

**Submission by the Howard League for Penal Reform to the Justice Committee's inquiry into children and young people in custody**

**Executive summary**

- There is no young offender institution or secure training centre that is, or has ever been, safe or fit to hold children and young people
- Young offender institutions are exposing children to record levels of violence, restraint, isolation and self-injury
- Systemic and serious child protection failings in secure training centres have led to a catalogue of child abuse
- We have been failing children for a century and it is time to find better ways of responding to children in conflict with the law
- The Howard League legal advice line receives hundreds of calls a year about conditions for children in custody, with many citing serious mistreatment relating to isolation, restraint and other abuses of children's rights
- Despite an array of rights and protections being available, there is an unacceptable gap between what is and what should be happening
- Children in custody are overwhelmingly vulnerable and disadvantaged with a range of complex needs. Young offender institutions and secure training centres are compounding children's problems and causing additional serious long-term trauma and damage
- Many children are being unfairly and unnecessarily sentenced and remanded because of discrimination and failings in justice, social care and health systems. These include children from black, Asian and minority ethnic backgrounds; children who are or have been living in residential care; child victims of exploitation; and children with serious mental health problems

- Widespread systemic and statutory failings across systems mean that children who should be being helped, supported and accommodated in different settings are being propelled into custody
- The vision of secure schools was well-intentioned but is just re-inventing yet another type of prison that risks repeating decades of failure at terrible cost
- If systems were functioning as they should be, custody would only be required and appropriate for a handful of children who cannot safely be managed in the community. These children should be housed in small, local authority-run homes with skilled staff and an appropriate level of resource to meet the high level of need

## **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. The Howard League has some 13,000 members, including prisoners and their families, lawyers, criminal justice professionals and academics. The charity 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 achieve these objectives through conducting and commissioning research and policy work aimed at revealing underlying problems and discovering new solutions to issues of public concern, as well as through direct legal and participation work.
- 1.3 Our legal team works directly with children and young adults in prison aged 21 and under and provides legal advice and representation. The Howard League legal team runs a free, confidential legal telephone service that is free for young people to call without needing the permission of prison staff.
- 1.4 We have drawn on our unique legal and policy work in preparing this submission.

## **2 Prison is no place for children**

- 2.1 In 2017, the Chief Inspector of Prisons warned the then minister that, because of high levels of violence, there was not a single young offender institution (YOI) or secure training centre (STC) that was safe enough to hold children. In July 2019, he issued the first Urgent Notification in respect of a children's prison.

- 2.2 In February 2019, the Independent Inquiry into Child Sexual Abuse (IICSA) published its report on sexual abuse of children in custodial institutions. It was a chilling read. The Inquiry heard of more than 1,000 allegations of child sexual abuse in custody between 2009 and 2017. A former Chief Inspector of Prisons told the Inquiry that YOIs and STCs were holding “*very vulnerable children in a very dangerous place*”.
- 2.3 In 2017/18, the Youth Justice Board (YJB) reported an increase across all “behaviour management measures” in the youth secure estate compared with the previous year. Self-harm incidents in child custody were up by 40 per cent (almost 1,800 incidents), proven assaults by 29 per cent (more than 3,500 incidents), incidents of “Restrictive Physical Interventions” (5,400 incidents) had increased by 20 per cent and there were 6,600 “use of force” incidents. The euphemistically termed “single separations” were up by eight per cent (YJB, 2019), although this does not adequately reflect the extent of this fundamental abuse of children’s rights (see paragraph 5.2 below). Data are only published for secure children’s homes and STCs on this issue. Comparable data are not held for public YOIs (YJB, 2019, p59, footnote 119).
- 2.4 As Mr Justice Munby, now Sir James Munby, said in his judgment in a judicial review brought by the Howard League in 2002, “[Children in custody] *are, on any view, vulnerable and needy children. Disproportionately they come from chaotic backgrounds. Many have suffered abuse and neglect ... they need help, protection and support if future offending is to be prevented.*”<sup>1</sup> His comments ring as true today as they did 17 years ago; a survey by HM Inspectorate of Prisons (HMIP) in 2017/18 found that 39 per cent of children in YOIs had experienced care and a fifth reported having a disability (HMIP, 2019).
- 2.5 YOIs and STCs have proved over decades that they are incapable of providing the necessary “*help, protection and support*”. They are unable to provide what should be a basic guarantee of children’s safety. They are compounding children’s problems and causing additional serious long-term trauma and damage. Prison is no place for children and it is dangerous for them and for society. The only solution is to close down YOIs and STCs.

