

Howard League for Penal Reform response to Her Majesty's Inspectorate of Prisons consultation on Expectations: Criteria for assessing the treatment of and conditions for those held in women's prisons

12 January 2021

Summary

- The Howard League welcomes the opportunity to comment on Her Majesty's Inspectorate of Prisons consultation on Expectations: Criteria for assessing the treatment of and conditions for those held in women's prisons
- There is a contradiction to the underpinning ethos of the draft Expectations.
- Her Majesty's Inspectorate of Prisons states that *women's custody should no longer be something designed for men, and adapted slightly to accommodate women* while at the same time noting that those held in women's prisons should experience a *'fundamentally different approach to their safe, decent and purposeful detention'*. This contradiction between fundamental divergence and slight adaptation is borne out in the many ways the Expectations still reflect the way in which men's prisons are inspected.
- Whilst women continue to be placed in prison for 'their own protection' prison staff should not only ensure there is a rapid assessment of their needs but also make every effort to ensure women facing a mental health crisis are moved out of prison as soon as possible to an appropriate placement, or bailed. Prison is not an appropriate place for women at risk to themselves.
- Prisons should ensure access to legal advice and the grant of representation under the Tarrant principles for women facing adjudications where appropriate.
- Clarity is needed as to what prisons should be doing to prevent the deaths of babies and to promote the health of pregnant women and women who go into labour whilst in prison.
- Special care and preparations must be made to support young women entering prison for the first time.
- Women face particular issues when it comes to resettlement
- No women should be released to homelessness.

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 over 12,000 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. We welcome the opportunity to comment on Her Majesty's Inspectorate of Prisons Expectations: Criteria for assessing the treatment of and conditions for those held in women's prisons.

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

2. Women are different to men

2.1 There is a contradiction to the underpinning ethos of these draft Expectations which merits some attention. The HMIP criteria for assessing conditions for and treatment of women in prison state that *'women's custody should no longer be something designed for men, and adapted slightly to accommodate women'*, while at the same time noting that those held in women's prisons should experience a *'fundamentally different approach to their safe, decent and purposeful detention'*. The Howard League would argue that a fundamentally different approach to women's prisons does not involve slight adaptation of a template derived from male imprisonment.

2.2 This contradiction between fundamental divergence and slight adaptation is borne out in the many ways these Expectations still reflect the way in which men's prisons are inspected. Some of the criteria, for example on the use of force, security, living conditions and healthy eating hardly differ from the criteria for men.

2.3 Women's prisons are an adaptation of a prison system designed largely by men and for men. This issue is not unique to prisons. As Caroline Criado-Perez pointed out in her book *Invisible Women*, women live in a society built around men and designed using data on men.

2.4 The Howard League recognises that HMIP must inspect services as provided, and has limited scope for assessing failures of policy. Yet as Baroness Corston noted in her 2007 seminal report, *'Prison is disproportionately harsher for women because prisons and the practices within them have for the most part been designed for men'*. The structure and design of prisons and the way they are run are adaptations of the male prison estate. This includes the buildings and facilities, the daily regime, discipline, the security and the staff culture.

2.5 The Expectations criteria need a different starting point which recognises from the outset the biological difference between men and women. This has different social and personal consequences and requires a radically different approach.

2.6 The HMIP inspection criteria for a healthy and balanced diet (43) is one of many examples where the criteria for men and women are almost exactly the same. The criteria states '*Women have a choice of meals and can make lifestyle choices about diet*'. The only difference between the criteria for men and women is the word 'prisoner' instead of women.

2.7 Women's prisons are not meeting the different dietary needs of women and the food provided is often carbohydrate heavy, based on a dietary plan suitable for men. Women in prison have little choice or control over their diet and often struggle with their weight or are obese.

2.8 The criteria for physical exercise (point 81) states '*Women engage safely in a range of physical education, fitness and associated activities, based on an effective assessment of their needs and capabilities*'. The criteria must reflect the fact that women have a different physique and need different exercise to men. Women's prisons have a gym, just like men's prisons but none has a pool since the closure of HMP Holloway and the re-rolling of HMP Bullwood Hall. Women often prefer activities such as walking, dance or swimming.

2.9 The revised criteria must be more explicit about the different needs of women. The criteria recognise their different needs such as the importance of relationships with their families and the impact of trauma. However, recognising difference is not enough. There needs to be a fundamental rethink about how to inspect a prison regime which is harmful to women in so many ways.

