

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

RE: Child sexual abuse in custodial institutions

SECOND WITNESS STATEMENT OF LAURA JANES

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 On 4 May 2018 I submitted a witness statement to the Inquiry. On 20 June 2018 I was asked to consider a series of additional questions by the Inquiry pursuant to Rule 9 of the Inquiry Rules. I have considered the additional questions and seek to address here the questions or aspects of questions where I feel that I am able to comment based on my experience, knowledge and understanding.

2. RELATIONSHIP BETWEEN SAFETY AND RESOURCES AND THE RISK OF CHILD SEXUAL ABUSE.

2.1 The additional questions note that “public information shows a reduction in resources and staff in prisons of 22-25%, and a corresponding reduction in safety which HMIP has described as ‘startling’” and asks whether child sexual abuse in custody should be regarded as part of a wider concern about

declining safety in these establishments. This data does not include secure children's homes, which are local authority run and, in my experience, generally provide a much higher standard of care for children.

- 2.2 In respect of safety concerns about children in Young Offender Institutions (YOIs) and Secure Training Centres (STCs), in his annual report published in July 2017, the Chief Inspector of Prisons said that "by February 2017, we concluded that there was not a single establishment that we inspected in England and Wales in which it was safe to hold children and young people."¹ According to the Ministry of Justice, in the five years leading up to 2015/2016 the use of force on children in custody increased by 36 per cent, assaults increased by 95 per cent and self-harm increased by 120 per cent.² The recorded incidents relate to things children experience directly and do not factor in the extent to which children are exposed to violence through witnessing it; many of the pre-sentence reports that I read refer to children's early childhood experiences of being exposed to domestic violence in their homes or other forms of violence between adults in their childhood and see that experience as highly relevant background information to their offending behaviour. Yet almost all children in YOIs and STCs witness high levels of violence. That inevitably leads to a climate where children are anticipating that violence will occur.
- 2.3 In September 2017, the Local Government Association (LGA) called for urgent action to improve safety in YOIs following Her Majesty's Chief Inspector's damning report about unsafe conditions in all YOIs. Richard Watts, Chair of the LGA's Children and Young People Board, stated: "There is no other situation in which children and young people would be placed into environments that are known to be unsafe, and youth custody should be no exception."³

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/629719/hmip-annual-report-2016-17.pdf

² Ministry of Justice (2017) 'Youth Justice Statistics 2015/2016 England and Wales' [online] Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/585897/youth-justice-statistics-2015-2016.pdf [accessed 23 March 2018]

³ Local Government Association (2017) 'Councils call for urgent action to improve safety in youth offending institutions' [online] Available at: <https://www.local.gov.uk/about/news/councils-call-urgent-action-improve-safety-youth-offending-institutions> [accessed 3 July 2018]

- 2.4 I have never known exposure to violence to be considered by the detaining authorities as something that requires protective measures notwithstanding that children are unlikely feel safe in such an environment. In November 2017, when Her Majesty's Inspectorate of Prisons (HMIP) published an analysis of 12–18-year-olds' perceptions of their experiences in STCs and YOIs between 1 April 2016 and 31 March 2017, the situation had not changed. 39 per cent of the boys in YOIs and more than one in five (22%) of the children in STCs did not feel safe (HMIP and Youth Justice Board, 2017).⁴
- 2.5 I am unable to chart any correlation between declining safety and sexual abuse of children in custody, in view of the lack of evidence as to the prevalence of sexual abuse either currently or over time. However, it stands to reason that child sexual abuse in custody ought to be considered in the context of these wider concerns, not only as it constitutes harm but also because it may further emphasise the power imbalance and place children in a fearful state where they are afraid to speak out.
- 2.6 The questions also ask whether there a link between the reductions in the custody budget since 2010 and child sexual abuse in custodial institutions and if so what it is and, generally, whether resourcing is adequate to protect children in custody from sexual abuse.
- 2.7 To the best of my knowledge the amount spent per child per place has increased in respect of YOIs. According to Hansard, in 2013 the average cost of per child per place in a YOI cost £65,000⁵ and this rose to £76,000 in 2017.⁶ During the same period the number of children in YOIs has reduced dramatically from 905 children in March 2013 to 652 children in March