### **3 Secure schools are not the answer**

- 3.1 The vision of secure schools was well-intentioned but, as the choice of Medway STC as the first site highlights, is just re-inventing yet another type of prison that risks repeating decades of failure at terrible cost.
- 3.2 The systemic failings and child abuse outlined above are not a recent problem; we have been failing children for a century. History shows that even with the best of intentions, various iterations of prisons for children as places

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<sup>1</sup> *R (on the Application of Howard League) v Secretary of State for the Home Department and the Department of Health* [2002] EWHC 2497 (Admin) at para. 10.

of education and rehabilitation, have simply never worked. A blog written by the Howard League Chief Executive, Frances Crook, outlining the history of Feltham, the subject of the above-mentioned Urgent Notification, illustrates the point.<sup>2</sup>

- 3.3 We are concerned that this new model of child custody risks sucking children into the most serious form of punishment our system has to offer in the hope that they will benefit from the provision. Secure schools must not be allowed to reverse the welcome recent reduction to the child custody population. They must replace YOIs and STCs, as stated in the Taylor Review (Taylor, 2016, para. 145) and confirmed in the government response (Ministry of Justice, 2016, paras 121 and 122). There must be a clear recognition that secure schools are fundamentally not schools but penal institutions to be used as an absolute last resort by the courts, as required by international law (Article 37(b), United Nations Convention on the Rights of the Child).<sup>3</sup>

## 4 Our vision

- 4.1 The vast majority of children should not be in custody. As outlined above, children in custody are overwhelmingly vulnerable and disadvantaged with a range of complex needs. Widespread systemic and statutory failings across justice, social care and health systems mean that children who should be being helped, supported and accommodated in different settings are being unfairly and unnecessarily propelled into custody. We say more about some of these children in section 7 below.
- 4.2 If systems were functioning as they should be, custody would only be required for a handful of children who cannot safely be managed in the community. These children should be housed in small, local authority-run homes with skilled staff and an appropriate level of resource to meet the high level of need.

## 5 Our direct knowledge of conditions in custody

- 5.1 Every day the Howard League receives calls to its legal advice line from children, parents and professionals which raise, often distressing, concerns about the conditions children are being subjected to in custody. Concerns regarding isolation and/or restraint were raised in more than 100 calls between September 2016 to September 2018. As we told IICSA, the punitive culture of YOIs and STCs is putting children at risk. Children do not feel safe enough to speak out and they do not have faith that they will be believed if they do.

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<sup>2</sup> *Reinventing different ways of locking up children – a cautionary tale* dated 30 July 2018 at <https://howardleague.org/blog/reinventing-different-ways-of-locking-up-children-a-cautionary-tale/>.

<sup>3</sup> For further detail on our position with respect to secure schools, we refer the Committee to our Response to the Ministry of Justice ‘Secure Schools: How to Apply Guide’ Consultation dated 30 July 2018 at <https://howardleague.org/wp-content/uploads/2018/07/Howard-League-secure-schools-response-30-July-2018.pdf>.

- 5.2 As the Howard League argued in the case of *AB*,<sup>4</sup> children should never be placed in solitary confinement. Yet, children in prison regularly report to us that they are spending 23-and-a-half hours a day in their cells with little meaningful contact with other people. This falls within international definitions of solitary confinement.<sup>5</sup> The extent of the problem was noted by the Joint Committee for Human Rights (JCHR), which said that in custodial settings, “*children are separated from human contact (whether in their own room or in a particular unit) too often and for too long, where other options would be less harmful and more effective. The problem is even worse than is reported, due to some data not being collected fully and some data not being collected at all in particular for the separation of children in their own cells in YOIs*” (JCHR, 2019, para. 50). In the two years up to September 2018, the Howard League received requests for help in respect of isolation at least 98 times.
- 5.3 The Howard League has supported many children who have been restrained either for not doing as they are told or in ways that are outside the strict guidelines designed to protect children from serious harm when they are restrained. We have made many complaints and safeguarding referrals.
- 5.4 We provide a handful of examples of cases the Howard League legal team has dealt with recently to give a flavour of the nature and severity of issues we are regularly encountering. For further examples, we refer the Committee to a blog written by Frances Crook dated 4 June 2019<sup>6</sup> and our submission to the JCHR.<sup>7</sup>
- 5.5 A teenager called us as he had an adjudication for criminal damage which involved punching an object in order to self-harm. He was on an ACCT (suicide and self-harm watch) subject to observations twice an hour. The lad also told us that he was restrained after swearing and making a slight movement after he had been told not to move. As a result he suffered bad bruising. The same young person had also been in contact about only getting one hour a day out of his cell.
- 5.6 A child told us that he was restrained until he was rendered unconscious.
- 5.7 A child was assaulted by a prison officer and then disciplined for it. We ensured the disciplinary proceedings were dismissed and that he was aware of his rights in respect of the assault he had suffered.

