

Written Evidence submitted by the Howard League for Penal Reform to the Justice Select Committee's Aging prison population inquiry

1 October 2019

Executive Summary

- The consequence of sentencing inflation is an ageing prison population, which risks turning some prisons into penal care homes
- If the government's new, 'tough' approach to criminal justice is carried through, the number of people growing old in prison will increase
- Reducing the number of older prisoners in the prison system is crucial, in order to reduce prison overcrowding, take pressure off the strained prison service and save taxpayer's money, at very little risk to the community
- Recent reports have identified a serious lack of provision for older prisoners and a continued failure to address this problem
- Too often, older prisoners receive poor care in prisons
- Social care budgets are stretched. The provision of care for older prisoners should not damage social care funding in the community
- Imprisonment is not practical or appropriate for people with forms of dementia
- People dying in custody place still more strain on the prison estate, and too many people die in inhumane conditions
- More could be done to release older people
- Existing provision must be reshaped by bringing the ethical dimension of imprisoning people who are very old and infirm into view

1. About the Howard League for Penal Reform

1.1 Founded in 1866, the Howard League is the oldest penal reform charity in the world. We have some 13,000 members, including lawyers, politicians, business leaders, practitioners, prisoners and their families and top academics. The Howard League has consultative status with both the United Nations and the Council of Europe. It is an independent charity and accepts no grant funding from the UK government.

- 1.2 The Howard League works for less crime, safer communities and fewer people in prison. We aim to achieve these objectives through conducting and commissioning research and investigations aimed at revealing underlying problems and discovering new solutions to issues of public concern. The Howard League's objectives and principles underlie and inform the charity's work.
- 1.3 Our submission, drawing on our policy work, recommends that the ageing prison population should be reduced in order to prevent prisons from becoming penal care homes and to decrease overcrowding, and that existing provision should be reshaped by bringing ethical considerations into view.

2. An ageing prison population is the logic of sentencing inflation

- 2.1 According to the government's latest prison population projections, the ageing of the prison population is thought to have peaked. A substantial drop in the number of 50-59 year-olds is predicted by June 2023, although the number of over-60s in the same period is predicted to remain more or less constant (Ministry of Justice 2019). These projections are based on the assumption that lower numbers of sexual offences, and the decrease in IPP and lifer populations, will continue.
- 2.2 However, average sentence lengths continue to increase. Sentences for sexual offences have increased most dramatically – the average sentence length for sexual offences increased to 61.4 months (more than five years) in 2018 – 16.9 months longer than a decade ago (Ministry of Justice 2019a). This will impact significantly on the ageing prison population, as 45 per cent of men in prison aged over 50 have been convicted of sex offences (House of Lords 2017).
- 2.3 Moreover, the prime minister's new 'tough' rhetoric, combined with an expansionist programme of building 10,000 more prison places, is set to increase sentence lengths still further. The government has announced that it will implement whole-life orders, end automatic release halfway through a sentence and extend the Unduly Lenient Sentences Scheme to cover 14 new, mainly sexual, offences.
- 2.4 As the length of prison sentences increases, more people will grow old in prison. An aging prison population is the logic of sentence inflation.

2.5 Making sentences longer is extremely expensive. The average cost per prison place in 2017-2018 was over £40,000 (Ministry of Justice 2018). In addition, unnecessary sentence inflation is a major contributor to overcrowding, which in turn undermines the effectiveness of rehabilitation programmes (Criminal Justice Alliance 2012).

2.6 An independent commission ought to be established with the aim of reversing sentence inflation and reviewing the number of offences that can be punished by a life sentence and tariff lengths, taking into account European norms.

3. A serious lack of provision for older prisoners

3.1 There is a consensus (Justice Committee 2013; PPO 2017; HMIP 2018) that older prisoners have special needs that are often not being met.

3.2 The Justice Committee's own report in 2013 found that 'older prisoners risk being isolated by a physical environment and regime which they cannot access' and recommended a national strategy be put in place to address the lack of provision for older prisoners.

3.3 The Care Act 2014 made the local authority within which a prison is located responsible for providing social care, but the prison inspectorate continues to identify a concerning lack of provision for older prisoners in many prisons (HMIP Annual Report 2018/19).

3.4 A Prison and Probation Ombudsman (PPO) review in 2017 identified 'unacceptable examples of poor care of the elderly and dying in prison' and reported that 'there is still no properly resourced older prisoner strategy, to drive consistent provision across prisons' despite the PPO having called repeatedly for such a strategy.

