

## Howard League for Penal Reform's response to the government's Consultation on Police Powers: Pre-charge Bail

June 2020

### Summary

1. The Howard League for Penal Reform welcomes the opportunity to comment on the government's Consultation on Police Powers: Pre-charge Bail.
2. The government proposes changes to the way individuals who are suspected of having committed a criminal offence are treated whilst they await completion of the investigation. The proposals aim to address the current unsatisfactory position whereby people may be under investigation indefinitely. This is distressing to victims and stressful to the people being investigated. It can be especially damaging to young people accused of offending who may be dealt with more harshly if they fall to be dealt with once they have reached adulthood or at a point when their networks of support have diminished. Yet the proposals draw no distinction between the treatment of children and young adults, and the treatment of the wider group of adults who are under investigation.
3. This response focuses on the need to recognise and provide for the distinct capacities and needs of children and young adults in contact with the criminal justice system.
4. Delays and uncertainty awaiting a decision on whether an allegation will proceed to prosecution are hugely detrimental to children and young adults' development and life chances. They also impact negatively on young witnesses and complainants, and on the family members of children under investigation.
5. It is therefore essential that children and young people are prioritised to avoid undue delay.

## **1. About the Howard League for Penal Reform and summary of response**

- 1.1 Founded in 1866, the Howard League is the oldest penal reform charity in the world. The Howard League has some 13,000 members, including prisoners and their families, lawyers, criminal justice professionals and academics. The Howard League has consultative status with both the United Nations and the Council of Europe. It is an independent charity and accepts no grant funding from the UK government.
- 1.2 The Howard League works for less crime, safer communities and fewer people in prison. We achieve these objectives through conducting and commissioning research and investigations aimed at revealing underlying problems and discovering new solutions to issues of public concern. The Howard League's objectives and principles underlie and inform the charity's parliamentary work, research, legal and participation work as well as its projects.
- 1.3 Our legal team works directly with children and young adults in prison.
- 1.4 We have drawn on our legal and policy work in responding to this consultation. While we welcome the opportunity to comment on the arrangements for pre-charge bail we are concerned that the proposals raise a number of concerns.
- 1.5 The Howard League would welcome the opportunity to provide further information about any of the points below.

## **2. The proposed changes and why they are so important for young people**

- 2.1 Following changes to the rules in 2017, when an individual is under investigation by police in relation to an allegation that they have committed a criminal offence, and they are not remanded into custody, they will be released into the community, either on bail (often with conditions they must keep to) or 'released under investigation' (RUI). The consultation aims to respond to concerns that, as a result of those changes, investigations are taking longer to complete.
- 2.2 The government's proposal considers changing the current position whereby many people are released under investigation for extensive periods of time and offers a range of options to achieve that. It also considers introducing a range of time limits and different levels of authorisation where the time taken to complete the investigation has to be extended, in order to get a grip on protracted periods of time where people are under police bail or investigation.
- 2.3 As presently drafted, the proposals draw no distinction between the position of children and young adults, and that of the wider adult population. The Howard League has particular expertise in the experiences of young people in the criminal justice system and the legal requirements that pertain to them due to our specialist legal work. This response draws on that expertise.

## **3. A distinct approach required for children and young adults**

- 3.1 The youth justice system is distinguished from adult processes in relation to progress post-charge. There is a separate legal framework, a different court structure adjusted to respond to the natural developmental immaturity of children and different timescales for completion of the prosecution. This distinct process reflects the distinct aims of the

youth justice system – prevention of offending by children and young persons (Crime and Disorder Act 1998 s37) and focus on the welfare of the child (The Children and Young Persons Act 1933 s44 and Articles 3, 37 and 40 of the UN Convention on the Rights of the Child). The Courts have consistently ruled that this legal framework should translate into different practices in respect of children, including at the police station (see, for example, *R (on the application of HC) v Secretary of State for the Home Department* [2013] EWHC 982 (Admin), which concerned the requirement to provide appropriate adults to all children under 18 at the police station).