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<sup>4</sup> *R (AB) v Secretary of State for Justice* [2017] EWHC 1694 (Admin); [2019] EWCA 9 (Civ)

<sup>5</sup> The Istanbul statement on the use and effects of solitary confinement provides this definition: “*Solitary confinement is the physical isolation of individuals who are confined to their cells for twenty-two to twenty-four hours a day.*”

<sup>6</sup> <https://howardleague.org/blog/feltham/>

<sup>7</sup> <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/youth-detention-solitary-confinement-and-restraint/written/91777.html>

5.8 The prevalence of isolation and restraint found by the JCHR suggests that the calls the Howard League are receiving about these issues are the tip of the iceberg. It is not surprising that we are not hearing about more incidents from children. In our experience, children often only call the Howard League if they are encouraged to do so by a concerned adult or a friend. While children are often keenly aware that their experiences feel unfair, they are not often aware that they have a right to challenge them. Complaints systems in STCs and YOIs are hard to access and children have little faith in them.

## **6 Resettlement**

6.1 The Howard League legal advice line has received hundreds of calls from and about children who did not have suitable accommodation or support for release. Too many children have no idea where they will live even days before release. Our legal team has represented many children who could have been released earlier but have remained in custody for weeks, or sometimes even months, because they do not have a package of accommodation and support in place.

6.2 The rush to find placements for children leaving custody often means that a child's health needs cannot be met on release because there has not been time to plan. This lack of planning also leads to children of statutory school age regularly returning to the community with no educational provision in place.

6.3 The opportunities for children to have any input into their release plan is often minimal even though custodial establishments have the ability to make effective use of release on temporary licence to visit placements in advance.

6.4 We have many case studies relating to resettlement, which we would be happy to share with the Committee.<sup>8</sup>

## **7 Children are being unfairly and unnecessarily propelled into custody**

7.1 Since 2010, the Howard League has been campaigning to reduce the number of child arrests with a view to "stemming the flow" of children into the youth justice system. We have worked closely with police forces across England and Wales to understand and tackle unnecessary arrests and criminalisation. In 2017, there were 79,012 child arrests in England and Wales, a 68 per cent reduction from the 245,763 child arrests in 2010.

7.2 This research and policy work, combined with knowledge from the Howard League legal team's direct work with children and young people, has

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<sup>8</sup> Recent examples can be found in our response to the thematic inspection report on the resettlement of children released from prison, published jointly by Her Majesty's Inspectorate of Prisons and Her Majesty's Inspectorate of Probation on 8 August 2019 at <https://howardleague.org/news/howard-league-responds-to-thematic-inspection-report-on-resettlement-of-children-in-custody/>

highlighted to us that many children are being pushed into the youth justice system unnecessarily and unfairly because of systemic failings across justice, social care and health systems. The discrimination against, and disproportionate representation of, children from black, Asian and minority ethnic groups is of grave concern and will, no doubt, be addressed in many submissions to this Inquiry. We set out below details of other groups about which we have particular knowledge and concern.

### Children in residential care

- 7.3 Four years ago we launched a campaign to address concerns that the police had raised with us about the disproportionate and unnecessary criminalisation of children in residential care.
- 7.4 Data we obtained showed that in 2014, 15 per cent of children in residential care were formally convicted compared to four per cent of children in other types of care placements (mainly foster care) and one per cent of all children. During the course of the programme, levels of criminalisation have significantly reduced and in 2018 ten per cent of children in residential care were formally criminalised (Howard League, 2019).<sup>9</sup>
- 7.5 There is what we describe as “a complex interplay of causative factors” that lead to the criminalisation of children in residential care. Our research has found that systemic problems and severe failings on the part of social care, children’s homes and the police are exacerbating children’s vulnerabilities. Good practices can clearly be protective while bad practice can intensify, create and promote criminal behaviour and unnecessary recourse to the police. More information about the Howard League’s work in this area can be found in our six briefings and the programme blog, which expands on the issues covered by the briefings.<sup>10</sup>
- 7.6 The disproportionate levels of criminalisation of looked-after children are reflected in both the child and adult prison populations, although data collection on this characteristic is poor.<sup>11</sup>

### Victims of exploitation

- 7.7 The Howard League is conducting research into the interface between child exploitation (including by criminals running “county lines”) and residential

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<sup>9</sup> It is important to note that the government only collects criminalisation data on children who have been in care for 12 months or longer. Given that over 40 per cent of children were in care for less than 12 months during the year ending 31 March 2018, the figures seem likely to considerably underestimate the disproportionality (Howard League, 2019)

<sup>10</sup> Available at <https://howardleague.org/our-campaigns/children-and-policing/programme-to-end-the-criminalisation-of-children-in-residential-care/>.

