suggests that abuse by staff is more prevalent among boys, this is not the case in my experience. The number of girls in prison is very small at just 3% of the children's secure estate, so it is impossible to draw any firm conclusions. However, in my work, a number of girls have indicated that they have had inappropriate experiences with staff members. The extent to which this was considered to be abusive by the children seemed to depend on a number of factors including their own perceived role in the relationship, the child's age and their past experiences. I am also aware that some girls have been distressed by both highly sexualised language and strip-searching. In terms of peer-on-peer abuse, concerns appear to relate more to sexualised language in bullying and the sense that the small number of girls mean there are very few girls in a boy's world.

³⁸ IICSA (2018) Child sexual abuse in custodial institutions, p 59.

6.11.2 **Ethnicity:** In accordance with the evidence cited that the risk of sexual abuse from staff occurs at a higher rate for non-white children, I note that in some of the calls to the Howard League legal service where children and young adults have raised concerns about sexualised behaviour towards them, they have also raised concerns about racism. However, due to the low number of concerns raised, it would not be appropriate to draw any conclusions from this. I am unaware of any research in this jurisdiction that specifically addresses the extent to which BAME children are more likely than other children to be the victim of sexual abuse in custody. As BAME children comprise 44% of the secure children's estate population as compared to 18% of the general population, this is an area that should be further explored (Ministry of Justice, 2018).³⁹

6.11.2 **Sexual orientation:** The REA notes that gay, lesbian and bisexual children reported a much higher rate of peer sexual victimisation than heterosexual youth in the United States of America (IICSA, 2018, p. 59).⁴⁰ The Howard League Commission on Sex in Prison heard evidence of the particular disadvantages experienced by gay children: it was reported that homophobia was common in male prisons and very few boys identified as non-heterosexual. This accords with my own experience of representing children in prison. For the purpose of completing this statement, I spoke to a young adult who had spent three years in prison from the age of 15. He was openly gay prior to admission. In his view, children who openly identified as gay were more likely to be approached for sexual contact by other boys. The young person concerned was well supported by a carer in the community with whom he was able to confide. He also felt that staff were more likely to engage in explicitly sexualised banter with openly gay children, possibly in the belief that they were developing a rapport with the young person. In one establishment, a few years ago, part of

³⁹ Ministry of Justice (2018) Youth Custody Data. Available at <https://www.gov.uk/government/statistics/youth-custody-data>

⁴⁰ IICSA (2018) Child sexual abuse in custodial institutions, p. 61.

a wing was designated as “pink” in an effort to make openly gay boys feel more comfortable, although it did not last. I am not aware of any research on the risk of sexual abuse to homosexual children in prison in this jurisdiction.

6.11.3 History of prior sexual assault: The REA refers to research from the United States that both children with a history of being victims of sexual assault, and perpetrators of sexual assault, were more likely to be both victims and perpetrators of sexual assault (IICSA, 2018, p.61)⁴¹. Given the low levels of reporting of sexual abuse in this jurisdiction, it is not surprising that there is no research on this. It is true to say that many of the case histories of the child clients I have represented over the years have contained references to past sexual abuse. In line with the research, this is especially the case in relation to girls and may affect and frame their experience in custody. For example, a girl that we understood had been a victim of sexual abuse in the past refused to submit to a strip search in an STC, explaining that she had “not [got] the self-esteem for it”. The implication was that this experience might be re-traumatising. Similarly, I recall another girl I represented who had experienced past sexual abuse, becoming very traumatised by being strip searched on her return to an STC following hospital check-ups during her pregnancy.

6.11 Given the lack of research in these areas and the prevalence of some of these indicators, it is in my view impossible to say that effective steps are presently taken to ward against the risk of abuse for children in these categories.

Violence and isolation

6.12 On top of histories of multiple disadvantage, once in custody children are exposed to levels of violence (including witnessing fights between other young

⁴¹ *Ibid.*

people and restraints by staff) and isolation that simply do not arise in the community.

