

Response to the College of Policing consultation on the guidelines for recognising and responding to vulnerability related risks, 23 October 2020

Key points

1. We welcome the focus of the guidelines on supporting officers and staff to recognise and understand the vulnerabilities of those with whom they come into contact. Police are the gatekeepers to the criminal justice system and are also frequently responding to people who have been let down by other services
2. The focus on strategic change as well as practical steps for first responders will be helpful in ensuring that understanding and responses are embedded across forces
3. The focus on encouraging and enabling police officers to use professional judgement is welcome and we support developing a police culture that evaluates and learns from its decision-making
4. People who come into contact with the police for allegedly committing an offence can be vulnerable and this should be made clearer in the guidelines. In this regard, the language of 'victim' and 'perpetrator' in the guidelines is unhelpful.
5. The guidelines should be clearer in addressing vulnerability and race.

1. About the Howard League for Penal Reform

- 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 The Howard League's work to reduce the arrests of children and women has shown that vulnerable individuals are criminalised when it is unnecessary and inappropriate. Our work with police forces across England and Wales has shown that forces which recognise vulnerability are reducing unnecessary criminalisation and research has shown this leads to better outcomes. Our legal team works directly with children and young adults in prison. We have drawn on our legal and policy work in responding to this consultation.
- 1.4 The Howard League would welcome the opportunity to provide further information about any of the points below.

2. Police as gatekeepers to the criminal justice system

- 2.1 The Howard League welcomes the recognition in the guidelines of the important role that the police play in responding appropriately to vulnerable individuals. Police are the gatekeepers to the criminal justice system and have a key role in identifying and protecting the vulnerable. They are frequently asked to deal with issues which are the result of failures by other services including health, housing or children's services.
- 2.2 The Howard League has been working with police forces across England and Wales for over a decade, as part of our programme to reduce the arrests of children and more recently, women. Our programmes to reduce arrests have shown that women and children often come into contact with the police as a result of their vulnerabilities.
- 2.2 Since 2010, the Howard League has been campaigning to reduce the number of child arrests with a view to "stemming the flow" of children into the youth justice system. The charity collects (and publishes) the numbers of child arrests made by police forces annually through Freedom of Information requests and works closely with police forces all over England and Wales to identify and address issues in order to prevent unnecessary arrests of children. In 2018, there were 70,078 child arrests in England and Wales, a 71 per cent reduction from the 245,763 child arrests in 2010 (Howard League for Penal Reform, 2019).
- 2.3 This research and policy work, combined with knowledge from the Howard League legal team's direct work with children and young people, has highlighted the fact that some groups of children are still being pushed into the youth justice system

unnecessarily and unfairly because of systemic failings and discrimination across justice, social care and healthcare systems. This includes children living in residential care, child victims of criminal and sexual exploitation and children with serious mental health problems.

- 2.4 In 2015, the Howard League launched a campaign to reduce the disproportionate and unnecessary criminalisation of children in residential care. In the year ending 31 March 2014 – just before the charity started this programme - 15 per cent of children living in children’s homes were formally criminalised; in the year ending 31 March 2019, this proportion had gone down to seven per cent (Howard League for Penal Reform, 2020a). More information about this programme and how these reductions have been achieved is available on the Howard League’s website at <https://howardleague.org/our-campaigns/programme-to-end-the-criminalisation-of-children-in-residential-care/>.
- 2.5 The Howard League is conducting a programme of work to reduce the arrests of women, building on its successful work with the police regarding children. The Howard League provides administrative support to the All-Party Parliamentary Group on Women in the Penal System which is conducting an inquiry into reducing the arrests of women.
- 2.6 The APPG on Women in the Penal System has published two briefing papers on reducing the arrests of women. The APPG found that women with histories of being victims of violence and abuse were over-represented in the criminal justice system. It also found that women who contacted the police about a domestic violence incident were sometimes arrested themselves. The APPG has called for a set of principles for policing women.
- 2.7 The Howard League Community Awards celebrate successful schemes that reduce crime and transform lives. Winners this year included Thames Valley Police’s Drug Diversion Scheme and Norfolk Constabulary’s joint programme with the youth offending team and children’s services in Norfolk. Both schemes are examples of innovative police work that is reducing the criminalisation of vulnerable children and young people. Humberside Police won an award for its work on domestic abuse and Birmingham and Solihull liaison and diversion team were recognised for their work in police custody suites in the West Midlands. The Community Awards highlight policing good practice across England and Wales that recognises and responds to the needs of the most vulnerable.

