

## **Submission to the Justice Select Committee for Evidence Session on Coronavirus (COVID-19): The impact on prison, probation and court systems in the youth justice system (2 June 2020)**

### **The Howard League's legal work with children in prison and our key concerns**

The Howard League has continued to run its confidential telephone advice service, which is available to all children and young people in custody, and to provide legal representation, throughout the Covid-19 pandemic. In May 2020, the Howard League published *Children in prison during the Covid-19 pandemic* and, with Garden Court Chambers, a practitioner's guide, *Ending the detention of unsentenced children during the Covid-19 pandemic*. Both publications are on-line at [www.howardleague.org](http://www.howardleague.org).

The experiences of children in prison during this period raise serious concerns and beg three key questions:

1. Why are children not being released from custody under the Covid temporary release schemes?
2. What safeguards are being employed to protect children in solitary confinement and what is being done to bring it to an end?
3. What are the plans to resume meaningful education for children in custody?

The evidence suggests that these questions need to be addressed urgently in view of the serious risk of harm to children in prison under current regimes.

### **Why children should be prioritised under the Covid temporary release schemes**

Children in Secure Training Centres (STCs) and prisons fall under the scheme. Yet as of 28 April 2020, none had been released and only ten children were deemed to be eligible over the next three months.<sup>1</sup> The government contends children in secure children's homes are excluded altogether.<sup>2</sup> The Ministry also appears to justify the reduced likelihood of releases for children on the basis that the custody threshold for children is higher and the risk of harm from Covid is lower.<sup>3</sup>

The current approach fails to take into account that the severely restricted prison regimes have resulted in the majority of children being held in prolonged solitary confinement; no face-to-face visits; virtually no education or therapy; and difficulties in contacting families and professionals, which makes planning for court hearings and release especially problematic. It is impossible to see how this approach can be reconciled with the welfare principle in section 44(1) of the Children and Young Persons Act 1933 and the best interests principle in Article 3 of the UN Convention on the Rights of the Child. The whole legal basis for the detention of children has fallen away. Children in prison are simply being contained, punished and exposed to harm, contrary to the purpose of the youth justice system.

<sup>1</sup> Parliamentary Written Question no. 41013, 28 April 2020, at <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2020-04-28/41013/>

<sup>2</sup> Parliamentary Written Question no. HL3689, 29 April 2020, at <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2020-04-29/HL3689/>

<sup>3</sup> Letter from the Government to Bhatt Murphy Solicitors, the Howard League and the Prison Reform Trust, 28 April 2020, at <https://howardleague.org/wp-content/uploads/2020/05/Governments-response-letter-to-Bhatt-Murphy-Howard-League-and-PRT.pdf> (see paras 44 - 54)

## **Why the prolonged solitary confinement of children in prison must be brought to an end**

A report by HM Inspectorate of Prisons (HMIP) in April 2020<sup>4</sup> stated that time out of cell since the Covid-19 lockdown 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 were eating meals alone in their cells. 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>5</sup> After 15 days, solitary confinement becomes prolonged, which the Supreme Court has noted can cause irreversible psychological harm.<sup>6</sup> The Supreme Court case highlighted the importance of routine checks and scrutiny both within and outside the prison to safeguard against this harm. Those checks and the external scrutiny are not happening and there is a real risk that hundreds of children will face irreversible harm as a result of this prolonged period of solitary confinement. There appears to be no plan to bring this to an end.

## **Why there must be a plan to bring back meaningful education for children in prison**

No out-of-cell activities or therapies are taking place, except in Parc prison where children are doing some activities as part of education provision. Education has been severely restricted. In Parc prison, children have been receiving two hours of face-to-face education activity every day but in most prisons, children are only getting education sheets or worksheets under the door to be completed in-cell. This is contrary to YOI Rules which require children to 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.<sup>7</sup> Many children in prison have or should have education and health care plans. Children with such plans in the community have continued to be prioritized for education throughout the pandemic. By contrast children with special educational needs in prisons and STCs have not received any face-to-face education. As children in the community start to return to school, the contrast between the treatment of children in prison and the community becomes more stark.

## **Increased need, reduced support and reduced scrutiny**

Children have told the Howard League of their acute anxiety at this time. One child told the Howard League: *"I'm worried because I got grandparents – I'm worried about what will and could happen to them."* Inspectors found that the suspension of visits from friends and family had had *"a dramatic impact"* on many children, a worry that was exacerbated by not knowing how long the situation would last. Inspectors were *"concerned to see limited specialist secondary mental health services for those who needed them"*.

While children in prison have been given additional phone credit, this is typically their only contact with the outside world. 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 Inspectorate noted the withdrawal of services, including Barnardo's and one-to-one programmes previously provided by mental health specialists. The absence of external visitors affects children's access to services and support and reduces the opportunities for external scrutiny and therefore has worrying implications for safeguarding.

**Howard League for Penal Reform, 28 May 2020**

---

<sup>4</sup> HM Chief Inspector of Prisons, *Report on short scrutiny visits to Young offender institutions holding children* by HM Chief Inspector of Prisons, 21 April 2020, at <https://www.justiceinspectorates.gov.uk/hmiprisons/inspections/young-offender-institutions/>

<sup>5</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, at <https://undocs.org/A/RES/70/175>

<sup>6</sup> *R (on the application of Bourgass and another) v Secretary of State for Justice* [2016] A.C. 384, para. 37

<sup>7</sup> *R (on the application of AB (A Child)) v Secretary of State for Justice* [2017] EWHC 1694 (Admin)