

Howard League for Penal Reform's response to the House of Lords Constitution Committee inquiry into the impact of Covid-19 on the operation of the courts

11 January 2021

Summary

1. The Howard League for Penal Reform welcomes the opportunity to provide a written submission on the impact of Covid-19 on the operation of the courts, focusing in particular on how the criminal case backlog and extension to custody time limits has affected prisoners awaiting trial.
2. Despite the hugely negative impact of Covid-19 on prisons, and the possibility of prisons becoming vectors of the virus, people are still being remanded to prison by the courts. Not only that but the remand population is growing.
3. Since March 2020 the nature of the prison population has changed. The proportion of people on remand has increased, including in the children's estate. In the current climate there is virtually no difference between the experience of an on remand and a sentenced person in prison.
4. That qualitative experience of custody is extremely impoverished. Prisons are managing the virus through a strategy of containment, meaning tens of thousands of men, women and children are spending enormous amounts of time restricted to their cells (often in solitary confinement) with no purposeful activity. The approach is inhumane.
5. In this third national lockdown, which is set to last for some time, there has been no pause to court business – although the ability of courts to see matters through will clearly be hampered by the pandemic as jurors, witnesses and staff fall prey to the virus. This means that those remanded to custody will spend many more months in Covid-affected prisons awaiting trial than they would have before. The practice is grossly unfair and dangerous.
6. The Prosecution of Offences (Custody Time Limits) (Coronavirus) (Amendment) Regulations 2020, in force since 2020, permits and facilitates further delay and therefore hardship on people who, under English law, are still "innocent until proven guilty". It should be revoked in its entirety – or in the alternative, at the very least for children.

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. The charity achieves 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 legal team works directly with children and young adults in prison. This request for evidence draws on both the charity's legal and policy work.
- 1.4 The Howard League would welcome the opportunity to provide further information about any of the points below.

2. Increase in proportion of prisons on remand, despite the risks posed by the virus

- 2.1 Despite the ongoing negative impact of Covid-19 on prisons, and the risk of prisons becoming vectors of the virus (see the Coker report referenced below), people continue to be remanded to prison by the courts. In the year leading up to September 2020 the prison population reduced by five per cent but the proportion of people on remand increased by 28 per cent.¹
- 2.2 At the start of the pandemic in March 2020 there were 10,043 people on remand out of a total population of 82,990 (12 per cent of the total population were remand prisoners). By September 2020 there were 12,274 people on remand out of a total population of 79,235 (15 per cent of the total population were remand prisoners).
- 2.3 The proportion of children on remand has increased to the point where around 40 per cent of children in custody are on remand. In March 2020, 195 children aged 15 to 17 were remanded to custody out of a total population of 544 children of that age in prison (36 per cent of children of that age in prison were on remand). By September 2020 162 children aged 15 to 17 were remanded to custody out of a total population of 395 children of that age in prison (41 per cent of children of that age in prison were on remand). Freedom of information requests for further information concerning the ethnicity of children in custody have consistently shown that Black children and young adults are more likely to be on remand than white children.² In the year ending March 2019, 66% of children remanded to youth detention accommodation did not subsequently receive a custodial sentence.³ Children from London on remand are

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/930646/Population_30Sep2020.ods

² FOI 200813013

³ Youth Justice Board / Ministry of Justice, Youth Justice Statistics 2018/19, published 30 January 2020

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almost all from Black and ethnic minority communities: Between July and September 2020, 87% of children on remand awaiting trial were from Black and ethnic minority backgrounds.⁴

- 2.4 The disproportionate impact of remand decisions on people from minority backgrounds can be seen in Ministry of Justice data⁵, which shows that in 2019 the proportion of Black, Asian and minority ethnic people of all ages in Crown Court matters who are remanded to prison stood at around 20 percent. In the case of children, that percentage rose dramatically to over a third of all children remanded. It is also noticeable that almost a third of young adults in the crown court who are remanded to custody are from ethnic minorities.
- 2.5 The backlog of trials and the extension of custody time limits in the courts, as well as inevitable disruption to trials due to participants being hampered by the pandemic, is likely to make this disproportionate impact worse.
- 2.6 The Covid-19 pandemic is the most serious health crisis the world has faced in more than a generation, the impact of which continues to be keenly felt by the prison population in England and Wales. While the serious risks identified in the Coker report⁶ did not initially materialise, as the spread and impact of the virus in prisons was contained between March and September, since then Covid-19 has begun to spread quickly in prisons. In the most recent monthly bulletin (data to 30 November 2020), 3,460 prisoners had tested positive for Covid-19 since the start of the pandemic, across almost the entire prison estate. Since October, the number of new monthly confirmed cases had increased by 1,825.⁷

