

## Howard League for Penal Reform's response to the Ministry of Justice's call for evidence on neurodiversity in the criminal justice system

January 2021

### Summary

1. The Howard League for Penal Reform welcomes the opportunity to contribute to the Ministry of Justice's call for evidence on neurodiversity in the criminal justice system.
2. At present the criminal justice system is not fit for purpose for people with neurodevelopmental disorders. Radical change is required to ensure that people with neurodevelopmental disorders are diverted away from the criminal justice system and do not become further entrenched in it.
3. The Howard League has come across many examples of instances where young people have been severely disadvantaged as a result of their cognitive needs both in terms of the care and treatment they receive and the decisions that are made about them.
4. While the development of tools, adjustments, interventions and training to identify and support people with neurodiversity in the criminal justice system is welcome, it must be accompanied by a holistic change in approach, including adaptations to the way in which decisions are made throughout the criminal justice process. For example, adapted prison programmes are not going to be effective if a person is struggling with everyday functions in prison. Similarly, decisions about recalling a person with extensive cognitive difficulties need to bear in mind the impact of their functioning on their behaviour and the impact of recall on their well-being.
5. This submission focuses on the Howard League's expertise in representing children and young adults in custody including the difficulties that young people with neurodevelopmental disorders face and the absence of appropriate adjustments in decisions about how they enter and leave prison.
6. It takes the form of a case study of a young person that the Howard League has supported in order to illustrate the extent of the failings of the criminal justice system in working with young people with neurodiversity at present.

## **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 1300 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 The Howard League would welcome the opportunity to provide further information about any of the points below.

## **2. The need for holistic approach and the focus of this submission**

- 2.1 At present the criminal justice system is not fit for purpose for people with neurodevelopmental disorders and therefore this call for evidence is welcomed.
- 2.2 However, there is a real risk that the areas that the call for evidence focusses on will not support substantive improvements in the situation for people with neurodevelopmental disorders. While the development of tools, adjustments, interventions and training to identify and support people with neurodiversity in the criminal justice system is welcome, it is not enough to remedy the current deficits.
- 2.3 Developments in assessments, tools and training must be accompanied by a holistic change in approach. For example, adapted prison programmes are not going to be effective if a person is struggling with everyday functions in prison and is spending the vast majority of their week alone in a cell without any support adapted to their needs. Similarly, if a person receives tailored psychological interventions adapted to their needs but a standard approach to punishment and discipline is taken for breaking prison rules, the latter is likely to undermine the efficacy of the former.
- 2.4 It is also essential that the training filters through to enable adaptations to the way in which decisions are made throughout the criminal justice process. For example, decisions about remanding, sentencing or recalling a person with extensive cognitive difficulties to prison need to bear in mind the impact of their functioning on their behaviour and the impact of prison on their well-being. Every effort should be made to divert people with neurodevelopmental disorders away from the system, and in particular prison.
- 2.5 A radical rethink of the system as a whole for people with neurodevelopmental disorders is required.

2.6 Drawing on the charity's legal work with children and young people, this submission focuses on the custodial challenges faced by people with neurodevelopmental disorders, as well as decisions about how they enter and leave prison through a case study and commentary. It is noted that the call for evidence is restricted to adults. It is not entirely clear why this is as the prevalence of neurodevelopmental disorders among children is also high and requires particular attention.

### 3. **Peter: a case-study and commentary**

- 3.1 Peter is a young adult who has a range of neurodevelopmental disorders, including a diagnosis of Foetal Alcohol Spectrum Disorder (FASD) and borderline learning disability.<sup>1</sup> FASD is a complex disorder with a range of primary and secondary symptoms which affect all aspects of life. FASD disorders also lead to a lower emotional age and lack of maturity. Peter functions like a primary school aged child. He has permanent brain damage. Whilst his communication skills can seem normal and he can be sociable, he often struggles to understand situations fully and, in the past, he has been exploited and taken advantage of by his peers. As is typical for many people with neurodevelopmental disorders, he has a range of other chronic mental health issues. He has struggled to adjust and cope with everyday life and normal society. From his teenage years, he suffered with severe anxiety and depression in the community, regularly resorting to self-harm.
- 3.2 Peter's parents made extensive efforts to get him assessed and diagnosed throughout his childhood with a view to obtaining the support he needed. Peter was not diagnosed with FASD until his late teenage years. By this time, he had already been admitted to hospital on account of serious mental health issues, had been suspended from mainstream school due to social and behavioural issues on several occasions, been taken into voluntary care as a looked after child and placed in a pupil referral unit. He committed a serious offence when he was just 16 years old and was given a lengthy custodial sentence following several years of delay in the prosecution and court process.
- 3.3 In custody, as a result of his impressionable nature, his childlike desire to please those around him and his tendency to take any threats literally, Peter was often bullied, harmed and exploited by his peers. He has struggled with saying no to other prisoners. Peter self-harmed prolifically, resulting in him having attended hospital over 50 times throughout his sentence. It was during this first part of his sentence that Peter's mother contacted the Howard League. By this time Peter was a young adult and there was virtually no support in the prison to help him access legal advice. He felt unable to make any meaningful use of the charity's advice line number as he struggled to remember to call and had low confidence in using the phone. He found it hard to physically access the phone. He was unable to answer the many letters sent to him by the Howard League as a result of his difficulties in understanding writing. Prison staff did not assist him to access legal support in any way. Repeated requests for mental health assessments to consider a transfer to hospital were made but it was very difficult for Peter, his parents or the Howard League as his legal representatives to obtain any information about what, if any progress was being made, who was assessing him and to what end. Finally, he was told that he was not suitable for transfer to hospital. Peter was unable to engage in any meaningful interventions in custody during this first of his sentence and spent much of his time on the segregation

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<sup>1</sup> Peter is not his real name. Peter has given the Howard League his permission to use his experiences as a case study for this submission. In his words, he hopes it "will help other people with FASD so they won't have to suffer the way I have."

unit or locked in his room on the wing. On one occasion he became distressed, fearful and frustrated and committed an assault in prison.

