



## Children in prison during the Covid-19 pandemic

A briefing from the Howard League for Penal Reform

# Howard League for Penal Reform

## Key points

- The Howard League's legal work with children in custody provides an insight into the difficulties they face. The team operates a unique front-line legal service for young people aged 21 and under in custody
- Evidence from a host of independent sources shows that custody can be harmful and difficult for children in ordinary times. Many children in prison report that they do not feel safe. Around half of all children in prison come from black, Asian and minority ethnic (BAME) backgrounds. Between a third and half of children in custody report having been in the care of their local authority
- The restrictions on the custodial regime as a result of Covid-19 are severe, and should be factored in even when making decisions about sending adults to custody
- The Howard League's legal work and contact with children during the Covid-19 pandemic shows that this is a particularly difficult time for children in custody
- In response to Covid-19, the regime in prisons has been severely restricted, with most children being placed in prolonged solitary confinement. There are no face-to-face visits, no face-to-face education in the majority of establishments and no therapy. Children are experiencing difficulties in accessing the support they need to plan for release. The usual safeguards that exist, including on-site advocacy services, are no longer present.

## **The Howard League's legal work with children in prison**

The Howard League for Penal Reform runs a specialist legal advice service for people aged 21 and under in custody. The Howard League has continued to run its confidential legal service, which includes a telephone advice service available to all young people in custody throughout the Covid-19 pandemic.<sup>1</sup> Custody is a harmful and difficult environment for children in ordinary times, but evidence from the Howard League's legal work shows that detention during the pandemic is particularly difficult. Children detained during the pandemic are in prolonged solitary confinement in Young Offender Institutions ("YOIs"), without any face-to-face visits and limited access to video-links or to meaningful education or therapy, which hinders their release.

## **The general conditions of penal detention for children in England and Wales**

In 2019, Her Majesty's Inspectorate of Prisons ("HMIP") reported that between 1 April 2017 and 31 March 2018, 40 per cent of the boys in YOIs and over a third (34 per cent) of the children in secure training centres ("STCs") did not feel safe at some point.<sup>2</sup> In April 2018, the British Medical Association, the Royal College of Psychiatrists and the Royal College of Paediatrics and Child Health condemned the 'solitary confinement' of children, warning that for children the risk of long-term psychiatric and developmental harm is increased.<sup>3</sup> In April 2019, a parliamentary committee found children's rights were being breached in respect of the widespread use of solitary confinement and restraint.<sup>4</sup> In July 2019, the Chief Inspector of Prisons issued the first urgent notification in respect of a children's prison (Feltham prison in West London).<sup>5</sup> In January 2020, the Chief Inspector conducted a thematic review of separated children in custody and found that "*many children separated from their peers in young offender institutions (YOIs)*

*are effectively held in harmful solitary confinement, with little human contact and in conditions which risk damaging their mental health.*"<sup>6</sup>

## **Restrictions on the regime generally as a result of Covid-19**

The restrictions on the custodial regime as a result of Covid-19 are severe and should be factored in even when making decisions about sending adults to custody. In a judgment dated 30 April 2020, the Lord Chief Justice made it clear that conditions are a relevant consideration, even when sentencing an adult:

*"The current conditions in prisons represent a factor which can properly be taken into account in deciding whether to suspend a sentence. In accordance with established principles, any court will take into account the likely impact of a custodial sentence upon an offender and, where appropriate, upon others as well. Judges and magistrates can, therefore, and in our judgment should, keep in mind that the impact of a custodial sentence is likely to be heavier during the current emergency than it would otherwise be. Those in custody are, for example, confined to their cells for much longer periods than would otherwise be the case – currently, 23 hours a day. They are unable to receive visits. Both they and their families are likely to be anxious about the risk of the transmission of Covid-19"* (paragraph 41).<sup>7</sup>

## **Characteristics of children detained in penal custody**

There were concerns relating to suicide or self-harm (31 per cent), physical health (30 per cent), mental health (33 per cent), learning disabilities or difficulties (32 per cent) for around one third of admissions to custody between April 2014 and March 2016.<sup>8</sup> Around half the children in custody

are black, Asian and minority ethnic (BAME) (the proportion has doubled since 2007/08 when 26 per cent of the child custody population was BAME, compared with 49 per cent in 2018/19).<sup>9</sup> Between a third and half of children in custody report having been in the care of their local authority for their own welfare prior to custody.<sup>10</sup>

## **The experiences of children in detention during Covid-19**

Most children<sup>11</sup> are experiencing a severely restricted regime in line with government policy: *“The usual regime in prisons has been paused temporarily to apply social distancing. ... This means prisoners can no longer take part in recreational activities such as the gym, worship or visiting the library.”*<sup>12</sup>

A report published by HM Inspectorate of Prisons dated 21 April 2020 detailed findings from short scrutiny visits to Cookham Wood, Parc and Wetherby YOIs (“the HMIP report”).<sup>13</sup> The Chief Inspector describes the report as *“generally positive”* in its detailing of the *“swift actions taken to keep children safe, as well as the creativity of staff and managers in providing opportunities for children to receive meaningful interaction”*. However, it is clear from this report and from the many calls the Howard League is receiving from children in prison that YOIs are operating very restricted regimes which will be damaging to children. The Inspectorate found significant variation in regimes between institutions, with some children suffering worse restrictions than others. As was noted in HMIP’s report, it is hard to see the justification for many of these inconsistencies across what is a relatively small estate.