- 3.2 There is a growing consensus that young adults in the criminal justice system have distinct characteristics and needs, arising in large part from their developing maturity. The evidence supporting this has been developed and promoted by the Transition to Adulthood Alliance (T2A).<sup>1</sup> This evidence is now widely accepted as justifying a different approach to young adults in the criminal justice system (see, for example, the findings of the Justice Committee, 2016<sup>2</sup> and 2018,<sup>3</sup> and the comments of the Lord Chief Justice in *R v Clarke, Andrews and Thompson* [2018] EWCA Crim 185). Research suggests that criminal justice interventions should adopt a developmental perspective to young adults enabling them to work, as they develop and mature, on emotional regulation, impulse control and peer influence, as well as on the social processes of maturation, such as developing future aspirations, forming adult relationships, and reducing recreational drug use.<sup>4</sup> Delays to criminal justice processes can inhibit this work, and extended contact with the criminal justice system for young adults raises the risk of adverse outcomes for young people and increases their risk of reoffending.<sup>5</sup>
- 3.3 Delays and uncertainty awaiting a decision on whether an allegation will proceed to prosecution are hugely detrimental to children and young adults' development and life chances. The impact on schooling and on family life will be profound for any child or young adult kept in limbo, whether on bail or RUI. Allegations made against children and young people frequently also involve young complainants and witnesses who are also seriously disadvantaged by long delays. Delays can be particularly problematic where bail conditions prevent a child attending school, as can often occur where complainants or witnesses attend the same school as the young person being investigated. For example, the Howard League is aware of an ongoing investigation in relation to a child who was 12 years old at the time of his arrest on suspicion of a sexual offence involving a similarly aged complainant. The child has spent almost a year on bail, with conditions which have prevented him attending his school. He has just been informed that he is now to be 'released under investigation' for a further 11 months. The damage done to his schooling and general development, as a result of the delays in the investigation, is likely to be substantial and long-lasting.
- 3.4 Bail conditions can also be extremely disruptive for parents, carers and siblings, particularly where a residence condition includes a 'doorstep' requirement obliging the young person to show themselves at the door to officers who can attend their address at any time of the night. A child may be obliged by bail conditions to reside away from

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<sup>1</sup> Transition to Adulthood Alliance, 2020, at <https://www.t2a.org.uk/>

<sup>2</sup> House of Commons Justice Committee, *The treatment of young adults in the criminal justice system*, 26 October 2016, at <https://publications.parliament.uk/pa/cm201617/cmselect/cmjust/169/169.pdf>

<sup>3</sup> House of Commons Justice Committee, *Young adults in the criminal justice system*, 20 June 2018, at <https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/419/419.pdf>

<sup>4</sup> Royal College of Psychiatrists, *Written evidence submitted by the Royal College of Psychiatrists to the young adult offenders inquiry*, HC 937, 13 October 2015, at <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justicecommittee/the-treatment-of-young-adults-in-the-criminal-justice-system/written/22190.html>

<sup>5</sup> Howard League and T2A, *Sentencing Young Adults: Making the case for sentencing principles for young adults*, 2018, at <https://howardleague.org/wp-content/uploads/2019/01/Sentencing-Young-Adults.pdf>

their immediate family, particularly where safeguarding concerns arise in respect of young siblings as a result of the unresolved allegation. Potential criminal proceedings can also be particularly detrimental when they overshadow the end of a child's school career, or a young person's transition into higher education, employment or training.

- 3.5 Delays which result in a child crossing the adult age threshold during investigation, or following charge but before trial, conviction and sentence, are especially detrimental. Where children commit offences but are tried or sentenced as adults, they are liable to receive a harsher sentence and will have to wait longer before their convictions become spent, just because of the delay.
- 3.6 Turning 18 after the alleged offence but before trial will mean that the child will be tried in an adult court, rather than in the youth court where proceedings are best adjusted to enable their effective participation.
- 3.7 Where a child turns 18 before sentence, the sentencing options are different. This is because in all cases except murder, the sentence available relates to the date of conviction, not the date when the offence was committed.
- 3.8 The longer term impact of any sentence is also different where a child turns 18. For example, when a conviction becomes spent relates to the date of conviction, not the date of the commission of the offence. The rehabilitation period is doubled where a person has been convicted at the age of 18 or over.
- 3.9 The care and support young people can expect to receive from the state differs greatly when a child turns 18 and again when a young adult turns 21 or 25. Statutory support can be very important in facilitating community sentences or being able to secure court bail.
- 3.10 A distinction between children and young adults and the wider group of adults in pre-charge processes is long overdue, necessary and appropriate. As CPS guidance notes: 'there is little point in conducting a trial for a young offender long after the alleged commission of an offence when the offender will have difficulty in relating the sentence to the offence. To maximise the impact on the youth offender, the case must be dealt with as soon as possible.'<sup>6</sup>
- 3.11 It is therefore essential that children and young people are prioritised to avoid undue delay. There should also be a requirement that the child or young adult who has been released under investigation is kept informed of the progress of that investigation, as would occur if they were on bail.

#### **4. Concluding observations**

- 4.1 The Howard League urges the government, in amending the approach to pre-charge decision-making and investigation oversight, to introduce a distinct approach for children and young adults, and one which, prioritises them to avoid undue delay.

**The Howard League for Penal Reform  
2 June 2020**

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<sup>6</sup> Crown Prosecution Service, *Youth Offenders*, 28 April 2020, at <https://www.cps.gov.uk/legal-guidance/youth-offenders>.