

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

RE: Child sexual abuse in custodial institutions

FOURTH 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 provided some comments in respect of the Howe+Co proposals for reform of child custodial institutions (the Proposals). Further to a formal request from the Inquiry sent by email dated 19th July 2018, I now provide further comments. I understand that there is a longer document setting out the Proposals in full and confirm that I have not had access to this document. I am making this statement based on the 'Summary of proposals for reform of child custodial institutions' submitted on behalf of F20, F27, F30, F32 and F34 and some further information provided by the Inquiry on 27 July 2018 in response to the Chair's request for proposals for reform of custodial institutions.

1.2 In the following paragraphs I will outline my reflections and observations in respect of the proposals that I feel able to comment upon based on my experience, knowledge and understanding.

2. REFLECTIONS AND OBSERVATIONS ON CERTAIN PROPOSALS

Creation of a statutory agency

2.1 Proposal 1(i) is the creation of a statutory agency, similar to the US Bureau of Justice Statistics to monitor sexual abuse in prisons; or for a new mandatory duty on an existing statutory agency, such as HM Inspectorate of Prisons, to collect this data.

2.2 As I understand it, the US Bureau of Justice Statistics (BJS) is a federal government agency belonging to the U.S. Department of Justice that collects, analyses, publishes, and disseminates information on crime, criminal offenders, crime victims, and criminal justice operations at all levels of government (BJS website).¹ I also understand that the US Bureau of Justice Statistics Survey of Sexual Victimization, referred to in the Rapid Evidence Assessment (REA), is a key source on child sexual abuse in custody. This survey found rates of sexual victimisation to be 2.5 per cent for youth on youth victimisation and 7.7 per cent for staff sexual misconduct (Beck et al., 2012).² I also understand that the Bureau of Justice Statistics also carries out an annual survey of correctional authorities on reported allegations of sexual victimisation in juvenile facilities. The most recent findings from this study (Beck and Rantala, 2016) were that there were 23 allegations per 1000 youth in 2012, with just over half relating to peer victimisation and the remainder relating to staff victimisation.³ I note that the Inquiry's REA found that, in contrast to the USA, there was little robust research evidence to draw on from England and Wales in respect of child sexual abuse in custody (REA, 2018, p. 18).⁴ Whilst the HMIP annual survey in Secure Training Centres (STCs) and Young Offender Institutes (YOIs) does ask children questions about sexual abuse, the way the survey is carried out and the

¹ <https://www.bjs.gov/index.cfm?ty=abu>

² <https://www.iicsa.org.uk/key-documents/5197/view/Child%20sexual%20abuse%20in%20custodial%20institutions%20REA%20-%20Full%20report.pdf>

³ <https://www.iicsa.org.uk/key-documents/5197/view/Child%20sexual%20abuse%20in%20custodial%20institutions%20REA%20-%20Full%20report.pdf>

⁴ <https://www.iicsa.org.uk/key-documents/5197/view/Child%20sexual%20abuse%20in%20custodial%20institutions%20REA%20-%20Full%20report.pdf>

challenges of collecting information on child sexual abuse may affect how accurately it represents the scale of child sexual abuse in custody. Additional questions about any abuse that is reported, such as the circumstances and characteristics of the perpetrator are not asked and no comparable data is available for Secure Children's Homes (SCHs).

- 2.3 As I noted in my first statement, it appears that there is a big gap in the evidence base as to the prevalence of sexual abuse among children in custody. Based on the information above, it would appear that it is possible to collect better data, both from children themselves and the adults charged with their care. In my view, any enhanced monitoring and scrutiny of the nature, prevalence and response to sexual abuse in custody is likely to be helpful in preventing it from occurring in the future and to assist the authorities to deal with it effectively.