## **Restrictions on time out of cell**

The HMIP report revealed that time out of cell was just 40 minutes per day at Cookham Wood and around one hour at Wetherby compared with over three hours out of cell for children held at Parc YOI, which holds

just over 30 children. All children are eating meals alone in their cells. Children have told the Howard League they are getting around half an hour of fresh air a day in small ‘family groups’ of three or four. The internationally accepted definition of solitary confinement is the physical isolation of individuals who are confined to their cells for twenty-two to twenty-four hours a day.<sup>14</sup> After 15 days solitary confinement becomes prolonged, which the Supreme Court has noted can cause irreversible psychological harm.<sup>15</sup> Most children in YOIs are now routinely held in prolonged solitary confinement.

## **Education, activities and therapy**

No out-of-cell activities or therapies are taking place, except in Parc YOI where children are doing some activities as part of education provision. Education has been severely restricted. In Parc YOI, children have been receiving two hours of face-to-face education activity every day, but in most YOIs, children are only getting education sheets or worksheets under the door to be completed in-cell.<sup>16</sup> One child told the Howard League that this consisted of some sheets on Maths and English that took him around 25 minutes a day to complete. There was no support with this work. The child described the worksheets as basic and not tailored to his learning needs or stage of education. Another child said his anger-management courses and art therapy been cancelled.

As the HMIP report notes, the lack of provision of education for children in prison, most of whom require education plans, is at odds with the Government’s advice that those who are deemed vulnerable should be able to attend education in the community. It is also contrary to the requirement in the YOI Rules that children should receive a minimum of 15 hours a week of education. In 2017, the failure to provide this for a 15-year-old child at Feltham prison was found by the High Court to be unlawful (*R(AB) v the Secretary of State for Justice*).<sup>17</sup>

## Acute anxiety

Children have expressed concern about elderly relatives and parents and their inability to help them while stuck in prison. One child in a YOI told the Howard League: *“I’m worried because I got grandparents – I’m worried about what will and could happen to them.”* HMIP has found that the suspension of visits from friends and family has had *“a dramatic impact”* on many children. Children told inspectors that they were concerned about not seeing parents, a worry that was exacerbated by not knowing how long the situation would last.

It is clear that many children will have additional mental health needs during the pandemic. The HMIP report said that inspectors were *“concerned to see limited specialist secondary mental health services for those who needed them”*.

## Restrictions on contact with the outside world, external scrutiny and difficulties in release planning

Children’s access to the outside world is severely restricted. The cancellation of all visits means families, social workers, youth offending team workers, lawyers and doctors cannot have face-to-face visits with children. The HMIP report notes with concern the withdrawal of some services, including Barnardo’s and intensive one-to-one programmes, previously provided by Child and Adolescent Mental Health Services (CAMHS) and psychology staff. The absence of external visitors not only affects children’s access to services and support; it also reduces the opportunities for external scrutiny and therefore has worrying implications for safeguarding.

IT systems in prison are generally restricted to court video-links. While children in prison have been given additional phone credit (the HMIP report found that the amount varied by institution), this is typically their only contact with the outside

world. The HMIP report noted that all three sites visited had been slow to implement video calling. Difficulties in contacting families and professionals make planning for release especially problematic. Legal duties to support and accommodate children leaving prison remain<sup>18</sup> and the HMIP report states that most training and remand planning processes have continued and expectations about accommodation and healthcare provisions on release are unchanged. However, the Howard League has seen the processes that support this planning slow down during the pandemic as professionals struggle to complete required assessments.

## Looking ahead

Whilst lockdown is being eased for the general public, the Ministry of Justice has made it clear that restrictions will need to continue in prison for the remainder of this financial year if the virus is to be contained and safely managed.<sup>19</sup> A continuation for up to a year of the severely restricted regimes that have been in place in child prisons since the end of March contravene children’s rights under the UN Convention on the Rights of the Child and they are simply untenable long-term. The Inspectorate’s report highlights the importance of providing children with opportunities to *“stay occupied and connected”* as we move forwards, citing key areas that need addressing to be education, activity, phone credit and video calling. The current issues facing children in prison which we have highlighted in this briefing need to be tackled as a matter of urgency in order to recognise and protect children’s rights and prevent further significant harm to this group of children.