⁴ HMIP and Youth Justice Board (2017) 'Children in Custody 2016-17: an analysis of 12-18-year-olds' perception of their experiences in secure training centres and young offender institutions' [online] Available at: https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2017/11/6.3903_HMIP_Children-in-Custody-2016-17_FINAL_WEB_011117.pdf [accessed 3 July 2018]

⁵ [https://hansard.parliament.uk/Commons/2013-03-19/debates/13031966000034/YouthDetention\(Costs\)](https://hansard.parliament.uk/Commons/2013-03-19/debates/13031966000034/YouthDetention(Costs))

⁶ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-05-15/144303>

2018/618 children in March 2017.⁷ Additional money has been allocated to spend on children in custody. In a letter dated 27 February 2018. Dr Phillip Lee MP, the then youth justice Minister, told the chair of the Justice Committee Bob Neill MP, that *the Ministry of Justice was “investing £64 million to reform youth custody and increase staffing, to improve safety and reduce violence.”*⁸ Therefore, while there appears to have been a problem with the recruitment and retention of staff in children’s prisons, particularly in the south of England, that may be more to do with the decline in safety described above than a lack of resources per se. As I understand it, conditions of service for prison officers working with children are no different from conditions for prison officers working with adults.

2.8 I do not have sufficient evidence to conclude there is a direct causal link between resources and the increased risk of child sexual abuse. However, a lack of resources, low staffing levels and high staff turnover is not in my view conducive to creating a safe space where changes in the behaviour of children and staff can be easily spotted and people feel able to speak out. It is also my experience that if children feel unsafe and/or poorly treated due to a lack of resources, and their complaints in respect of those issues remain unresolved, they simply lose faith in the system and become less likely to see any point in raising concerns.

3 . STAFF RECRUITMENT AND TRAINING

3.1 The additional questions ask me to identify any potential failings in terms of the training and recruitment of staff working with children in custody. I am not sufficiently familiar with the current screening/vetting processes to comment on this aspect. In respect of the qualifications, skills and experience required, I note that when the new youth custody service was announced in February 2017, it was proposed that “the Youth Custody will have its own workforce separately recruited and trained to work in the youth estate” and “distinct career pathways for those wanting to work with children and young people in

⁷ Ministry of Justice and Youth Justice Board (2018) ‘Official statistics: youth custody data’ [Online] Available at: <https://www.gov.uk/government/statistics/youth-custody-data> [accessed 3 July 2018]

⁸ <https://www.parliament.uk/documents/commons-committees/Justice/correspondence/Dr-Lee-Young-adults-youth-custodial-estate.pdf>

the secure estate, including a new Youth Justice Specialist Worker role” will be created. While I am aware that some members of staff working in STCs and YOIs have been undertaking a designated qualification, as I understand it, this is not a pre-requisite to working with children in the secure estate and most staff do it as part of in-service training. Further, it is not clear to me what detailed training about child development or children’s rights staff working with children in custody get as a matter of course.

- 3.2 In addition, as far as I am aware staff get no routine or structured training in talking to children about sexual behaviour, sexual identity, the law around sex (and the rationale behind the law) or healthy sexual relationships.
- 3.3 The only time I have even known children in custody to have these discussions has been where the child has been convicted of an offence involving harmful sexual behaviour and these discussions have been held as part of individualised therapeutic work. The work completed with children with histories of harmful sexual behaviour tends to be focused around the “Good Lives” model and will usually involve in-depth generic work on these topics.
- 3.4 Given the stage of development of most children in prison and the absence of any sexual outlets in prison described in my first statement at paragraph 6.3, it seems to me that this work could play an important role for all children, not just those with histories of harmful sexual behaviour. I am also aware that in the past some of those involved in specialist interventions with children convicted of harmful sexual behaviour in secure settings, such as Lucy Faithfull or GMAP practitioners, would also provide advice and guidance to other staff members about what to expect and how to react to children with regard to their sexuality. I can only think that this kind of advice and guidance was helpful and assisted with developing openness and consistency, although to the best of my knowledge in prison establishments it was ad hoc and not structured. It would also usually therefore only include staff with a particular interest and risk leaving out important figures who provide moral guidance to children such as prison chaplains.