3. Strategic and practical change

- 3.1 We welcome the fact the guidelines focus on strategic level guidelines for chief officers as well as practical guidelines for police responders. Our work with police forces to reduce the criminalisation of vulnerable women and children has shown that a two pronged approach helps to ensure that policy and practice becomes embedded across forces when there is strategic leadership from the top as well as practice change with officers working at the coal face.

4. The use of professional judgement

- 4.1 We welcome the emphasis in the guidelines on encouraging the use of professional judgement.

- 4.2 We have found examples of police forces where officers are using their professional discretion to keep the most vulnerable individuals out of the criminal justice system and avoid the unnecessary use of arrests. Dorset, West Mercia and Sussex have developed local protocols to prevent the criminalisation of children in care homes. Thames Valley Police is working to refer drug users for treatment and support rather than arresting them and prevent the criminalisation of vulnerable women by working in partnership with Alana House women's centre.
- 4.3 However we are also aware of situations where officers had felt more inhibited about using professional judgement. Some officers have told us there are perceived 'tramlines' for dealing with certain alleged offences such as possession of a weapon or domestic abuse.
- 4.4 The guidelines should be clearer in emphasising the importance of preventing the unnecessary criminalisation of vulnerable people. Police officers have the discretion to arrest. The guidance could be clearer in encouraging and enabling officers to use their professional judgment in deciding not to arrest a vulnerable individual when it is not in the public interest to do so.
- 4.5 In 2015, Her Majesty's Inspectorate of Constabulary (HMIC, 2015) published a joint thematic inspection on the welfare of vulnerable people in custody. The Chief Executive of the Howard League was a member of the expert reference group. HMIC found that,

'many people taken into police custody are vulnerable in some way, and that detention in police custody can be particularly detrimental to their welfare'.

The guidelines should be more explicit in explaining the detrimental effects of arrest and police detention on vulnerable individuals. There should be greater emphasis on ensuring that vulnerable people are not unnecessarily criminalised.

5. A police culture that evaluates and learns from its decision-making

- 5.1 The Howard League has found good examples where police forces are evaluating and learning from its decision making. For example, one force was evaluating incidents of domestic abuse where women had been arrested.
- 5.2 Our work to prevent the criminalisation of children in care has highlighted forces which are evaluating and learning from decision-making. West Mercia police reviewed the calls it was receiving from children's homes to assess what percentage of calls were inappropriate. The force worked closely with children's homes to reduce the number of inappropriate calls, which led to improvements in the police and the homes' responses to vulnerable children in care (Howard League, 2017b).
- 5.3 A senior police officer gave an example to the APPG (2019) of a women with learning difficulties who had repeatedly come into contact with the police due to her problematic behaviour on public transport. Rather than arrest the woman, officers reviewed her situation to determine the causes of the problems on the bus. The decision was made to contact her care providers and the issue was resolved as she was provided with transport. This was a good example of officers developing solutions which prevent unnecessary criminalisation and arrest.

