



All our children:
The work of the Howard League to
make the rights of children in trouble
a reality in England and Wales

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Howard League for Penal Reform

Key points

- November 2019 marks the 30th anniversary of the UN Convention on the Rights of the Child
- The Howard League has championed the Convention rights of children in conflict with the law over the last three decades through our legal and policy work
- Alongside landmark cases, our lawyers use rights-based arguments every day to try to improve children's experiences and address abuse
- There is an unacceptable gap between what should be and what is happening
- A culture of children's rights needs to be embedded throughout the justice system in order to prevent breaches of children's rights
- Children need to be made aware of their rights so that they can spot abuse and speak out about it
- This briefing explores some of the ways in which the Howard League has worked to bring the Convention rights to life for children affected by the criminal justice system.

United Nations Convention on the Rights of the Child

November 2019 marks the thirtieth anniversary of the United Nations Convention on the Rights of the Child (the Convention). The Convention is the most widely-ratified human rights treaty in history. The USA is the only UN Member State that has abstained from ratification. It is the most complete statement of children's rights ever produced, containing 54 articles covering all aspects of children's civil, political, economic, social and cultural rights.

Despite being the most widely ratified convention, according to Muncie (2008) it is *"lamentably also the most violated"*. Children in conflict with the law in England and Wales have been singled out repeatedly by the UN Committee on the Rights of the Child as the subject of breaches of the Convention in a series of damning reports. The Committee has criticised the low age of criminal responsibility, the high number of children deprived of their liberty, indicating that detention is not always applied as a measure of last resort, and the treatment and conditions of children in custody (UNCRC, 2008; 2016). In September 2019, the Committee published a revised commentary of the rights of children in the justice system, General Comment No. 24 (UNCRC, 2019). The General Comment concludes that *"many States parties still require significant investment to achieve full compliance with the Convention, particularly regarding... the minimum age of criminal responsibility and the reduction of deprivation of liberty"*.

The Howard League believes that the justice system for children in England and Wales should be underpinned by the international standards set down in the Convention, which alongside the considerable additional guidance,* *"provide a unifying framework for formulating youth justice policy and for guiding practice"* (Goldson, 2019).

Although the Convention was ratified by the UK Government in 1991, it has not been incorporated into English law. It was incorporated into Welsh law through the Rights of Children and Young Persons (Wales) Measure 2011. In 2019 the Scottish Government issued a public consultation on incorporating the Convention into Scottish law (Scottish Government, 2019).

The English Government has no plans to sign provisions that would permit individual children to have the right to petition the Committee on the Rights of the Child (JCHR, 2015).

Yet the Convention can be used in English Courts to assist children. In a judicial review brought by the Howard League, Mr Justice Munby (as he then was) said the Convention can *"properly be consulted insofar as they proclaim, reaffirm or elucidate the content of those human rights that are generally recognised throughout the European family of nations, in particular the nature and scope of those fundamental rights that are guaranteed by the European Convention [on Human Rights]"* (*R (Howard League) v Secretary of State for the Home Department*, 2003, para 51).

The work of the Howard League

Since 2002 the Howard League has used its legal and campaign work to fight for the rights of children in conflict with the law and to improve their situation in line with the aspirations of the Convention.

The Howard League's confidential legal advice line for young people in custody is open every day of the week. This free legal advice line number is a global number which means that children can call it without seeking permission from the prison first. The service is entirely young person led.

Lawyers at the Howard League use rights-based arguments every day to address the issues children raise to challenge abuse and to improve children's experiences of custody and in preparation for release.

In the six months from May to October 2019, the Howard League helped 135 children with 150 legal issues, actively improving their access to justice in over half of these instances. As well as supporting children to increase their own voice and knowledge, the Howard League advocated for children in many instances and opened 24 discrete cases in this period to represent and advise children.

This briefing considers four of the key Convention articles that are particularly relevant to children who come into contact with the justice system. It explores how the Howard League has tried to



make the principles in the Convention respond meaningfully to problems that have emerged from what children have told us through legal and campaign work.

The best interests of the child - Article 3

Article 3 requires all actions and decisions affecting children to be in their best interests.