6.13 Both violence and sexual abuse by staff on boys featured heavily at Medomsley Detention Centre (Crook, 2014).⁴² One of the key perpetrators at Medomsley, Neville Husband, had previously been employed at Portland prison, where boys were subjected to a regime of extreme violence. The Chief Executive of the Howard League has since pointed out that while the organisation raised concerns about violence in the prison at the time, questions about sexual abuse were not asked: it is now clear that extreme violence and sexual abuse often go hand in hand (Crook, 2014).⁴³ The Howard League was recently contacted on behalf of a person who had been sexually abused as a child at Portland, who was still suffering as a result of their experiences and seeking support. In my view, extreme violence should be treated as a warning sign as to the risk of sexual abuse.

6.14 All secure establishments permit the use of force on children. The Howard League has repeatedly highlighted the risk that children may be at risk of sexual abuse in the course of restraint and has called for research on the relationship between the use of restraint and sexual development (Carlile, 2006; The Howard League, 2015).⁴⁴ Children in prison are typically physically developing and experiencing hormonal changes, yet they are largely untouched. I have even known children to be prohibited from hugging their parents on a visit, both as a matter of routine and when “closed” visits have been imposed. As part of their independent review of restraint in custody, Smallridge and Williamson (2008)⁴⁵ found staff were able to describe worrying instances of children who actively sought restraint for sexual or other gratification, and found these situations very difficult to deal with. Equally,

⁴² Crook, F. (2014) Comment: Police need to investigate Portland prison for historic sexual offences. *politics.co.uk*, Available at <http://www.politics.co.uk/comment-analysis/2014/05/02/police-need-to-investigate-portland-prison-for-historic-sexu>

⁴³ *Ibid.*

⁴⁴ Carlile, A.C. (2006). The Carlile Inquiry
Howard League for Penal Reform (2015) Healthy sexual development of children in prison.

⁴⁵ Smallridge and Williamson (2008) Independent review of restraint in juvenile secure settings, Ministry of Justice and Department for Children, Schools and Families, London

restraint may provide an opportunity for adults to engage in inappropriate contact. The Howard League Commission on Sex in Prison received one submission alleging that some staff would “bait” children into situations that would result in restraint for their own gratification (Howard League, 2015a).⁴⁶ Analysis of case files for this statement revealed situations where children alleged inappropriate behaviour by staff in the course of restraints. One 14-year-old that I represented complained that his trousers were removed in the course of a restraint – not an authorised hold. Another concerned a child who said he had his bottom smacked in the course of a restraint, which the child identified as a sexual violation. In my view, the use of force on a child is such a serious and abnormal measure (Janes, 2011b)⁴⁷ that it should be seen as a warning sign triggering further investigations to ensure that there are no child protection concerns either giving rise to the incident or arising in the course of the incident.

6.15 The British Medical Association (BMA, 2014)⁴⁸ has warned of the adverse impact of custody on children’s health and development.⁴⁹ More recently the BMA, together with the Royal College of Child Psychiatrists and the Royal College of Paediatricians and Child Health have issued a statement that the solitary confinement of children in prison should be banned.⁵⁰ In the 12 months leading up to April 2018, the Howard League received around 40 calls in respect of children in isolation. Studies show that BAME children were three times more likely than White British/White Other children to find themselves in

⁴⁶ Howard League for Penal Reform (2015) Healthy sexual development of children in prison.

⁴⁷ Janes, L. (2011) Twisted: The use of force on children in custody. *Howard League for Penal Reform*. Available at <https://howardleague.org/wp-content/uploads/2016/04/Twisted.-The-use-of-force-on-children-in-custody.pdf>

⁴⁸ British Medical Association (2014) Young lives behind bars: the health and human rights of children and young people detained in the criminal justice system. Available at <https://www.bma.org.uk/collective-voice/policy-and-research/equality/young-lives-behind-bars>

⁴⁹ See also Steinberg et al. (2004) who found that custody was likely to hinder processes of normative psychosocial development by disrupting children’s relationships with parents, teachers, and other sources of adult support and guidance.