3.5 An HM Inspectorate of Prisons (HMIP) thematic report in 2018 acknowledged that 'people with social care needs... are at a significant disadvantage' and found a wide variation in the quality of social care between prisons, even after the implementation of the Care Act.

Case study

3.6 The most recent Independent Monitoring Board (IMB) report for Littlehey prison, which has a rapidly aging population, found that facilities for older men are decreasing rather than being increased (IMB

2019). Almost 50 per cent of the men in Littlehey are 50 or older, and just 30 wheelchairs have to be shared between 80 men. Neither is there enough purposeful activity for older men – 42 per cent of the over-65s have no allocated work compared to 14 per cent of 20-25 year olds. The entire heating system needs to be replaced and boilers heating some of the cells at Littlehey were out of action for eight months. The IMB concluded that this lack of provision effectively imposes a ‘double sentence’ on older men.

3.7 Despite being the largest prison for men convicted of sexual offences in Europe, only a very small number of men at Littlehey are able to access interventions to help reduce their risk. The IMB ‘questions the purpose of imprisonment when approximately 40 per cent of prisoners with determinate sentences are in full or part denial or are assessed as low risk using the risk assessment matrix’.

3.8 In lieu of a national strategy for older prisoners, a prison like Littlehey appears to have become a de facto centre for this cohort. It certainly has a large ageing population and yet conditions are poor and there is a concerning lack of provision for older prisoners.

4. Prisons or penal care homes?

4.1 If the prison system is to meet the needs of its ageing prison population it risks turning prisons into penal care homes, placing a further demand on already limited resources which have to be channelled into old age and palliative care.

4.2 The recent creation of palliative care facilities within some prisons means that, in the words of the PPO, ‘prisoners are able to spend their final months within the prison, while receiving a similar level of attention that they might expect in a hospice’ (PPO 2017).

4.3 This begs important questions for the Committee to consider. Should the prison estate be responsible for the provision of palliative care? What are the consequences of effectively running penal care homes?

4.4 In the community, there remains a large unmet need for palliative care of between 92,000 and 142,500 people in England each year (Craft et al 2011). Social care budgets are already stretched, yet the public sector is taking on much greater caring responsibilities by incarcerating more older people. The provision of care for older prisoners within the prison

estate should not damage social care funding in the community.

4.5 There is no public safety argument for incarcerating someone who is so physically incapacitated they pose no risk.

4.6 The PPO review in 2017 found that while health conditions for older prisoners could impact significantly on their risk, risk assessments of older prisoners were not sufficiently responsive and overly formulaic. Older prisoners ought to be progressed more efficiently in order to reduce the demand for old age provision or palliative care in prisons.

4.7 A form of 'geriatric conditional release', as is the practice in other jurisdictions, should be considered. In the United States, Louisiana, Ohio and Virginia have 'geriatric conditional release' laws that make old age grounds for consideration for an early release (Pew Trust 2016).

4.8 However the Committee should be wary of blanket approaches. Risk assessments require discretion on a case-by-case basis, and older prisoners, where they do remain in prison, often require highly personalised care.

4.9 For some older prisoners, remaining in prison is preferable to the prospect of being transferred to the unfamiliar setting of a care home for the last few months of their life. In the course of this inquiry, the Committee must also consider those prisoners who would prefer to end their life in prison rather than a care home. Is it appropriate that a prison should offer better care than a care home? To what extent can the institutionalisation of older prisoners be avoided?

5. Dementia in prisons

5.1 Illnesses related to old age such as dementia are especially difficult to accommodate in a prison setting for reasons that are both practical and ethical.

5.2 Practically speaking, imprisoning people with dementia does not serve penal aims and is arguably unjust. A person without the capacity to understand or remember why they are being imprisoned will not be deterred or rehabilitated.

5.3A Freedom of Information request submitted by the Howard League revealed that at least five prisoners diagnosed with dementia are held in

the high security estate, we believe this to be a significant underestimate. The Justice Committee noted in 2013 that there is a lack of training and awareness in prisons of illnesses like dementia which could limit its diagnosis, so that number is likely to be higher. People with dementia are unlikely to pose a high escape risk and place more pressure on already strained resources (all of the high security prisons in England and Wales are close to or over capacity).