<sup>11</sup> Fitzpatrick, C. (2018) *The impact of care-experience across the life-course*. Blog post dated 19 September 2018 at <https://howardleague.org/blog/the-impact-of-care-experience-across-the-life-course/>. Accessed on 30 September. 2019.

children's homes. It is clear that many – probably the majority of – child victims of criminal exploitation, are not being identified by the police and other agencies. All too frequently children are criminalised, for example, after being found in possession of drugs, rather than being recognised as victims of exploitation and supported and safeguarded. While there have been significant advances amongst the police and other agencies over the last couple of years much more needs to be done to prevent this. There is insufficient understanding and knowledge of the victim status of exploited children, of the National Referral Mechanism and of the defence under the Modern Slavery Act 2015.

### Children with serious mental health problems

- 7.8 The Howard League legal team has seen an increasing number of children who have serious mental health problems, which professionals believe require treatment in hospital, who have been remanded or sentenced to custody because there is no appropriate therapeutic alternative.

### Improving children's representation and support at the police station

- 7.9 Both the Taylor Review and the government response made a number of recommendations relating to police custody. This is a "moment" in the child's journey through the criminal justice system that requires much more attention and research.<sup>12</sup> One of the areas of concern is the quality of legal representation children are receiving at the police station. Poor legal representation is too common and it is adversely affecting both children's conditions in police custody and their criminal justice outcomes. The Howard League's new step-by-step guide for lawyers representing looked-after children at the police station, which we have published jointly with Just for Kids Law (September 2019), highlights areas of concern and provides legal and practical guidance which is of relevance not only to lawyers but also to custody officers, appropriate adults and others.

## **8 Children's rights**

- 8.1 Every day the Howard League legal team uses children's rights arguments to try to improve children's experiences in custody. Children are entitled to an array of rights and protections, and there is a complex system of oversight and scrutiny, but children's rights are routinely overlooked. Even when our lawyers advocate for children's rights in custody, it remains difficult to improve their situation. There is an unacceptable gap between what should be and what is happening.
- 8.2 The youth justice system in England should be underpinned by a children's rights approach based on international standards and guidance which

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<sup>12</sup> See, for example, Bevan, M. (2019a) *Views from the cells*. Blog post dated 31 October 2018 at <https://howardleague.org/blog/views-from-the-cells/>.



*“provide a unifying framework for formulating youth justice policy and for guiding practice”* (Goldson, 2019).<sup>13</sup> The United Nations Convention on the Rights of the Child (UNCRC), ratified by the UK government in 1991, provides a comprehensive checklist of children’s rights. Key articles relating to children in custody are Articles 3, 37 and 40. In relation to this Inquiry, Article 37(b) is key: *“The arrest, detention or imprisonment of a child shall ... be used only as a measure of last resort and for the shortest appropriate period of time”*.

- 8.3 The Howard League’s Children Act case<sup>14</sup> held that the UNCRC rights *“proclaim, reaffirm or elucidate”* the scope of other fundamental rights in the European Convention on Human Rights (ECHR) which apply to all humans, both adults and children (para. 51). Key Articles of the ECHR applicable to children include Articles 3, 5 and 8.
- 8.4 Yet it is not enough to have the ability to bring rights-based challenges after the event. In order to prevent breaches of children’s rights in the first place, a rights-based approach must be fully adopted by staff on the ground. A rights-based approach, coupled with appropriate education, could also equip children with the ability to recognise abuse and help them speak out about it.

## **9 Conclusion**

- 9.1 Prison is no place for a child. The vast majority of this hugely vulnerable cohort are there because of multiple failings across systems. Prison is not safe for them and the impact on them of their time in prison is not safe for society. This submission provides a snapshot of the wealth of knowledge and experience the Howard League has about child custody and related issues. We would welcome the opportunity to provide additional information and to assist the Committee further.

**Howard League for Penal Reform  
9 October 2019**

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<sup>13</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the ‘Beijing Rules’, 1985); United Nations Guidelines on the Prevention of Delinquency (the ‘Riyadh’ Guidelines, 1990); United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the ‘Havana Rules’, 1990); United Nations Convention on the Rights of the Child (1989); Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010); General Comment No. 24 (201x), replacing General Comment No. 10 (2007) Children’s Rights in juvenile justice.

<sup>14</sup> *R (on the Application of Howard League) v Secretary of State for the Home Department and the Department of Health* [2002] EWHC 2497 (Admin)

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