

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

RE: Child sexual abuse in custodial institutions

THIRD 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 In the course of giving evidence on 11 July 2018 I was asked a number of questions by the Inquiry Panel member Ivor Frank about the relationship between the rights of children in care and the risk of criminalisation faced by children in care. Further to a formal request from the Inquiry dated 12 July 2018, I here address those issues as best I can based on my experience, knowledge and understanding.

2. THE RIGHTS OF CHILDREN IN CARE

- 2.1 Inquiry Panel member, Ivor Frank, highlighted that sections 8 and 9 of the Children Act 1989 prohibit children who are under the age of 16 and in care from making applications in private family law proceedings. This means that children in care cannot make applications under section 8 for contact arrangements, specific issue orders or prohibited steps orders. While I

understand that section 34 of the Children Act 1989 makes separate provision for children in care in respect of contact arrangements, I am not aware that there is any provision for children under the age of 16 to make applications for specific issue or prohibited steps orders. I do not know the rationale for this prohibition but presume it is linked to the duties owed by the state to children in care to look after them and make applications on their behalf if they are deemed necessary. I am not a family lawyer and therefore not well placed to comment on the impact this may have in reality on children in care being able to enjoy the same rights as other children. However, it does appear to me that the prohibition could at least be perceived as sending out a message that children in care have different rights from other children. It certainly could be interpreted as reducing the agency of children in care compared to other children.

- 2.2 Although those prohibitions relate to restrictions on children's rights in family law proceedings, they could be seen as symptomatic of the particular difficulties children in care face in realising their rights.
- 2.3 The disadvantages the children in care face are well documented. In my experience, these disadvantages sometimes mean that professionals inevitably focus on the requirement to ensure the needs of children in care are sometimes met at the expense of giving sufficient weight to children's rights. That is not to say that rights and needs are mutually exclusive. At the heart of children's rights is the right for the child's best interests to be a primary consideration in every decision affecting him or her, as provided for by Article 3 of the United Nations Convention on the Rights of the Child (UNCRC). However, in my experience, the need to protect children in care sadly remains so pressing that it often overshadows discussions about children's rights. For example, the Howard League for Penal Reform has worked for years to support children to obtain suitable accommodation and support on release from custody. That is clearly a pressing need. Because the need for suitable support and accommodation on release is so pressing, and sometimes a pre-requisite to release (where early release is an option), the energy and focus in this area often centres around finding a package that professionals feel may

meet the child's needs rather than focusing on the need to ensure that the child's wishes and feelings are fully voiced and factored in, as required under the Children Act 1989 and Article 12 of the UNCRC.

2.4 It is my view that the best way to protect any child from risk of abuse is to empower them to understand and enforce their rights (see paragraph 8.2 of my first witness statement and Janes, 2018).¹ In my view, this is especially the case for children in care who may require additional support and encouragement to understand and enforce their rights. The overlap between children's rights and human rights means that children in care have, at least in theory, a clear course of potential legal action to challenge their corporate parent, because the Human Rights Act 1998 allows for violations of human rights by state actors to be challenged. By contrast a child who is not in the care of the state cannot allege that their parent has violated their human rights. However, the disadvantages faced by children in care, combined with the fact that they often lack an independent adult voice to help them identify and champion their rights, and the lack of legal aid available to children, means that children in care will often have the greatest need to rely on their rights and the least resources to realise them. For this reason, I am firmly of the view that all possible steps should be taken to ensure that children in care are empowered to understand and use the law.

2.5 A number of recommendations have been made to that end by a range of experts. For example, Article 39 believes that the right to an independent advocate for all children and young people receiving or seeking care or support from the state should be enshrined in law.² The Bach Commission (2017) recommended that "all matters involving children should be brought back into the scope of funded legal aid."³ In addition, in my view children need to be provided with the requisite knowledge and skills to understand

¹ Janes (2018), Why a participatory, rights-based approach is the best way to protect children in trouble with the law, in Child-friendly youth justice? A compendium of papers given at a conference at the University of Cambridge in September 2017, National Association of Youth Justice, available at <http://thenayj.org.uk/wp-content/uploads/2018/05/NAYJ-Child-friendly-youth-justice-May-18.pdf>

² <https://article39.org.uk/advocacy/>

³ The Bach Commission (2017) The Right to Justice, available at http://www.fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission_Right-to-Justice-Report-WEB.pdf page 31

their rights and how to enforce them. The need for enhanced public legal education to enable the robust enforcement of rights has been highlighted by the Joint Committee for Human Rights (2018).⁴

3. THE RISK OF SEXUAL ABUSE OF CHILDREN IN CARE AND THE LINKS BETWEEN CARE AND CRIMINALISATION

3.1 As noted above, the disadvantages faced by children in care may increase the need for them to assert their rights. The disadvantages faced by children in care may directly increase their risk of sexual abuse. As the Rapid Evidence Assessment (REA) acknowledges, there is significant literature indicating that victims of child sexual abuse are at increased risk of being victimised again, although there is no specific evidence that this leads to an increased risk of abuse in custody (IICSA, 2018, p.61).⁵ According to the Department of Education (2017)⁶, over 60 per cent of children are taken into care because of abuse or neglect in England. Sexual abuse is not provided as a distinct category of need within the category of "abuse or neglect" in this data. The failure to single out sexual abuse within the wider category of abuse and neglect leaves a gap in data collection about the reasons why children are taken into care in the first place. The risk of sexual abuse faced by children once they are taken into care is clearly an issue of concern for the Inquiry and no doubt is being considered in greater depth in other investigations.