⁵⁰ British Medical Association, Royal College of Psychiatrists and Royal College of Paediatrics and Child Health (2018) Joint position statement on solitary confinement of children and young people. Available at <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>

isolation (Office of Children's Commissioner, 2015: 23).⁵¹ It is at least possible that such levels of confinement will add to feelings of sexual frustration among teenage boys. The international evidence is that it risks irreparable psychological damage.⁵² The link between the risk of sexual abuse and isolation for children has, to the best of my knowledge, not been fully explored but given the evidence that "solitary confinement perpetuates, worsens, or even in some cases precipitates mental health concerns that can lead to long-term and often permanent changes in adolescent brain development", it is possible that it will inhibit the ability of children to resist or report sexual abuse (*VW and others v Eugene Conway, Onondaga County Sheriff* [2017] WL 696808 p.7).

Personal and emotional support

6.16 Many children in prison do not have the benefit of personal and emotional support from family members or struggle to maintain family ties. Even though children may not want to discuss sexual abuse with family members, in my experience children who have the benefit of a supportive family, and who can keep in contact with them, are better equipped and generally more confident to speak out. As the secure estate for children has contracted in size, the average distance from home has increased. In 2016, the YJB commissioned a review by HMIP to look at the impact of distance from home on children in custody (in YOIs and STCs).⁵³ The review found that on average children were held 49 miles from home, with some children being held much further including one child who was held 187 miles from home. It was reported that each 25-mile interval that a child was held from home was associated with one less visit from a family member or friend and that each 26-mile interval that a

⁵¹ Office of the Children's Commissioner (2015) 'Isolation and Solitary Confinement of Children in the English Youth Justice Secure Estate' pp. 1-68. Available at: http://solitaryconfinement.org/uploads/Unlocking_Potential_-_supporting_research_1.pdf

⁵² International Psychological Trauma Symposium (2007) The Istanbul Statement on the Use and Effects of Solitary Confinement. Available at http://solitaryconfinement.org/uploads/Istanbul_expert_statement_on_sc.pdf

⁵³ HM Inspectorate of Prisons (2016), The impact of distance from home on children in custody, Available at <https://www.justiceinspectorates.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2016/09/The-impact-of-distance-from-home-on-children-in-custody-Web-2016.pdf>

child was held from their home area was found to be associated with one less visit from a professional (HMIP, 2016).⁵⁴

6.17 In my experience it is often also very difficult for children in YOIs to maintain telephone contact with their families. Families cannot call their children and are reliant on their children calling them. In the same report, HMIP found that less than three-quarters (72%) of boys in YOIs who were far from home said they could have daily access to a telephone. Further, the length of time that a child can spend on the phone is often limited to ten minutes before the phone automatically cuts off, calls are much more expensive than in the community and there are limits on the amount of phone credit that a child can have. Some children have told me that they have to choose between phoning home or being able to buy extra food when they are hungry because they have very limited funds available to them in prison. It is also difficult for some children in YOIs to make calls privately as only HMYOI Cookham Wood and HMYOI Parc have in-cell telephones: in all other instances in YOIs, children need to be provided with association (designated time out of their cells where they can mix with each other) or be allocated specific time out of cell so they can make calls. This is in contrast to STCs and LASCHs, where children can receive incoming calls in their room. Children know that their telephone calls to family members are monitored.

6.18 For children who do not have family support and who are reliant on social services for support, it is a matter of real concern that many children tell me that they often do not receive regular visits from their social workers, despite the clear legal duties on children's services to visit looked after children in prison.