- 3.5 While training is in no way a complete answer, a level of specialist education advice and guidance around sexuality, sexual identity, healthy sexual relationships and the law would be beneficial to both children and staff working with them. It could also provide a regular safe space to talk for both children and staff who may have concerns. I am certainly aware of an instance where a child raised concerns about sexual abuse of another child in prison during such a session. If children and the staff working with them were routinely made aware of the law around sex, it would at least provide a point of reference for people to know clearly what is and is not allowed and provide additional confidence in raising concerns. This is particularly the case where the abuse takes the form of something that is, at least initially, perceived as a relationship by the child.
- 3.6 In addition, as noted in my first statement at paragraph 8.2, specific training about children's rights for children, staff and other adults who support children in prison such as parents and carers, would likely assist in creating an environment where children are empowered to speak out about their concerns. A rights based approach can help to prevent abuse because it empowers children to recognise it. Failure to recognise abuse as such is a fundamental barrier preventing children from speaking out about the harm they have suffered. In my experience, there continues to be an anxiety among prison staff that children's rights will be used "against" them rather than an acceptance that a rights based approach will assist and protect both children and staff.
- 3.7 It is well established that child sexual abuse is often about power and control and therefore child sexual abuse may be an indicator of dysfunctional relationships. To that end it seems to me that just as there is a case for regular and routine specific training and guidance about children, sexuality and rights, there may also be a case for a culture of reflective supervision for the staff charged with the care of children in prison. As noted in my first statement at paragraph 6.9, children in prison are highly likely to have experienced trauma and difficult relationships in the past. The current levels of violence and fear in prison may lead to both children and frontline staff

being exposed to trauma in their daily lives, either directly or vicariously. Staff may benefit from regular, structured and appropriately facilitated group supervision to reflect on their work. This could provide the foundation to enabling relationships that are safe and sustainable and do not risk becoming punitive or abusive. Such systems may enable staff to not resort to ways of surviving work which damage the children they are looking after. Without suitable supervision and support, staff may be at risk of either “othering” the children they work with to the extent that they may not see the children as children as a means of coping with the risks to their safety. There is also a risk that without suitable support staff may over-identify with the children in their care. In my experience, these scenarios are not hypothetical. I recall meeting a newly recruited prison officer walking into a children’s prison. I asked if she was working with the children. In response, she indicated her view that they were not children given their size and strength. It seemed to me that her way of dealing with the risk of violence posed by the children was not to see them as children. On the other hand, I have encountered several examples over the years where staff have formed positive relationships with children that have been called into question by other professionals on the basis that such relationships are not appropriate. I am not aware that within the prison service there is any routine or structured clinical supervision available to staff (other than those providing psychological services) in respect of how to manage relationships with prisoners, let alone children, or how to deal with the upsetting or traumatic experiences in their work place. Routine supervision that is pre-emptive and not reactive to concerns might assist in creating a better culture of transparency and openness.

- 3.8 In terms of any failings in professional/child protection standards for staff risk factors for child sexual abuse, I am not sufficiently aware of any specific standards for staff risk factors that exist. However, I am concerned that the general approach to child protection for children in custody is inconsistent and unsatisfactory. The legal team at the Howard League makes a number of child protection referrals on behalf of children in secure settings each year and receives varying responses. Many responses are obstructive and dismissive, focusing on how the referral has been made rather than the