- 3.4 As Peter neared his automatic release point, despite the clear and severe level of needs, no bespoke plans were in place for his release to meet his needs. The Howard League asked for a Care Act assessment and was promised that his home local authority would conduct one shortly after his release. In the meantime, his probation officer determined that he would need to be placed in approved premises, presumably due to the absence of any risk reducing work in prison, his high level of need and the absence of any alternative identified suitable community placement. At the approved premises, there was virtually no support in place for him. His probation officer did not meet him.
- 3.5 Peter was recalled by the probation service very shortly after release for failing to follow the conditions of his licence, which he did not understand or realise he was breaking. He did not commit any offence on licence. He was not given any warnings or support to better manage his licence conditions.
- 3.6 Any person who is recalled to custody on a long sentence is entitled to a review by the Parole Board on their suitability for re-release. Since his return to custody, as a result of the coronavirus pandemic, face to face parole hearings have been suspended. However, due to Peter's obvious needs, the Parole Board has deemed him too vulnerable for his hearing to take place in any other way. The result is that his parole case has been subject to almost a year of delay.
- 3.7 Since his recall to prison, Peter has continued to suffer in custody, with prolonged episodes of self-harm requiring hospitalisation and life-threatening surgery. The extent of his self-harm has escalated over time. He continues to be regularly disciplined for breach of prison rules when he is bullied by other prisoners.
- 3.8 Peter was prosecuted for the assault he committed in prison. The Howard League provided a detailed letter to the sentencing judge outlining his background and complex needs. It became apparent that, had this letter not been provided, the court simply would not have been fully aware of the extent of his needs. He received a sentence that would provide minimal interference with the ability of the Parole Board to release him as soon as it deemed that he could be released safely. Peter's mother wrote to the Howard League after the sentencing hearing stating that Peter told her "the Judge had read the letter from Howard League just before the hearing. The judge recognised he was mentally in a very bad place at the time, and given his brain damage he needed support rather than punishment."<sup>2</sup> Peter's mother has commented that this demonstrated a different approach from the attitude of the judge who originally sentenced Peter.
- 3.9 Peter has again been assessed as not suitable for transfer to hospital. He has been assessed by a prison psychologist as unsuitable for programmes in prison due to his level of cognition but unmanageable on licence because he has not evidenced a reduction in his risk. He has still not had a community care assessment, even though the Parole Board has directed one should take place. The Howard League is likely to

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<sup>2</sup>The Howard League has developed a stream of work to enable judges and magistrates to ensure that a distinct approach is applied to sentencing young adults and that the high prevalence of neurodevelopmental disorders in this age group are recognised and factored into sentencing young adults. This work is available on the Howard League's website. Further work is being done to embed this work, including the development of short accessible films to support professionals to understand the impact of brain development and neurodiversity on young adults' behaviour. See <https://howardleague.org/legal-work/sentencing-young-adults/>

have to threaten the local authority responsible for this with legal action should it not take place in a reasonable period of time.

- 3.10 Peter's diagnosis was known prior to him coming to custody. His case illustrates that it is not enough to screen and diagnose: once neurodevelopmental disorders are identified, effort needs to be made to ensure that all criminal justice decisions factor them in. In Peter's case that may have meant considering an alternative to custody in the first place and the probation service thinking much more carefully before initiating an administrative recall that will likely result in him spending over a year in prison during the pandemic.
- 3.11 If custody really could not have been avoided, efforts should have been made to ensure that his needs were fully met in custody. That does not always need to be specialist support.
- 3.12 Peter has had some pockets of good experiences amongst the harm he has experienced in prison. For example, prison staff at his current establishment have also recognised the importance of involving his parents in the review process which is triggered when he self-harms and have at times made efforts, following extensive correspondence with his parents, to adapt the regime to ensure that he is able to spend more time out of his cell for constructive activities, such as painting. Peter has on occasion received kindness and humanity from individual officers, which has been incredibly important. In one establishment the head Governor made great efforts to work with Peter's parents and put in place some plans to help Peter's day to day living experience. The Governor arranged for Peter's mother to come to the prison and see Peter on the wing so she could understand his environment. When he has experienced it, this tailored attention and willingness to adapt the usual "regime" has been incredibly helpful for Peter and his family. Unfortunately, this adapted approach is intermittent and is too dependent on individual relationships with prison staff and the willingness of senior management to support it.

#### **4. Conclusion**

- 4.1 Assessments, tools and interventions adapted to the needs of people with neurodevelopmental disorders, are necessary but not sufficient.
- 4.2 Peter's case shows that it is essential that the progress in recognising the needs of people with neurodevelopmental disorders is accompanied with a sea-change in all decisions that are made about them, from decisions about remand, sentencing and recall to everyday decisions about regime and contact with people outside the prison.

The Howard League for Penal Reform  
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