Power imbalance

⁵⁴ *Ibid.*

- 6.19 The combination of vulnerability and powerlessness is a feature that I see in respect of the children in YOIs that the Howard League supports. The former chief inspector of prisons, Nick Hardwick, has previously said “[p]eople in prisons are uniquely vulnerable...there is a power imbalance between the prisoner and the jailer. If I am a warder and you are a prisoner I can use physical force on you. But also you are dependent on me for absolutely every aspect of your life” (Hardwick, 2014).⁵⁵ The modern history of prison law has developed and refined some of the key constitutional and public law principles by which government is held to account and made subject to the rule of law, as well as protecting the rights of hundreds of thousands of individual prisoners (Kaufmann and Owen, 2013).⁵⁶ Citing Sedley, Kaufmann and Owen talk of the “sense of impotence and isolation” experienced by prisoners when informed by prison officials of an unpleasant truth—“I’m the law here”. Kaufmann and Owen note that such absolute power is the antithesis of the rule of law. Yet the very fact of incarceration creates a power paradigm in which the risk of abuse of power is great.
- 6.20 In 2017, a prison officer told me that he had “all the power” and could prevent me from accessing a vulnerable child to provide him with legal advice for a prison disciplinary hearing if he (the officer) wished, by not putting my name on the prison gate to access the segregation unit. I was taken aback: I cannot imagine how a vulnerable child copes with being confronted with such a sentiment.
- 6.21 The power imbalance in the relationship between prison staff and children and the focus on security might make it difficult for a child to feel comfortable confiding to prison staff about sexual matters (Howard League, 2015a).⁵⁷ Young people in prison are going through the critical stages of adolescent development, yet often have little or no family contact and no-one close to talk

⁵⁵ Hardwick, N. (2014) ‘Chief prisons inspector Nick Hardwick interview: ‘You need to make rehabilitation the central point’’. *The Independent*. Available at <https://www.independent.co.uk/news/uk/politics/chief-prisons-inspector-nick-hardwick-interview-you-need-to-make-rehabilitation-the-central-point-9662761.html>

⁵⁶ Kaufmann and Owen (2013) *The price of dignity and liberty: legal aid for prisoners*, E.H.R.L.R., 5, p.482-493.

⁵⁷ Howard League for Penal Reform (2015) *Healthy sexual development of children in prison*.

to about personal problems, let alone sexual problems. For example, a child psychologist told the Howard League Commission on Sex in Prison that it is unlikely that a boy concerned about a lump on his testicle will want to talk to his personal (prison) officer about this. I have personally represented a child who had such a problem and was unable to confide in staff until his behaviour had deteriorated due to stress and he eventually disclosed it to a member of staff he trusted.

Punitive culture

6.22 The Howard League Commission on sex in prison also heard it was difficult for children in custody to develop a healthy sexual identity. Boys learn to keep their sexual behaviour secret in prison. The Commission heard that boys had been disciplined for masturbating, when they thought they were masturbating in the privacy of their own cell. I have represented children in this situation. In the case of children with histories of harmful sexual behaviour, I have found that some members of staff will immediately view any form of masturbation as potentially offence paralleling and are quick to resort to disciplinary procedures. In one instance, where a member of staff had been intensively monitoring a child I represented for signs of increased masturbation and walked into his cell to find that he had indeed been masturbating, the child was adjudicated for endangering health and safety.

6.23 The prison disciplinary system exemplifies the power imbalance inherent in the prison system. It regulates the behaviour of children through a range of rewards and sanctions, which can even include additional days of imprisonment for children serving certain sentences in YOIs. As far as I am aware, although sexualised behaviour is often the subject of disciplinary proceedings, it is impossible to measure how often this behaviour is penalised because there is no offence under the prison rules that expressly relates to sexualised behaviour: such “offences” are usually charged under “assault” or “threatening and abusive” words or behaviour which is described in the discipline manual PSI 47/2011:

"1.74 PR 51 (20) / YOI R 55 (22) uses threatening, abusive or insulting words or behaviour

'At (time) on (date) in (place) you used threatening (or 'abusive' or 'insulting') words or behaviour towards (name), by saying (quote words used) (or briefly describe behaviour)'

1.75 It is not always necessary to name an individual at whom the words or behaviour were directed.

1.76 There is no Rule specifically prohibiting sexual acts between prisoners, but if they are observed by someone who finds (or could potentially find) their behaviour offensive, a charge under PR 51 (20) / YOI R 55 (22) may be appropriate, particularly if the act occurred in a public or semi-public place within the establishment, or if the prisoners were 'caught in the act' during a cell search. But if two prisoners sharing a cell are in a relationship and engage in sexual activity during the night when they have a reasonable expectation of privacy, a disciplinary charge may not be appropriate."