6. Definition of vulnerability

- 6.1 The guidelines state *'a person is vulnerable if, as a result of their situation or circumstances, they are unable to take care of or protect themselves or others from harm or exploitation'*.
- 6.2 Her Majesty's Inspectorate of Constabulary's thematic inspection on the welfare of vulnerable people in custody (HMIC, 2015) recognised that people taken into police custody may be both offenders and in need of care.
- 6.3 The definition of vulnerability in the guidelines includes all who come into contact with the police. Too often, vulnerable people are regarded as the harmer rather than the harmed. The APPG found that women had been arrested in domestic violence incidents when there were signs of physical harm on their partner, such as scratches, but only once in police custody was it recognised that the women had been a victim of violence.
- 6.4 HMIC (2015) stated vulnerability can be a trigger for crime or it can make people more likely to be the victims of crime. The vulnerability assessment in the guidelines is useful and shows that aggressive behaviour can be an indicator of vulnerability.
- 6.5 The guidelines do recognise that vulnerability-related risks may not always be obvious and identifying vulnerability can be difficult. It also points out the barriers to the disclosure of risk such as a person may not wish to disclose their vulnerability or may not see themselves as vulnerable.
- 6.7 Our work with the police to reduce the arrests of women and children has shown the importance of leadership from above in supporting officers to recognise vulnerability in situations of conflict.
- 6.8 There has been a rise in the number of women arrested for assault on an emergency worker. Some of these incidents are related to domestic assault incidents. A senior officer spoke to use about women using 'defensive violence' when feeling threatened. The guidance should be clearer in highlighting the need to avoid criminalising vulnerable people who behave aggressively as a result of feeling threatened.
- 6.9 The language of victim and perpetrator (pages 17-19 of the guidance) can be unhelpful when recognising and responding to vulnerability. It can lead to a one-sided approach where only those people who are regarded as 'victims' are picked up. Police officers working in the areas of child sexual exploitation and child criminal exploitation are leading the way in understanding the overlap in this area and the need for safeguarding responses where appropriate.
- 6.10 There is a danger that the guidelines will do little to address some of the failings revealed by HMIC (2015) which found that the emphasis of policies and practice on vulnerability *'was more strongly focused on protecting vulnerable victims and witnesses than on supporting vulnerable people who are taken into custody'*.

7. Vulnerability and race

- 7.1 HMIC (2015) recognised that people from Black, Asian and minority ethnic communities can be vulnerable because of their minority status. HMIC research and data analyses showed that people from Black, Asian and minority ethnic communities were disproportionately represented in the number of stop and searches and arrests. The data also indicated that a disproportionate number of

people from African-Caribbean groups (compared to numbers in the general population) were both in custody, and subject to strip-searches.

- 7.2 The Lammy review (2017) found Black and ethnic minority women were more than twice as likely to be arrested as white women.
- 7.3 There should be greater emphasis in the guidelines on recognising the specific vulnerabilities of Black, Asian and minority ethnic people to prevent criminalisation.
- 7.4 *Guideline 3: Communication* does not make specific reference to race. The guideline does refer to minimising personal or unconscious bias but there is no reference to racial bias. Officers should be encouraged to reflect on their knowledge and understanding of racial and cultural differences as this will impact on their development of a rapport with individuals.
- 7.5 The Lammy review noted that trust in the criminal justice system was low for people from Black, Asian and ethnic minority communities and they were less likely to see the system as fair. Officers must recognise that a level of distrust could make it less likely that people from Black, Asian and minority ethnic communities will be open about the risks they face or their vulnerabilities.
- 7.6 We support the inclusion of using a procedurally just approach. The guidelines emphasise the importance of treating people with respect. This must apply to all individuals who come into contact with the police, not just to those who have been identified by officers as victims or witnesses.

8. **Conclusion**

- 8.1 Guidelines to promote a better understanding and response to vulnerability are welcome and reflect the good practice that is already taking place in many forces. It should lead to a significant reduction in the criminalisation of vulnerable men, women and children. It will require leadership to ensure cultural change is embedded across all forces and that vulnerability is recognised, regardless of how an individual comes into contact with the police.

The Howard League for Penal Reform
23 October 2020

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