In 2002, the Howard League brought a landmark case that forced the prison service to accept that the welfare duties owed to children in the community also applied in prison (*R (Howard League) v Secretary of State for the Home Department*). Previously it was widely thought that children's rights stopped at the prison gates. The case acknowledged that the Convention should be used to interpret how human rights are applied to children. As a result of that case a whole raft of policies and practices were introduced to protect the welfare of children in prison in line with the Children Act 1989. The Howard League case was a huge step forward but not sufficient to protect children in prison from abuse and neglect, as demonstrated by a number of reports from independent bodies such as Her

Majesty's Inspectorate of Prisons, the Joint Committee on Human Rights and Independent Inquiry on Child Sexual Abuse. There is much to be done to bring the treatment of children in prison in line with the best interests principle.

The voice of the child - Article 12

Article 12 of the Convention says that all children have a right to express their views in matters affecting them and that they should be given opportunities to do so.

Children in the criminal justice system are given few opportunities to realise this key right.

The Howard League's legal advice line provides a voice for hundreds of children in custody. On top of this, in recent years the Howard League has developed participatory work enabling children's voices to be heard by decision-makers and drive change (Howard League, 2012a).

The Howard League successfully argued in a judicial review that the right for children to be heard when being considered for release by the Parole Board required the provision

of appropriate support (*R (K) v Parole Board*, 2006). Article 12 was used to interpret the requirements of common law fairness. The Court concluded that “*the opportunity to be heard must be rendered effective by the provision of appropriate adult assistance where possible*”. Following that case, the Howard League produced a publication outlining the special requirements that apply to children being reviewed by the Parole Board (Howard League, 2007). The Howard League lobbied the Parole Board and secured an automatic right for all children to have oral hearings if not released following a paper review (Parole Board, 2010).

Detention should be a last resort and humane - Article 37

Article 37 says that custody should only be used as a last resort and for the shortest possible period of time. It must also be humane.

The Howard League has worked to keep children out of the system and improve conditions for those children who remain in it through legal cases and campaign initiatives.

“Stemming the flow”

Keeping children out of the criminal justice system altogether is the best way to achieve the aims of Article 37. 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. The Howard League has worked 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 (Howard League, 2018a).

The Howard League also identified that children in residential care were being unnecessarily criminalised. Through an award-winning project that aims to end the criminalisation of children in residential care, the Howard League has addressed the causes of criminalisation, sought to improve practice by police, lawyers and staff in children’s homes and put the voices of children and young people with experience of the issues at its heart.

Challenging conditions for children in custody

Article 37 requires that children should not be placed in adult prisons. The Howard League relied on that provision to argue that a 17 year old girl had been placed in an adult prison unlawfully: the case failed on the basis that at the time the UK Government had issued a reservation in respect of this requirement. However, the Court observed its hope that the reservation would be withdrawn soon and the judgment was influential in leading to the end of placing girls in adult women’s prisons in England and Wales (*R (DT) v Secretary of State for the Home Department*, 2004).

In 2006, the Howard League published the findings of an independent inquiry, chaired by Lord Carlile of Berriew QC, into the use of restraint, solitary confinement and strip-searching of children in prison. It made powerful findings that the Howard League continues to campaign on. Ten years later the Howard League published a follow up report which highlighted some progress, such as the end of routine strip-searching for children and the reduction in the number of children in prison, as well as serious on-going concerns around restraint and solitary confinement (Howard League, 2016). The Howard League has developed a stream of work specifically focused on ending the solitary confinement of children in prison.

Focus on solitary confinement

The Howard League issued a judicial review on behalf of a child, AB, who was kept in “*solitary confinement*” at Feltham when he was 15 years old (*R (AB) v Secretary of State for Justice*, 2017). The widely accepted international definition of solitary confinement is being kept for 22 or more hours a day alone in a cell without meaningful contact and available stimuli reduced to a minimum. AB was held in these conditions for at least 55 days. He was locked alone in his cell for over 23 hours a day. He received no education and had no access to gym, psychological interventions or any purposeful activity. He was permitted no contact with other children and had limited contact with adults. AB was just one of many children who told the Howard League that they had been isolated in this way without any proper

safeguards in place, resulting in no clear plan as to how or when the isolation might come to an end.

