

Submission to the Justice Select Committee (16 April 2020)

1. The vanishing window of opportunity

On Tuesday 14 April, the Justice Committee heard that only 4 prisoners have been released so far as part of the End of Custody Temporary Release Scheme.¹ This number falls far short of the 4,000 releases announced by the government ten days earlier, on 4 April 2020. Of the 70 pregnant women and mothers to be released early, only 14 have been released so far – over two weeks after the announcement was made on 31 March 2020. There is no sign as yet of the “few hundred” releases that the minister told the Justice Committee to expect on Wednesday 15 April. Half of the prisons in England and Wales now have confirmed cases of coronavirus. The window of opportunity to prevent the virus spreading exponentially through the remaining half of the prison estate is closing fast. As Professor Richard Coker stated in his expert report on Covid-19 in prisons in England and Wales, “time is of the utmost importance. This pandemic has a doubling time measured in days.”² Pandemics follow exponential patterns of growth which means that swift action and timing are crucial. Actions taken early on to avert infection can have a much greater impact than if the same actions are taken even a week later. Recent weeks have seen an exponential growth in known cases of Covid-19 in the prison system. The number of confirmed cases of coronavirus among prisoners more than doubled in the last two weeks, from 73 on 1 April 2020 to 218 on 14 April 2020. The number of prisons with confirmed cases of Covid-19 has also more than doubled, from 27 on 1 April to 57 on 14 April. **The Committee must urge the government to take immediate and swift action to reduce the prison population ahead of a catastrophic surge in infections.**

2. Prisons continue to be hugely overcrowded

The expansion of the prison estate through the installation of temporary, single-occupancy cells does not go nearly far enough to address levels of overcrowding. The sites where the first of 500 temporary cells will be installed – North Sea Camp, Littlehey, Hollesley Bay, Highpoint, Moorland, Lindholme and Humber – are all either at or over capacity, but they are not the most overcrowded prisons in the estate. The ten most overcrowded prisons in England and Wales, all of which are 150 per cent over capacity or more, are Doncaster, Pentonville, Exeter, Preston, Wandsworth, Leeds, Lincoln, Leicester, Durham and Swansea. Swansea, at the top of the list, is supposed to hold no more than 250 men, but at the end of February 2020 it was actually holding 436. In a report published on 15 April 2020, HM Inspectorate of Prisons found that 80 per cent of men in Lincoln are living in overcrowded and cramped cells.³ Lincoln is the fourth most overcrowded prison in the country, currently operating at 164 per cent over capacity. The minister told the Justice Committee this week that there would be “potentially” around 2,000 new spaces opened up across the estate. **Are these 2,000 new spaces on top of the 500 temporary cells already announced? Where will they be built, and when will they come into use?**

Even with 2,000 extra spaces across the estate, prisons will remain extremely overcrowded unless the pace of releases is significantly sped up. The prison population has dropped slightly in the last few months, from 83,329 on 31 January 2020 to 82,589 on 3 April 2020, a net reduction of about 740 prisoners. But as Jo Farrar told the Justice Committee on 7 April 2020, “between 10,000 and 15,000” prisoners would have to be released to achieve single cell occupancy.⁴ Releases are currently nowhere near that figure. **Will the government urgently speed up the pace of releases to tackle extreme overcrowding in the prison estate?**

¹ <https://committees.parliament.uk/work/254/coronavirus-covid19-the-impact-on-prison-probation-and-court-systems/publications/>

² https://howardleague.org/wp-content/uploads/2020/04/2020_04_01_COKER_Report_HL_PRT.pdf

³ <https://www.justiceinspectorates.gov.uk/hmiprison/inspections/hmp-lincoln-3/>

⁴ <https://publications.parliament.uk/pa/cm5801/cmselect/cmjust/correspondence/200407-Justice-Committee-meeting-Robert-Buckland-note1.pdf>

3. Transfers and cohorting

This week the Justice Committee also heard that some vulnerable prisoners in Wymott prison had been transferred to Garth (Leyland) prison because of a serious outbreak of the virus at Wymott. Tragically, on 8 April, Wymott lost one of its prison staff members to coronavirus. The Howard League is seriously concerned that transferring prisoners from one infected prison to another congregate setting risks spreading, rather than containing, the virus. The transfer contravenes Public Health England advice as cited by Jo Farrar on 7 April, that it is “best not to send prisoners between prisons to achieve single cell accommodation.” Wymott, which is currently operating at 104 per cent over capacity, is more overcrowded than Garth (at 100 per cent capacity) but the additional prisoners transferred to Garth will mean that that prison is also now overcrowded. There is no guarantee that vulnerable prisoners will be safer in Garth prison. In 2019, inspectors found that a high proportion of the cells and communal spaces in Garth were very dirty, and some toilets were “filthy”.⁵ **Will the Committee urge the government to avoid transfers between prisons wherever possible, and prioritise releases?**

One particular concern raised by Professor Coker’s report is the practice of ‘cohorting’ (for instance, in overcrowded Wandsworth prison). ‘Cohorting’ refers to measures taken to house prisoners together if they are determined to be disease free, potentially exposed (and thus quarantined), or have symptoms. Given the low levels of testing taking place in prisons and the fact that asymptomatic individuals may transmit the virus, ‘cohorting’ is likely to be of “almost no benefit in controlling outbreaks in prisons”. **Will the government issue guidance to prevent the practice of cohorting across the prison estate?**

4. Limited use of ordinary early release measures - Home Detention Curfew

Apart from those serving short sentences of under four months, the majority of those falling under the temporary release scheme will be eligible for Home Detention Curfew (HDC) which allows for release at an earlier stage and for longer. However, insufficient efforts are being made to ensure that the scheme is operating as effectively and efficiently as it could. Many prisoners who are eligible for release under the scheme have not been released. A significant number of prisoners are presumed “unsuitable” but can be released in “exceptional circumstances”. Although the pandemic clearly constitutes compelling and exceptional circumstances, there has been no clear message from the Ministry of Justice to confirm this and we have a number of examples of people, including a 15-year-old child, who could be released if it was agreed that the pandemic amounts to exceptional circumstances. **Greater use should be made of existing early release schemes given the exceptional circumstances we find ourselves in.**

5. Transparency and scrutiny

There is a concerning lack of transparency around the number of people dying in prisons, not just from coronavirus. **How many men and women in prison have died from natural causes that may have been exacerbated by contracting coronavirus? And how many men and women in prison have died by suicide in the last six weeks?**

At a time of unprecedented crisis, there is barely any independent scrutiny or monitoring of prison conditions. Her Majesty’s Inspectorate of Prisons has suspended almost all of its prison inspections in line with social distancing measures, implementing one-day short scrutiny visits in their place, and the work of the Independent Monitoring Boards has been greatly restricted.⁶ Parliamentary scrutiny is also limited for the time being. **When will the one-day HMIP visits commence? How many IMBs are still visiting prisons? What further measures are being taken to ensure the basic care, safety and rights of those held in custody in the current circumstances?**

⁵ <https://www.justiceinspectorates.gov.uk/hmiprisons/media/press-releases/2019/05/hmp-garth-chief-inspector-hopes-prison-can-continue-commendable-improvements-in-safety-and-respect/>

⁶ <https://www.justiceinspectorates.gov.uk/hmiprisons/2020/03/covid-19-update/>