5.4 There is no ethical justification for imposing a punishment on those who do not understand its purpose. People with Alzheimer's or other forms of dementia effectively lose their decision-making capacity – at which point prisons are simply caging physical bodies.

5.5 It is estimated that there are several hundred people in the prison estate with dementia (PPO 2016).

5.6 People with dementia should not be held in the high security estate and where possible should be moved out of the prison estate entirely.

6. Deaths in prisons

6.1 Reducing the number of older prisoners would mean that fewer people die in prison and help to ensure that the dying are cared for humanely. Prison officers are not trained nurses but are expected to cope with prisoners who require a very high level of care. Caring for extremely ill or dying prisoners can be very distressing for staff.

6.2 What counts as 'old age' in prisons differs from 'old age' in the community, as poor living conditions in prisons mean people age more quickly. For this reason, the prison inspectorate uses the age of 50 as a benchmark for defining 'old age' in prisons (HMIP 2018).

6.3 Unsurprisingly, the largest number of people who die in prison from natural causes are over 50. In 2018, 142 people over 50 died from natural causes; 106 of these were over 60. Only 24 under-50s died from natural causes (PPO figures collected by the Howard League).

6.4 The number of over 50s dying in prison from natural causes has increased from 90 in 2013 to 142 in 2019 (PPO figures collected by the Howard League). Yet the number of over-50s as a proportion of the prison population rose by only three per cent over the same period (Ministry of Justice 2019b).

Case studies

- 6.5 A recent death at Holme House prison demonstrates some of the ways in which prisons fail older prisoners. A 69-year-old prisoner with a history of strokes, confusion, memory loss and a high risk of falling was not given a falls assessment in a timely manner. The PPO record that this was a man who was 'too frail to stand on his own'. Subsequently the prisoner was injured after a fall in his cell and spent several months in hospital. Shortly after being transferred back to the palliative care unit at Holme House, he died. Confusion over who was responsible for finding accommodation for the prisoner in the community meant that his compassionate release application was not processed before he died (PPO 2019).
- 6.6 Delays in processing applications for compassionate release have also recently occurred at Rye Hill prison, where it took three weeks for the prison to send the medical report required by Public Protection Casework Section, and when they did it remained in the manager's inbox awaiting his return to the office. The 53-year-old prisoner, who had lung cancer, died before the application could be processed (PPO 2019a).
- 6.7 In another recent example of the prison service's failure to care humanely for the dying, an 81-year-old man imprisoned at HMP Littlehey was restrained with handcuffs or an escort chain on three separate hospital visits, despite being frail and ill with cancer (PPO 2018). The PPO has raised concerns about the unjustified use of restraints at Littlehey three times this year (see PPO 2019b). The same prisoner was left lying naked on the floor of his cell for two long periods in the hour before he died (PPO 2018). The PPO have also criticised prisons Walton, Altcourse and Forest Bank for using restraints on old and frail prisoners inappropriately in recent months.
- 6.8 People dying in prisons creates a significant additional cost for prisons not only in expenditure on social care, but in funeral costs. Prisons have a duty to offer to pay reasonable funeral expenses of up to £3,000.
- 6.9 A review of older prisoners should ask: how many over-50s are in prison because of repeated, failed applications to the parole board, where that failure could have been prevented? Should the parole board take age and infirmity into account? A more efficient parole system would reduce the number of people dying in prison.

7. Recommendations

7.1 The following steps should be taken to reduce the ageing prison population:

- Establish an independent commission with the aim of reversing sentence inflation and reviewing the number of offences that can be punished by a life sentence and tariff lengths, taking into account European norms.
- A review of older prisoners to consider whether the prison estate should be responsible for the provision of old age and palliative care. The provision of care for older prisoners within the prison estate should not be in competition with social care funding in the community.
- Risk assessments of older prisoners should also be reviewed in order to make them more responsive and less formulaic.
- Geriatric conditional release, as is the practice in other jurisdictions, should be considered.
- People with dementia should not be held in the high security estate and where possible should be moved out of the prison estate entirely. The prison service should aim to reduce the number of older people who die of natural causes in prison.
- Older prisoners ought to be progressed more efficiently in order to reduce the demand for old age provision or palliative care in prisons. A more efficient parole system should take age and infirmity into account and consider early release for older prisoners who pose a low risk to public safety.
- The ethics of imprisoning the old and infirm should be given greater consideration when formulating policy and guidelines for the treatment of older prisoners.

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