3. Impoverished regime, indistinguishable from that of sentenced prisoners

- 3.1 The current severe restrictions in prisons, imposed as part of a strategy of containment to combat the virus, have rendered the qualitative experience of custody as one of extreme impoverishment, with detrimental impacts to the well-being of those in custody at this time.
- 3.2 The Lord Chief Justice acknowledged in *R v Manning* [2020] EWCA Crim 592 §41 that “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.”
- 3.3 The Howard League has received hundreds calls from children and young people in prison who have described the very restricted regimes in YOIs since March and the negative

Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/862078/youth-justice-statistics-bulletin-march-2019.pdf

⁴ <https://www.theguardian.com/society/2020/dec/21/nine-out-of-10-children-on-remand-in-london-come-from-bame-background>

⁵ MoJ (2020) *Criminal Justice System Statistics publication: Remands at the Crown Court: Pivot Table Analytical Tool for England and Wales, December 2015-December 2019*, <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2019>

⁶ https://howardleague.org/wpcontent/uploads/2020/04/2020_04_01_COKER_Report_HL_PRT.pdf

⁷ <https://www.gov.uk/government/statistics/hmpps-covid-19-statistics-november-2020>

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impact this has had on their mental health.⁸ For a significant period of time children have been unable to have in-person visits or education and with significant reductions in the amount of time allowed out of their cell in order to follow social distancing guidelines. A report by HMIP in April 2020 stated that in Cookham Wood the amount of time that children were spending out of their cells since the first lockdown was just 40 minutes a day. Children in Rainsbrook secure training centre were routinely given just thirty minutes out of their cell each day. For the majority of time since lockdown children in prisons have had to eat meals alone in their cells, have had very limited access to education, activities or therapy sessions as support services have largely withdrawn.

- 3.4 Despite the fact that the principle “innocent until proven guilty” remains a fundamental plank of English law, remand prisoners are generally no longer treated differently from sentenced prisoners. The main difference is slightly greater access to their own funds, should they have any and increased visiting rights. However, the lockdown has reduced all prisoners to the lowest common denominator of the highly restricted regime described above undermining that important principle yet further.
- 3.5 In addition, it should be noted that even before the pandemic, remand prisoners were already considered at a heightened risk of suicide and self-injury. In the last thematic report on remand from the Inspectorate of Prisons, it was also found that some remand prisoners surveyed had experienced high levels of stress and anxiety while their trial was in progress and they were uncertain about the outcome.⁹ Increasing the numbers of remand prisoners and the length of time they can stay on remand during a pandemic, when prisons are vectors for the virus and operating extremely limited regimes in response, is inhumane.

4. Impact of no pause to court business and extension of custody time limits during the third national lockdown

- 4.1 In the first lockdown, many courts paused work, which led to a reduction in the prison population as people naturally came to the end of their sentences and the flow of people into prison reduced. However, there are no plans to pause court business during the current lockdown. While the courts continue to process cases, Covid-19 will likely significantly disrupt and delay operation of trials, particularly as jurors, witnesses and staff fall prey to the virus. This means those remanded to custody will spend many more months in Covid-affected prisons awaiting trial than they would have before. The practice is grossly unfair and dangerous.
- 4.2 The Prosecution of Offences (Custody Time Limits) (Coronavirus) (Amendment) Regulations 2020 came into force on 28 September and extended the custody time limits in the Crown Court by two months. The extension of the custody time limits permits and facilitates further delay and therefore hardship on people, who under English law, are still “innocent till proven guilty”. Given the dangers posed while Covid-19 affects prisons, the extension to custody time limits should be revoked in its entirety or in the alternative, at the very least for children

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⁸ See <https://howardleague.org/publications/children-in-prison-during-the-covid-19-pandemic/> and <https://howardleague.org/wp-content/uploads/2020/06/YA-Covid-19-Briefing-FINAL.pdf>

⁹ <https://www.justiceinspectors.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2012/08/remand-thematic.pdf>