6.24 As such it is hard to get any data on the use of the discipline system to regulate sexualised behaviour by children. In my own experience of advising and representing children accused of sexualised behaviour, they often struggle to understand why they are being disciplined, especially when their behaviour appears to be similar to what everybody else seems to be doing all the time, or is considered a reaction to perceived sexual overtures. I suspect that should the Inquiry be able to access adjudication paperwork, an analysis of the charge sheets and records of hearing for disciplinary offences concerning sexualised behaviour may provide a helpful insight into the experiences of children in prison.

- 6.25 The above only applies to YOIs, as the REA notes (IICSA, 2018, p. 67).⁵⁸ In LASCHs and STCs, children's behaviour is managed without formal disciplinary hearings.

7. HURDLES TO EFFECTIVE SYSTEMS OF REDRESS AND MEASURES THAT MAY PREVENT ABUSE

Not believed

- 7.1 The operation of the disciplinary system in prison provides a good illustration of the reasons why children are likely to fear that they will not be believed if they report sexual abuse, especially by staff. Although the standard of proof in prison disciplinary hearings is "beyond reasonable doubt", in reality where the evidence amounts to the word of a child against an officer, it is likely that the officer's version will be preferred. Children routinely complain of a sense of injustice because they are often not believed at such hearings. For example, I once advised a boy disciplined for inappropriately touching a female prison officer. He was extremely distressed about this. He had never before been accused of anything of this nature and was extremely upset at the thought of being found guilty without having a fair chance to fight his case. When we first spoke to him, he did not know anything about the offence and could barely read the charge sheet. He was extremely upset because he knew it would just be his word against the word of an officer. He felt totally unable to argue his case saying that he would just get confused and upset and probably get into even more trouble. That is precisely what happened. Children are not entitled to representation before Governors at disciplinary hearings, unless certain special criteria are met.⁵⁹ I am aware of a number of cases where the Howard League has assisted children to complain to the PPO where the

⁵⁸ IICSA (2018) Child sexual abuse in custodial institutions, p. 67.

⁵⁹ *R v Secretary of State for the Home Department ex parte Tarrant* [1985] 1 QB 251

investigation has not upheld the complaint simply on the basis that the matter concerns a child's word against officers and therefore cannot be proven or acted upon. On one occasion, when a child said that he was held in a headlock, the PPO concluded this did not happen on the basis of comments made by staff in the use of force paperwork and the assumption that if a headlock were used it would have been "memorable". In another case, even though the PPO admitted an absence of evidence in support of the prison's position, the report concluded that it could not support the account of the young person.

Complaints not acted upon

- 7.2 It is not surprising that it is rare for children to complain about sexual abuse in prison if they do not think they will be believed.
- 7.3 In some instances, even if children want to complain they are prevented from doing so on a number of levels. As far as I am aware, there is no official complaints procedure in STCs. Many children 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. A duty governor from one YOI recently told me that he was unable to run association at the moment due to staff shortages. Children are not routinely provided with copies of their complaints and are therefore unable to prove they have been submitted, if the prison says the complaint has been lost.
- 7.4 Even when children do manage to complain about non-sexual issues there appear to be a series of barriers to preventing effective investigations or redress. On a number of occasions the Howard League has pursued complaints on behalf of children subjected to serious restraints in an STC setting. In these cases, where internal investigation was inadequate, the only

system of redress was to refer the case to another, non-independent, body, the YJB monitor. These investigations proved equally ineffective, as they were delayed, did not examine evidence and even failed to interview the children in question. As a result of concerns raised about this process, the terms of reference of the PPO were amended to include the investigation of complaints from STCs. However, the complaints the Howard League has dealt with have taken years to conclude. In my 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. The Lammy Review, citing recent research, noted that this was a particular problem in respect of discrimination complaints (Lammy, 2016).⁶⁰ The research considered 610 complaints relating to allegations of discrimination (the majority, 62%, relating to race) and found that only 1% of adult prisoners alleging discrimination by staff had their case upheld such that the complaints system "does not have the confidence of prisoners" (Edgar and Tsintsadze, 2017).⁶¹ 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.