The High Court found that AB's isolation did not comply with the requirements of the YOI Rules regarding children being removed from associating with others or guidance issued by the Ministry of Justice. His treatment was therefore not in accordance with the law and in breach of his human rights. As a result of this decision, prison staff are more aware of the legal requirement to properly record all instances of isolation and go through the correct procedures designed to safeguard against its prolonged use. However, the High Court and the Court of Appeal did not accept that AB's treatment was inhuman and degrading. The Courts found that it did not amount to a breach of his right to personal and psychological development (*R (AB) v Secretary of State for Justice*, 2019). The Court of Appeal also examined the relevance of the Convention and the interpretation of the UN Committee on the Rights of the Child and found these provisions only prohibited the use of solitary confinement to punish a child as part of a disciplinary process. AB has petitioned the Supreme Court to be allowed to appeal the decision.

Despite the refusal of the courts to rule that solitary confinement can never be justified in the case of children, the publicity around this legal challenge resulted in some significant developments. It triggered a number of reports in national media, raising the profile of the issue. It also prompted a statement from the British Medical Association, the Royal College of Psychiatrists and the Royal College of Paediatrics and Child Health condemning the use of solitary confinement on children in custody and raising ethical concerns around medics being involved in the process (BMA, 2018). This was followed by a parliamentary inquiry on the subject, which found that its use is widespread and a breach of human rights (JCHR, 2019).

Children in trouble should be supported to reintegrate into society - Article 40

Article 40 also says that children in custody should be supported to reintegrate into the community. The Howard League has helped hundreds of children obtain support from local authorities to do this and brought test cases to

strengthen the law in this area. The charity has produced guides on the law and what home means to children in trouble (Howard League, 2012; 2018b).

The Howard League brought a landmark legal case that has helped hundreds of children get better support on leaving custody (*R (M) v Hammersmith and Fulham London Borough Council*, 2008).

M, a vulnerable child in prison, challenged the failure of her local authority to provide her with support from social services. The judgment established that, where a child appears to need accommodation, that child must be referred to children's services for an assessment of their needs, even if they initially present to the council's housing department. Following the case, the Department for Communities and Local Government and the Department for Children, Schools and Families issued joint guidance aimed at ensuring that there were "no gaps" between housing services and children's services. This is crucial because it helps ensure children get the support they require and helps to prevent children ending up without a home.

Rights for children in trouble – a work in progress

The Howard League has worked to make the rights in the United Nations Convention on the Rights of the Child as great a reality for children in trouble with the law as for all children through a combination of legal work, policy and lobbying.

Although the law is clear that children are entitled to a wide array of rights and protections, all of which are subject to interpretation using the Convention, children's rights are routinely overlooked or ignored in the criminal justice system. There is an unacceptable gap between what should be and what is happening.

The Howard League will continue to bring rights-based challenges to poor and abusive practice and to shine a light on the treatment of children in conflict with the law. However, in order to prevent breaches of children's rights in the first place, government and staff in all parts of the youth justice system must commit to a culture where children's rights are respected and protected.

There is still much to do to empower children to understand their rights so that they can recognise abuse and speak out about it.

About the Howard League for Penal Reform

The Howard League is a national charity working for less crime, safer communities and fewer people in prison. We campaign, research and take legal action on a wide range of issues. We work with parliament, the media, criminal justice professionals, students and members of the public, influencing debate and forcing through meaningful change.

* United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the 'Beijing Rules', 1985); United Nations Guidelines on the Prevention of Juvenile 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 (2019), replacing General Comment No. 10 (2007) Children's Rights in juvenile justice.

About BBC Children In Need

BBC Children in Need is the BBC's corporate charity. It exists to change the lives of children and young people across the UK. The Howard League for Penal Reform has been working with support from BBC Children in Need to help children in custody to improve their knowledge about their rights, increase their voice and to advocate on their behalf.

A full list of references is available on our website

www.howardleague.org



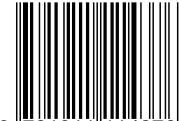
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