content and I rarely see responses dealt with rigorously or urgently. If sexual abuse is to be seen in the wider context of other forms of abuse, the lack of a serious response to other concerns suggests that children are unlikely to have confidence in the system when it comes to reporting sexual abuse. For example, a member of my team recently made a child protection referral to a local authority designated officer (LADO) about a child in solitary confinement in a YOI. The LADO refused to accept the referral on that basis that it was not related to a specific person – a point that is arguable given that the removal from association of a child has to be authorised by an individual – and should be made to the social services duty team. I asked that the referral be sent on to whichever team was responsible and also raised concerns with the director for children’s services who simply defended the practice of the prison, and in doing so did not refer to any consultation or discussion with the child concerned. If the treatment of children in prison is to be taken seriously as a child protection issue, as indicated by Lord Carlile in his inquiry into the use of restraint, strip-searching and isolation in 2006⁹ and the Chair of the LGA (as noted at paragraph 2.3 above), it may be that officers in the social work teams in the areas where children’s prisons are based ought to be afforded specialist training in this area, if this does not happen already.

- 3.9 In respect of the risks posed by a high turnover rates for staff and a divergence between the diversity of staff in custodial institutions and the diversity of the children in custody, in the absence of reliable data correlating these factors, I cannot conclude a causal link. However, in my experience of over a decade of working with children in custody, it is more likely that children open up to people they trust and have formed positive relationships with. Where there is a high turnover of staff, it is difficult for children to develop relationships of trust and confidence. In my experience, children in secure children’s homes have a much better experience than children in YOIs and I understand that in the former there is generally a much more stable and long-term staff group. By contrast, in YOIs staff tend to have a higher turnover, especially in the South of England and staff shortages may be dealt with by using staff from other areas on detached duty. In respect of diversity

⁹ Carlile, A.C. (2006). The Carlile Inquiry

of staff, I note that the Lammy review (2017) concluded that there was a trust deficit among BAME groups and identified the lack of diversity among professionals in the criminal justice as a problem.¹⁰ Latest data from the Ministry of Justice shows that 48 per cent of children in prison are BAME (Ministry of Justice, 2018).¹¹ I do not have the corresponding data for staff working in children's prisons. However, with the exception of Feltham, all YOIs holding children are in rural locations where there is less diversity. As I noted in my first statement at paragraph 6.16, the average distance from home per child in prison is 49 miles. It is highly likely that children in prison will find it more difficult to open up to people who appear to be so different from themselves.

4. USE OF FORCE

4.1 The additional questions note that I addressed the use of force in secure establishments at paragraph 6.14 of my first statement and ask whether restraint/force is still used for good order and discipline and whether 'pain compliance techniques' are used.

4.2 In respect of the use of force for compliance, the rules for STCs and for YOIs are different. Pursuant to STC Rules 1998 rule 38, no child in an STC may be physically restrained "*save where necessary for the purpose of preventing him from— (a) escaping from custody; (b) injuring himself or others; (c) damaging property; or (d) inciting another trainee to do anything specified in paragraph (b) or (c) above.*" An attempt was made to amend the rules to permit restraint for good order and discipline. That attempt failed when the Court of Appeal held the provision to be *ultra vires* (*R(C) v SSJ* [2009] QB 657). The YOI Rules 2000 do not contain a provision parallel to STC Rules 1998 rule 38. Under the YOI Rules 2000 rule 50, force may be used provided it is "*necessary*". There is no express restriction on the use of force as in rule

¹⁰ Lammy (2017) *The Lammy Review*
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf

¹¹ Ministry of Justice (2018), *Youth Custody Data*
<https://www.gov.uk/government/statistics/youth-custody-data>

38, and therefore, at least as far the YOI Rules 2000 are concerned, nothing expressly prohibiting the use of force in order to uphold good order and discipline. Further, the Secretary of State's policy on the use of force on children in YOIs is contained in Prison Service Instruction (PSI) 06/2014. Paragraphs 4.3.7 to 4.3.10 deal with use of force in order to maintain good order and discipline in YOIs. It provides (emphasis in original):

"4.3.7 The degree and means of restraint must be proportionate to the risk of harm, and restraint should not routinely be used as a response to non-compliance. However, Governors have a duty to maintain order and control, and in exceptional circumstances, the use of restraint on passive, non-compliant young people may be the only reasonable option available in view of the long term interest of the young person or others and the high risk of disorder due to impact on the wider regime and the possible reaction of other young people.