Unless and until arrangements are made to ensure children are guaranteed humane conditions in custody, they should not be detained, either on remand or under sentence. This is entirely in accordance with current law and practice.<sup>20</sup>

## Footnotes

<sup>1</sup> The number is 0808 801 0308. It can be called without the need for prior approval and is open every weekday morning. For more information see <https://howardleague.org/contact-us/> and <https://howardleague.org/legal-work/advice-line/>

<sup>2</sup> HM Inspectorate of Prisons (HMIP), *Children in Custody 2017–18*, 2019, pages 7-8, [https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2019/01/6.5164\\_HMI\\_Children-in-Custody-2017-18\\_A4\\_v10\\_web.pdf](https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2019/01/6.5164_HMI_Children-in-Custody-2017-18_A4_v10_web.pdf)

<sup>3</sup> British Medical Association, Royal College of Psychiatrists and Royal College of Paediatrics and Child Health, *Joint position statement on solitary confinement of children and young people*, 18 April 2019, [https://www.rcpch.ac.uk/sites/default/files/2018-04/solitary\\_confinement\\_position\\_statement.pdf](https://www.rcpch.ac.uk/sites/default/files/2018-04/solitary_confinement_position_statement.pdf)

<sup>4</sup> Joint Committee on Human Rights *Youth detention: solitary confinement and restraint. Nineteenth Report of Session 2017–19*, 18 April 2019, page 33, HC 994, HL 343, <https://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/inquiries/parliament-2017/youth-detention-solitary-confinement-17-19/>

<sup>5</sup> HM Chief Inspector of Prisons, Peter Clarke, *Urgent Notification: HMYOI Feltham A*, 22 July 2019, <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2019/07/22july-SofS-Urgent-Notification-FelthamA.pdf>

<sup>6</sup> HMIP, *Chief Inspector calls for major overhaul of harmful separation of children in young offender custody*, 21 January 2020, <https://www.justiceinspectorates.gov.uk/hmiprisons/media/press-releases/2020/01/chief-inspector-calls-for-major-overhaul-of-harmful-separation-of-children-in-young-offender-custody/>

<sup>7</sup> *R v Christopher Manning* [2020] EWCA Crim 592, <https://www.bailii.org/ew/cases/EWCA/Crim/2020/592.html>

<sup>8</sup> Youth Justice Board / Ministry of Justice, *Key Characteristics of Admissions to Youth Custody April 2014 to March 2016, England and Wales*, 26 January 2017, page 5, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/585991/key-characteristics-of-admissions-april-2014-to-march-2016.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/585991/key-characteristics-of-admissions-april-2014-to-march-2016.pdf)

<sup>9</sup> *House of Commons Library Briefing: Youth Custody*, 31 January 2020, p9, <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8557>

<sup>10</sup> HMIP, *Children in Custody 2017–18*, 2019, pages 19, 29, [https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2019/01/6.5164\\_HMI\\_Children-in-Custody-2017-18\\_A4\\_v10\\_web.pdf](https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2019/01/6.5164_HMI_Children-in-Custody-2017-18_A4_v10_web.pdf)

<sup>11</sup> In secure children's homes, children receive the best possible regime, but where there have been cases, homes have had to institute a restricted regime.

<sup>12</sup> Ministry of Justice and HMPPS, *Guidance: Coronavirus (COVID-19) and prisons*, 9 April 2020, <https://www.gov.uk/guidance/coronavirus-covid-19-and-prisons#changes-to-regimes>

<sup>13</sup> HM Chief Inspector of Prisons, *Report on short scrutiny visits to Young offender institutions holding children*, 21 April 2020 at <https://www.justiceinspectorates.gov.uk/hmiprisons/inspections/young-offender-institutions/>

<sup>14</sup> United Nations General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners* ("the Nelson Mandela Rules"), General Assembly Res 70/175, 17 December 2015, <https://undocs.org/A/RES/70/175>

<sup>15</sup> *R (on the application of Bourgass and another) v Secretary of State for Justice*, [2016] A.C. 384, para. 37, <https://www.supremecourt.uk/cases/uksc-2013-0230.html>

<sup>16</sup> The Howard League has heard that at least one STC is managing to provide some face-to-face education but this seems to be very limited to a session a week.

<sup>17</sup> <https://www.judiciary.uk/wp-content/uploads/2017/07/oa-ab-a-child-v-sosfj-and-others.pdf>

<sup>18</sup> See the Howard League guide, *Supporting children from custody into the community* at <https://howardleague.org/publications/supporting-children-from-custody-into-the-community/>

<sup>19</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/882622/covid-19-population-management-strategy-prisons.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/882622/covid-19-population-management-strategy-prisons.pdf)

<sup>20</sup> For more information on sentencing children see [https://howardleague.org/wp-content/uploads/2018/03/D\\_ADULT\\_Guide.pdf](https://howardleague.org/wp-content/uploads/2018/03/D_ADULT_Guide.pdf). For more information on children and remand decision-making see [https://howardleague.org/wp-content/uploads/2020/04/Children-in-prison-during-the-Covid-19-BAIL-PACK\\_HL\\_GDNCT\\_2020\\_04\\_28.pdf](https://howardleague.org/wp-content/uploads/2020/04/Children-in-prison-during-the-Covid-19-BAIL-PACK_HL_GDNCT_2020_04_28.pdf)

## 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 professions, stakeholders and members of the public, influencing debate and forcing through meaningful change.

[www.howardleague.org](http://www.howardleague.org)

### Howard League for Penal Reform

1 Ardleigh Road t 020 7249 7373  
London e info@howardleague.org  
N1 4HS w www.howardleague.org  
@TheHowardLeague

Company limited by guarantee  
No. 898514  
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