Child Custodial Safeguarding Authority'

- 2.4 Proposal 1(ii) is the creation of a 'Child Custodial Safeguarding Authority'. As I understand it Howe+Co's submission is that data should be kept by a national safeguarding body responsible for the custodial estate, such as a 'Child Custodial Safeguarding Authority', independent of both the Ministry of Justice and Youth Justice Board, who can record, investigate and act on allegations of abuse, including child sexual abuse, and oversee the implementation of safeguarding standards by institutions, contractors (where relevant), police and local authorities. Further, Howe+Co's clients suggest that all recorded allegations should be retained electronically for 75 years, including incident descriptions, the name of the alleged victim, alleged perpetrator, the action taken and the result of the investigation, including where it was referred to allow a 'Child Custodial Safeguarding Authority' to monitor the number and nature of allegations, whether they are referred to the police or social services, whether they are investigated, and the outcome of any investigation and subsequent action. It is suggested that such a mechanism is a prerequisite to meaningful reform. It is also suggested that it would ensure accurate monitoring, enabling trends and problematic institutions to be identified and providing a central agency for direct referrals if necessary. Given the evidence from Article 39 (which accords with the experience of the Howard League legal team) as to the large number of referrals

that do not appear to result in the complaint being upheld or substantiated (November 2017)⁵, the ability to analyse centralised data and investigate problematic establishments may be more likely to result in investigations of those institutions. However, given that at present local authorities ought to be aware of all allegations of sexual abuse, there is no reason why this cannot already happen.

- 2.5 In my view the creation of such an agency or ensuring that there is at least a recognition within current structures of the need to have special regard to the risk of abuse of children in custody would assist in reducing the risk of child sexual abuse in custody.

Staff training in dealing with allegations of child sexual abuse

- 2.6 Proposal 1(iii) is that all staff working in child custodial institutions should have specialist (ongoing) training in dealing with allegations of child sexual abuse, including knowledge of how to handle disclosures, which services to signpost and direct victims to, and what procedures to follow to ensure a timely and proper investigation. The REA also points to wide-ranging support for all staff working in custodial settings to receive specialist training on working with children.⁶ It is therefore concerning that despite the consensus around this point, the evidence suggests that staff in YOIs and STCs do not receive sufficient training (REA, 2018, p. 91).⁷ As set out in my previous witness statements, I am of the view that specialist and on-going training for staff working with children in custody to equip them to identify and deal with abuse appropriately is required.

An individual duty to protect

- 2.7 Proposal 1(iv) is that all staff members swear an oath that they will 'protect and report', making it clear their duty is to protect children from physical, sexual or mental abuse and report any concerns that they have without fear or favour.

⁵ Abuse in children's institutional settings: How much is known?

⁶ <https://www.iicsa.org.uk/key-documents/5197/view/Child%20sexual%20abuse%20in%20custodial%20institutions%20REA%20-%20Full%20report.pdf>

⁷ <https://www.iicsa.org.uk/key-documents/5197/view/Child%20sexual%20abuse%20in%20custodial%20institutions%20REA%20-%20Full%20report.pdf>

While progress has been made over time regarding the child protection referral process within custodial institutions, there is still a lot of room for improvement, and issues related to the appropriate understanding of what constitutes a child protection matter within the secure estate remain (REA, 2018, p. 97).⁸ In my view, the most important aspect of this proposal is the duty to ensure suspected abuse is reported.

2.8 In the course of considering children’s rights in custody, I have reviewed the various rules and regulations for each type of establishment. In all three types of institutions that detain children, the statutory framework requires staff report impropriety. I have set these out the table below.

Establishment	Requirement to report abuse
YOI	YOI Rule 67 (2): “General duty of officers” An officer shall inform the governor promptly of any abuse or impropriety which comes to his knowledge.
STC	STC Rule 39 (2): “Officers of secure training centres” An officer shall inform the governor promptly of any abuse or impropriety which comes to his knowledge
SCH	The Children’s Homes (England) Regulation 33(2): “Employment of staff” Homes must operate a disciplinary procedure which: (a)provides for the suspension from work of an employee if necessary in the interests of the safety or welfare of children; and (b)provides that the failure on the part of an employee to report an incident of abuse, or suspected abuse, whether past or present, in relation to a child to the appropriate person is a ground on which disciplinary proceedings may be instituted.