Safeguarding referrals

7.5 Nor in my experience are safeguarding processes in prison particularly effective. Where I have made safeguarding referrals in respect of concerns on behalf of children and have had an opportunity to speak to the child concerned after the referral has been activated, my impression has generally been that the child felt it made no difference. Even where a safeguarding referral is made to the police, it rarely results in a positive outcome for the child.

⁶⁰ 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

⁶¹ Edgar and Tsintsadze (2017) Tackling Discrimination in Prison: still not a fair response, Available at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Tackling%20discrimination.pdf> quoted in https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf p.53.

- 7.6 The most concerning example I am aware of relates to a complaint by a 17-year-old boy in a YOI who had been accused by the prison of sexually assaulting a member of staff. The boy alleged that the member of staff had been having a sexual relationship with him and with other children in the YOI. A referral was made to the local authority's designated officer; the member of staff was suspended and the matter was referred to the police for investigation. We were told by the prison that the police attempted to interview a number of children but this was unsuccessful and no further action was taken by the police. The prison told us that our client was not interviewed because he was "being demanding" and would not speak to the police unless certain conditions were met. These conditions included being allowed to have a shower and make a telephone call before being interviewed. The prison refused to allow this and so the interview did not proceed. No further action was taken by the police. Our client was subsequently moved to another prison. An investigation was commissioned by the employer of the member of staff (not the prison service) but I do not know the outcome of this investigation.

Preventative measures or features

- 7.7 In my view the most important thing is to prevent sexual abuse occurring in the first place.
- 7.8 In the absence of any robust research, it is not possible to say with certainty that sexual abuse is more prevalent among young adults in prison. However, in view of the larger number of disturbing allegations the Howard League receives from young adults about sexual abuse in custody, I have considered how the young adult estate differs from that for children. Of course, the fact that young adults tend to voice these concerns may simply reflect that there are more of them and they are more likely to contact the Howard League service generally, perhaps as they develop in confidence and maturity. However, there is a strong consensus that young adults in the criminal justice system have vulnerabilities that are distinct from older adults and may have

on-going needs similar to those of children (Justice Committee, 2016).⁶² I have therefore considered the practical differences in the custodial environment for young adults compared with that for children. One obvious difference, as demonstrated in the NM case (see paragraph 5.3) is that young adults have exposure to older adults, including sharing a cell, which is never the case for children in the current estate to the best of my knowledge. In some settings this will include exposure to adult sex offenders. I recall a young adult client who transferred from the children's estate to the adult estate. He had been convicted of a sexual offence as a child and was himself vulnerable, having been sexually abused himself. He was clearly disturbed by the things he experienced in the adult prison estate when he was placed in a prison for sexual offenders, describing on one occasion being distressed by listening to older inmates fantasising about children's television. He later raised concerns about being inappropriately touched in prison. Another young adult with significant learning disabilities that I have represented had a similar experience: having been imprisoned for a sexual offence as a child following an abusive childhood, he was later placed in an adult prison where he was groomed by an older sex offender. Another key feature of the young adult estate is the lower staff ratios and the absence of permanent external adults such as the advocates and social workers who work in children's prisons. The presence of children's rights advocates who can freely walk around the prison and talk to children, as well as social workers employed by the local authority, all of whom are required as part of their job description to put the welfare of children first, may well serve as an important safeguard against abuse, particularly by staff. Finally, I am aware of a number of instances where young adults have been in what they have themselves considered to be a relationship with a member of staff in prison, whereas I have only once come across the even the hint of this in the secure estate for children. That may be because in the young adult estate there is an increased likelihood of staff and prisoners being the same age. The REA notes that drug abuse may also indicate an increased risk of sexual abuse in custody (IICSA, 2018, p. 61).⁶³

⁶² Justice Committee (2016). The Treatment of Young Adults in the Criminal Justice System. Available at <https://publications.parliament.uk/pa/cm201617/cmselect/cmjust/169/169.pdf>

⁶³ IICSA (2018) Child sexual abuse in custodial institutions, p. 61.