3.2 Given that children with a history of being sexually abused may be at a greater risk of being abused again and that a significant number of children in care will have experienced sexual abuse, the Inquiry will no doubt be concerned by the evidence that children in care are more at risk of being criminalised and detained compared to other children. The disproportionate

⁴ Joint Committee For Human Rights (2018) 10th Report - Enforcing Human Rights, available at <https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/669/669.pdf> (see Chapter 6)

⁵ 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>

⁶ Department of Education (2017) Children looked after in England (including adoption) year ending 31 March 2017 SFR 50/2017, available at <https://www.gov.uk/government/statistics/children-looked-after-in-england-including-adoption-2016-to-2017>

representation of children in care in prison is dealt with at paragraph 6.9 of my first statement. The legal framework requires that children are only detained as a last resort and it is very rare for children to be detained for a first offence. In my view, in order to reduce the penal detention of children in care, it is essential to stop them being over-criminalised.

- 3.3 Analysis by the Ministry of Justice of children in contact with the public law system (i.e. formal care proceedings) found children aged ten to 17 "were more likely to offend and commit multiple offences...than those of the equivalent age group in the general population" (Ministry of Justice, 2017).⁷ This statistical analysis does not factor in the reasons for the link between care and offending. I am not aware of any specific data as to the proportion of children in custody nationwide who were in residential care prior to being detained. However, based on my experience of working with children in prison for over a decade, it appears to me that detained children with a history of being in care are more likely to have experienced at least one residential care placement (many have experienced multiple placements). To illustrate the point, the Howard League undertook participation work with children and young people in custody. An analysis of the first 50 responses from children with experience of the care system showed that 43 had been placed in children's homes in the past. The Howard League is undertaking a project concerning the criminalisation of children in residential care (as opposed to foster care) and has prepared four briefings on the subject, which are available on our website.⁸ The Howard League' has researched the extent to which children in residential care are at risk of criminalisation: they are at least 13 times more likely to be criminalised than all other children (Howard League, 2017).⁹ The Howard League has also considered good practice that may prevent the criminalisation of children in residential care. Police forces

⁷ Ministry of Justice (2017) Using family court data to explore links between adverse family experiences and proven youth offending, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/653037/using-family-court-data-to-explore-links-between-adverse.pdf

⁸ <https://howardleague.org/what-you-can-do/children-and-policing/programme-to-end-the-criminalisation-of-children-in-residential-care/>

⁹ Howard League (2017) Ending the criminalisation of children in residential care - Briefing one, available at: <https://howardleague.org/publications/ending-the-criminalisation-of-children-in-residential-care/>

are receiving high levels of call-outs from some children's homes, a significant proportion of which they regard as inappropriate. In response to this, many forces are developing innovative practices to reduce unnecessary criminalisation and demand on police resources (Howard League, 2017).¹⁰ The Howard League consulted senior officers and their staff in over half of the 43 police forces in England and Wales. The Howard League heard that considerable police time and resources are being spent dealing with issues that should not have been brought to their attention. All the forces the Howard League spoke to reported call-outs from homes for minor incidents or which resulted from the staff in the care home being unable to cope with behaviour which, in the view of the police, they should have been able to handle. Concerns were also raised that some homes were calling the police in order to punish and control children. Many officers spoke of being called out for incidents that a parent would not have called the police over: "One force told us that they had been called because a child had squirted a member of staff with water. Another related a call from a home about a boy who had pulled down a curtain. One officer said that he felt that on occasion homes called the police to help them 'tuck up' teenagers who refused to go to bed."¹¹

- 3.3 The Howard League has worked closely with the Department for Education and Ofsted to drive meaningful change in practice and regulation. This resulted in new requirements from April 2018 to provide details of police call-outs on Ofsted's pre-inspection questionnaire and a new National Protocol to reduce the unnecessary criminalisation of children in care and care leavers, which is expected to be published later this year. However, the Howard League legal team continues to come across children in residential care who are referred to the police for inappropriate reasons, including sometimes when the child is clearly deeply vulnerable and requiring intensive mental health support rather than criminalisation. One particularly concerning example involved a 17 year old child at risk of sexual exploitation who was referred to the police for incidents in the care home even though she was clearly

¹⁰ Howard League (2017) Ending the criminalisation of children in residential care. Briefing two: best practice in policing, available at <https://howardleague.org/publications/ending-the-criminalisation-of-children-in-residential-care-briefing-two-best-practice-in-policing/>

¹¹ Ibid

vulnerable and was assessed to have the functioning of a primary school aged child. As a result, she was remanded to custody until she was bailed and placed under a welfare order.

4. CONCLUDING OBSERVATIONS

- 4.1 The lack of focus on the rights of children in care and the hurdles they faced in accessing their rights is particularly important given the links between care and criminalisation.
- 4.2 For the reasons set out in my first and second witness statements, it is my view that children who are better equipped to speak out and enforce their own rights will be better placed to prevent or at least speak out against the risk of sexual abuse.
- 4.3 It stands to reason that if children in care struggle to enforce their rights and are more likely than other children to be criminalised, there is an increased risk of children in prison being less able to assert their rights or speak out when their rights have been violated.
- 4.4 In my view serious consideration should be given to concerted efforts to reduce the criminalisation of children in care in line with best practice by police, local authorities and care providers outlined in the Howard League briefings on this subject. At the same time, children in care should be empowered to understand their rights and how to enforce them through legal education, the provision of independent advocates and all matters affecting children being brought back into the scope of legal aid funding.

The contents of this statement are true.

Signed:



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DR LAURA JANES

Dated:

20 July 2018.....