2.9 The table illustrates the different governance approaches across the institutions. Notably, it is only in Secure Children’s Homes that the regulations include a consequence for not reporting abuse or suspected abuse. The risk of being disciplined for not reporting even suspected abuse may be a powerful factor in encouraging a person who is unsure about reporting suspected abuse. It seems

⁸ <https://www.iicsa.org.uk/key-documents/5197/view/Child%20sexual%20abuse%20in%20custodial%20institutions%20REA%20-%20Full%20report.pdf>

to me that it would be instructive to consider parallel statutory provisions in different establishments and how they operate in practice.

Proscribing pain-induced techniques

2.10 Proposal 1(v) is that the Inquiry recommend that the use of pain-induced control techniques are proscribed. The Howard League has long called for abolishment of pain-inducing restraint techniques. The independent inquiry by Lord Carlile of Berriew QC, commissioned and published by the Howard League in 2006, concluded that resort to restraint was a failure to de-escalate conflict and the infliction of pain was not acceptable and may be unlawful (The Carlile Inquiry, 2006, p. 12).⁹ A follow-up report published by the Howard League in 2016 found that pain-inducing techniques continued to be used on children despite the introduction of the new system of restraint called Minimising and Managing Physical Restraint (MMPR) in 2012 (The Carlile Inquiry 10 years on, 2016).¹⁰ The report found evidence that at some prisons the use of pain compliance had increased in the intervening ten years. The courts have held that deliberately inflicting pain on a child for compliance is unlawful.¹¹

2.11 The children who call the Howard League's legal advice line often report suffering pain, distress, and in some cases severe injuries following use of force on them. Children have reported feeling pain both through the use of techniques designed to inflict pain and the use of techniques that are not deliberately designed to inflict pain but still hurt. For the reasons set out at paragraph 6.14 of my first statement, I remain of the view that the use of force on children in prison is deeply concerning and not conducive to an atmosphere free from abuse. I agree that the use of deliberate pain should be proscribed. In my view, the negative experiences of children subjected to deliberate pain in custody by staff are likely to seriously impact on their ability to trust staff or report other concerns.

Violence reduction coordinator

⁹ <https://howardleague.org/wp-content/uploads/2016/03/Carlile-Report-pdf.pdf>

¹⁰ <https://howardleague.org/wp-content/uploads/2016/06/Carlile-Inquiry-10-years-on.pdf>

¹¹ R(C) v Secretary of State for Justice, 2008

2.12 Proposal 1(vii) is that each child custodial institution have a violence reduction co-ordinator who monitors trends in violence in the institution, and responses to violent incidents, victims and perpetrators. There is some evidence that sexual abuse in custody occurs within a broader context of victimisation and violence which takes place within these establishments (REA, 2018, p. 110).¹²

2.13 In my view any efforts to reduce violence experienced by children in custody should be welcomed both generally to protect children and to mitigate the risk of sexual abuse.

Confidential spaces for professionals

2.14 Proposal 1(viii) is that advocacy workers, legal representatives, social workers and other persons from outside the custodial institution be given unfettered access and confidential interview spaces in order to create opportunities for children to disclose. It stands to reason that having a physical safe space to talk is likely to increase the chances of children reporting concerns. At present, in my experience, the availability of such spaces is extremely varied across the secure estate: in some YOIs I understand it is particularly difficult to secure access to confidential safe spaces. I still hear about sensitive issues being discussed “through the door” because either the professional involved is not able to unlock the cell or there is no private space to have that conversation.

A standard and confidential complaints system

2.15 Proposal 1(ix) is that a standardised complaint form is introduced at all youth custodial institutions. Also that such forms are available at all times at the request of a child inmate, and that they be placed in a position where they are accessible at association times, so that a child does not have to ask for one should they wish to complete one. This must be accompanied by a secure and confidential complaints system allowing for discreet complaints to be made which are immune from censure and outside of the standard administration within a custodial institution.