Based on my experience of working with young adults, I believe that this may be the case, particularly as the methods of concealing drugs can often include secreting them inside intimate body parts such that retrieval results in a sexual violation. In my experience, drugs are simply not as much of an issue in the children's estate.

- 7.9 The REA also refers to the possibility that CCTV may prevent sexual abuse, citing as part of the evidence in support of that messages from children during the Howard League's inquiry on violence in prison for children in the 1990s (IICSA, 2018, p. 77).⁶⁴ The REA also points to literature highlighting the risks caused by gaps in coverage (IICSA, 2018, p. 77).⁶⁵ Certainly, some of the examples I have set out in section five of this statement and the instances where children become disheartened because they are not believed included situations where incidents took place in children's cells and in the absence of CCTV. In addition, in my evidence to the Carlile Inquiry five years on (Janes, 2011a)⁶⁶, I highlighted that I have hardly ever received CCTV of serious incidents despite routinely requesting it when representing children who are complaining of abuse. While, as the REA reports, there has been a huge investment in CCTV and there is now an increased use in body-worn cameras, the officer is in control of when the camera is turned on (IICSA, 2018, p. 77).⁶⁷ Further, children may have different feelings about how safe CCTV makes them feel and any feelings of enhanced safety have to be balanced against the invasion of privacy and the chance to develop normally. For example, I recall representing a girl in an STC who had been sexually abused before entering custody. Her social worker had made arrangements for her to be released to a foster care placement. The child explained to me that she was distressed about living in a family type solo placement as she felt she would be at risk of repeat abuse in such a setting. When I pointed out that she might be at similar risk in the unit she was in (she was the only child in that part of the unit), she said felt safe as the only child on that unit because there was CCTV. On the other hand, I recall visiting a high intensity mental

⁶⁴ IICSA (2018) Child sexual abuse in custodial institutions, p. 77

⁶⁵ *Ibid.*

⁶⁶ Janes, L. (2011) The Carlile Inquiry: Five Years On. The use of force on children in custody.

⁶⁷ IICSA (2018) Child sexual abuse in custodial institutions, p. 77

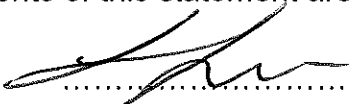
health unit within the prison estate (no longer in operation) where I was struck by the officer in charge of the unit sitting in a control room watching the children in their cells. When I asked how they were able to have space for personal time, he explained to me that the CCTV could be turned off for an agreed period if they requested a private moment, an extremely awkward request for a teenage boy to have to make.

8. CONCLUDING COMMENTS

- 8.1 Incarceration risks reinforcing the things that lead to crime, including reducing respect for authority and damaging experiences that reduce a person's sense of self-worth. Children are more susceptible than most to these factors partly because they are impressionable and have few resources to rely on to cope with negative experiences.
- 8.2 System change is required to transform institutions that lock up children so that staff and children alike submit to the rule of law, a common set of rules and standards that are firmly grounded in a rights-based approach. At present I am not aware of any strong emphasis on children's rights other than the recent inclusion in Barnardo's advocacy contracts and a reference to rights in the new training course for officers. A rights-based approach, coupled with appropriate education, could inspire confidence and encourage children to become empowered to recognise abuse when it occurs, or is at risk of occurring. A rights-based approach will also support children to be more assertive in protecting themselves against sexual abuse and speaking out against it.
- 8.3 The past ten years has shown that a significant reduction in the child prison population can be achieved without negative consequences. There are still too many children in prison. The children that remain there need to be treated with great care. But they also need to be empowered to take responsibility for

their own futures, and demand to be treated with respect and dignity. In my view, this will be the best way to protect them from the risk of future abuse.

The contents of this statement are true.

Signed: 

DR LAURA JANES

Dated: *4 May 2018*