4.3.8 Examples may include: a young person being extremely disruptive but not violent in class and refusing to leave the room or listen to repeated attempts to persuade him to cease; or passive concerted indiscipline such as sit-down protests which are judged likely to lead to wider risks to the establishment. A minimal use of force in these instances can be considered to be legitimate, justifiable and necessary in order to prevent harm arising from actions, which although passive, could lead directly to wider disorder and create danger and harm to other young people and staff.

4.3.9 In these circumstances a lawful order can be effected by using the low level guiding holds within the MMPR restraint syllabus. If the young person is completely uncooperative, it may be necessary to carry him out using the authorised restraint procedure. Other, more rigorous forms of restraint, including pain-inducing techniques, must not be used unless the young person becomes violent.

4.3.10 In the circumstances set out above (i.e. without aggression/violence from the young person) the use of force must always be the last option and must be planned and authorised in advance by an officer of custodial manager rank or above. The authorising officer must be assured that all other options including persuasion and negotiation have been tried and have proved ineffective for the use of force to be considered justified."

4.3 In addition to the policy position as set out in the PSI, in my experience children regularly describe being restrained for not doing as they are told.

4.4 In respect of the use of pain compliance, the system of restraint for children that was developed following the death of two children in STCs was designed to reduce the risk of inflicting deliberate pain on children. Minimising and Managing Physical Restraint (MMPR) trains staff on de-escalation in relation to children, including using their existing relationships with children to de-escalate volatile incidents rather than to gain control and secure compliance through the use of force. It aims to minimise the number of children who experience restraint, as restraint should only be used as a last resort, when de-escalation attempts have failed. MMPR also provides for a number of authorised “holds” that have been specifically approved as less likely to result in harm to children than adult restraints. MMPR replaces C&R for children in YOIs and the Physical Control in Care (“PCC”) technique, previously applied to children held in STCs. C&R was previously applied to children detained in YOIs and continues to be used for adults over the age of 18 in detention. However, setting aside on-going concerns that MMPR still includes three pain-inducing MMPR holds (thumb flexion, mandibular angle and wrist flexion), in my experience children are still sometimes subjected to C&R. The Howard League has recently been granted permission to judicially review the High Court in respect of the failure of Feltham prison to ensure that all staff who may be called upon to restrain children are trained in MMPR. We receive regular calls on our advice line from children complaining about being hurt in the course of restraints in STCs and YOIs.

4.5 In addition to the pain and fear that can be caused by the practice of restraining children, in my experience the sense of injustice and powerlessness children experience is often compounded by the use of disciplinary processes following restraint.

5. SUPPORT FOR CHILDREN WHO MAKE ALLEGATIONS REGARDLESS OF WHETHER OR NOT IT IS PROVEN

5.1 I am asked whether, “given the difficulty children may have in substantiating allegations, should support or protection be considered even if the allegation was not proved?” In my view support should be considered in all instances

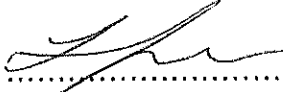
where abuse is alleged. For example, we received a call last year from a 17 year old child who was injured following a restraint in custody but felt unsafe as the officer remained on the same wing, even though a representative from the prison's safeguarding team was aware. In my view, taking steps to protect the child is paramount and should always take place, not only to protect the child concerned but to demonstrate that children who do complain will be taken seriously.

6. CONCLUDING OBSERVATIONS

6.1 By way of conclusion I am asked whether it follows from my evidence to date that I do not consider that the current inspection and regulatory regime applicable to children in custody provide an effective system for protecting them from sexual abuse and facilitating disclosure of sexual abuse as appropriate. Given the concerns I have outlined, in my view the current inspection and regulatory regime is unlikely to be effective.

6.2 I am also asked whether there is effective leadership and governance on child sexual abuse issues in custodial institutions. It also follows from the concerns that I have outlined that it is unlikely that there is sufficiently effectively leadership and governance at present to guard against the risk of child sexual abuse in many custodial institutions.

The contents of this statement are true.

Signed: .....

DR LAURA JANES

Dated: *5 July 2018*.....