

## **Justice and fairness under Covid-19 restrictions**

This briefing focuses on ensuring justice and fairness— a key concern as the justice system attempts to work around the restrictions necessitated by the pandemic and independent scrutiny mechanisms remain limited. The Howard League is aware that the restrictions in prisons and across the wider justice system, threaten to undermine the legitimacy of the criminal justice system risking excessive periods of detention, especially for the most disadvantaged, at a time when conditions in prison are particularly severe. This briefing outlines some key concerns that the Howard League has become aware of and which require the government to take steps to avoid punishing disadvantage and frustrating the efficacy of the system as the restrictions become business as usual.

### **Parole Board directions for prisoners to be released being frustrated by lack of Approved Premises placements**

There is currently a serious shortage of probation Approved Premises, especially in London where almost half the hostels have been closed. This means that some prisoners, whom the Parole Board has directed should be released, are remaining in prison under lockdown conditions. This frustrates the careful decision-making of the Parole Board and risks undermining excellent progress made by prisoners in their rehabilitation. Greater transparency is needed about the process for bed allocation and the size of waiting lists. A recent Freedom of Information Act request made by the Howard League has revealed that since 2017 there have typically been only 11 or 12 Approved Premises beds to cater for the whole London area. In March 2020 that figure was reduced to a mere 6 beds.

The Howard League represented a young adult who had worked really hard to address his offence in prison and had matured into a young man ready to prove himself in the community. The Parole Board agreed and directed that he should be released to an Approved Premises. Despite this direction becoming final in February 2020, he remained in prison until April because of a lack of available accommodation. Locked in his cell for 23 hours a day he was becoming withdrawn and losing hope. His lawyers' difficulties addressing the shortage of accommodation were exacerbated by a lack of information about the process of hostel bed allocation and the numbers on the waiting list. Accommodation was eventually found for him, but only after legal action was threatened - liaison with the Ministry of Justice team dealing with releases and the probation complaints mechanism having failed to achieve the necessary result [for more detail see our [blog](#)]. The Howard League is currently representing another young adult in a similar situation: he has been directed for release but is stuck in an open prison awaiting a place in an Approved Premises. Prior to Covid-19, he was working a full-time job, 5 days a week, in the community and taking monthly home leave for up to 5 nights at a time. All this has stopped and he has no idea when a place may become available for him to enable his release.

### **Ensuring effective participation requirements do not result in extended detention**

Meeting additional participation needs of vulnerable individuals in the justice system is always challenging, but it is especially so at this time. The Howard League is aware that such challenges are sometimes being dealt with in a way that results in further disadvantage, with hearings being adjourned on the basis that effective participation is not currently possible. The intention is to honour the individual's participation rights but the inadvertent outcome is that the vulnerable are at risk of being penalised for their participation difficulties.

In one instance, the Howard League represented a young person who required the support of a specialist communication facilitator to effectively participate in his parole hearing. In an ideal world

the facilitator would have attended in person. The switch to virtual-only parole hearings means that this is not possible. The Board is considering whether it can proceed at all. If it does not, the young person will be denied a meaningful review before his sentence expires. The Howard League is aware of another case where an adjourned hearing for a vulnerable teenager was cancelled on the basis that the Parole Board felt it was too complex for a remote hearing. In that instance, arrangements were put in place following representations that vulnerability should not deprive a young person of the chance of liberty. In both cases, this issue has caused delay to hearings where liberty is at stake.

The Howard League is concerned that across the criminal process many vulnerable defendants are having their cases delayed, sometimes indefinitely, because of challenges to accommodate their additional needs. It is important that the government put in place plans to ensure that rights are properly balanced, the primacy of the right to liberty is acknowledged and sensible options explored so that there is no redoubling of disadvantage at this time.

### **Complex cases – co-dependency and delay**

The most complex of cases often proceed within a web of inter-connected processes in other jurisdictions which may be at different stages of completion (eg care proceedings alongside criminal matters, or parole proceedings where there are outstanding prosecutions). Strain on all jurisdictions is resulting in some of these complex cases being seriously delayed.

The Howard League is representing a young adult with learning difficulties serving a determinate sentence who has been recalled to custody for breach of his licence conditions. At the date of his initial release he was facing outstanding allegations in relation to incidents that had taken place previously. His probation officer is now not recommending release on account of the fact that the young person has outstanding criminal matters that have not been dealt with. This is despite the fact that our client had been released whilst the allegations were pending, and the circumstances of his recall are non-violent and unrelated to the outstanding allegations. He is not formally remanded for the outstanding allegations. There is a real risk that consideration of this release will be unduly delayed because of the backlog of cases in the criminal courts.

Given the extreme conditions in prisons under Coronavirus, justice must be allowed to run its course in the community where, as in the example case, this can safely occur. The government must act to ensure that there is careful co-ordination to prevent progress in co-dependent cases being unnecessarily hampered.

### **Remand prisoners - the risk of indefinite pre-trial detention in severe conditions**

Remand prisoners are entitled to an adjusted regime in comparison to sentenced prisoners, including greater access to social visits. Under the current restrictions there is no such adjustment. Remand and sentenced prisoners alike are being held in conditions amounting to solitary confinement, for extended periods as they await trials that have invariably been delayed. Nothing has been done to address this, for adults or children in the system.

The Howard League and Garden Court Chambers have produced a [practitioners' guide](#) to reduce the use remand for children during the pandemic, although many of the issues raised in the guide affect all age-groups. Although we are aware of areas of good practice, there is an urgent need for guidance for all Judges and Magistrates making remand decisions. They must be fully apprised of the conditions in the secure estate and directed to give anxious scrutiny to all remand applications at this time, including the need to take into consideration the best interests of dependent children (article 3 UNCRC). In particular there should be no use of the power to remand into custody for the individual's 'own protection' or welfare – a misnomer at this time.