¹² <https://www.iicsa.org.uk/key-documents/5197/view/Child%20sexual%20abuse%20in%20custodial%20institutions%20REA%20-%20Full%20report.pdf>

2.16 At paragraph 3.9 of my first witness statement, I set out my concerns that children often have very little faith in the complaints system. At paragraphs 5.2 and 7.2 I provide further information and some examples that illustrate why children may have little faith in the system. In my view an effective complaints system that children can meaningfully participate in is important. This may require that children are supported to raise their complaints in a range of ways that reflect their levels of need and understanding.

Peer-led panels

2.17 Proposal 1(xi) is that Userve (peer-led panels) be introduced in youth custodial institutions in order to facilitate representation of the children in those custodial institutions on a variety of issues connected to sexual abuse, such as violence, restraint, sex education and other matters; but also in order to empower those children to feel able to make allegations.

2.18 This initiative could be very positive in promoting the kind of rights-based approach that I have referred to in my previous statements.

BAME review

2.19 Proposal 1(xii) is that a separate review of BAME groups in the youth justice system be commissioned, in the light of the massive overrepresentation of persons from the Traveller, Gypsy and Roma community, as well as other BAME inmates.

2.20 As noted in my first witness statement at paragraph 6.11.2, as far as I am aware, there is a gap in the evidence as to whether BAME children are more likely than other children to experience sexual abuse in custody. A separate review of the type proposed may be able to explore this further.

Meaningful care plans for victims of bullying and violence

2.21 Proposal 1(xiv) is that the HMIP recommendation regarding HMYOI Feltham be implemented ("*Managers should ensure that meaningful care plans are in place for victims of bullying and violence. Monitoring of victims and perpetrators should*

take place on residential units and should be recorded”) and propose that care plans be included in national guidance on child protection in custody.

2.22 Based on my experience of working with children in prison, detailed care plans that are made in consultation with the child and shared with the professionals working with the child can make a real difference.

Specialist mental health training

2.23 Proposal 1(xvi) is that staff training include specialist mental health training and that it should include specific modular training on mental health issues in relation to groups that are likely to be prevalent in custody. For example, mental health support for drug users and minority groups.

2.24 More specialist mental health training to enable staff to have a better understanding of children’s needs in my view can only be positive. Various mental health informed models are already in existence such as the ‘Trauma Recovery Model’ and ‘Secure Stairs’. I understand that these models sometimes provide additional benefits by virtue of increased funding and resources.

Statutory review of mental health services available to young people in custody

2.25 Proposal 1(xvii) is that the Inquiry recommend a statutory review of mental health services available to young people in custody. With an urgent review as to whether the children and young people have properly been identified for being held within the secure estate as against a mental health institution.

2.26 The Howard League has assisted a number of children who have been deemed suitable for a transfer to hospital who have had to wait for excessive periods prior to actually being transferred. Clearly it is important that children are placed in the most appropriate setting. However, the risk of sexual abuse is also present in secure hospitals.

Compulsory sex and relationships education (SRE)


2.27 Proposal 1(xviii) is that sex and relationships education (SRE) should be compulsory for all persons in custodial institutions; including education on sexual abuse, grooming, sexual harassment and other harmful sexual behaviours, in order to aid children in identifying these issues and to understand positive sexual relationships.

2.28 SRE may provide an important vehicle to ensure that children fully understand what is and is not acceptable, although it ought to also include education around what sexual behaviour is lawful and unlawful (see my first statement at paragraph 6.7 and my second statement at paragraph 3.5).

3. CONCLUDING OBSERVATIONS

3.1 I hope that my observations and reflections on the proposals that I have commented upon are of some assistance to the Inquiry. It remains my view, as set out in my first witness statement at paragraph 3.1 that prison is inherently risky for children and it will be impossible to eradicate the risk of sexual abuse for children in penal detention. So long as children are incarcerated, it is vital that steps should be taken to mitigate the risk so far as is possible.

The contents of this statement are true.

Signed: .....

DR LAURA JANES

Dated: *16 August 2018*.....