2.10 Over 10 years ago, Baroness Corston recommended replacing existing women's prisons with small multi-functional custodial centres. That has not happened. Women and their families will continue to be harmed by their experience of imprisonment if prisons continue to be inspected as a variant of prisons designed for men.

2. Detention for own protection

2.1 Point 3 includes the bullet point '*Women who have been detained for their own protection are identified during reception processes and a plan is put in place to provide them with support and care. This involves a multidisciplinary team, including health representatives, with the aim of rapidly assessing the individual to make sure an appropriate placement in a suitable facility is found*'.

2.2 The All Party Parliamentary Group on Women in the Penal System has called on the government to abolish the outdated law that gives the courts powers to send women to prison for their own protection (APPG on Women in the Penal System, 2020). The APPG heard evidence that prisons were not suitable places for women facing a mental health crisis. Prison can lead to a deterioration in a women's mental health and the longer a woman is held in prison, the greater that deterioration will be.

2.3 Until the abolition of the power to detain women in prison 'for their own protection' every effort must be made to ensure women facing a mental health crisis are transferred to an appropriate placement as soon as possible and staff should push to ensure this happens. Other organisations, such as mental health service commissioners, must be challenged to fulfil their duty of care

2.4 Prison staff should be proactively supporting women to enable greater use of community options, for example supporting women with bail applications including liaising with community services and making sure women have access to legal support.

3. The right to legal advice

3.1 The Howard League (2020) has raised concerns about the disciplinary process in prisons, including that people in prison have access to legal advice and representation when appropriate and ensuring that the disciplinary process is used as a flag for underlying issues.

3.2 Point 15 of the criteria states that:

- *Women have the option to be supported at an adjudication hearing by a person of their choice. This can include another prisoner, a member of staff or a person who is significant to them within the prison.*
- *Women are routinely offered legal advice, understand why it may help them and are provided with enough time to seek it.*

3.3 The criteria should be strengthened. It is difficult for women to access legal advice for governor's adjudications and prisons should therefore support women to access it. Prisons should ensure that the need for representation (which is funded) before governors is actively considered in each case in accordance with the Tarrant criteria, as outlined in Annex A of PSI (05/2018) on prison disciplinary procedures (adjudications). Prisons should be monitoring the grants of Tarrant representation. Women should not have to formerly apply for one. It is the experience of our lawyers that prison governors rarely grant it, even when it is applied for.

4. Deaths of babies in prison

4.1 Point 10 states '*Any deaths of women while living in the prison, or their babies/children while in the mother and baby unit (MBU), are reported and action is taken in line with the PPO recommendations*'.

4.2 The PPO is yet to publish any recommendations regarding the deaths of babies in prison although it is currently investigating the deaths of 11 babies following an intervention from the Minister of State for Prisons and Probation.

4.3 Clarity is needed as to what prisons should be doing in the meantime to prevent the deaths of babies and to protect the health of pregnant women and women who go into labour whilst in prison.

4.4 The Expectations should include all babies in women's prisons in order not to exclude the deaths of stillborn babies whose mothers are not in MBUs.

5. The specific needs of young women

5.1 The inclusion of criteria for the specific needs of young women aged 18-25 (point 70) is welcome. It is critically important that special care and preparations are made to support young women entering prison for the very first time. This includes young women who have spent time in custody as a child.

5.2 Howard League lawyers have represented young women making the transition from secure children's custody to prison. Examples of good practice include allowing girls to meet staff who will be responsible for them before they make the transition to prison and involving them in planning and decision making in compliance with the UN Convention on the Rights of the Child,

as well as allowing young women to remain in the children's estate where that is in their best interests.

6. Resettlement

6.1 The resettlement criteria (Point 97) are almost identical to the criteria for men and do not reflect the different challenges that women face and ensure that every woman has a safe home to go to on leaving prison.

6.2 Women face particular issues when it comes to resettlement. Finding a home for release is often far harder for women than it is for men, often because of a lack of appropriate and suitable accommodation in the community.

6.3 Baroness Corston (2007) found that women in prison were less likely than men to have someone on the outside looking after their home and family and they are more likely to lose their home and children as a result of imprisonment. Maintaining or finding a home ahead of release is made all the more harder by the fact that women are more likely than men to be located further away from their families as a result of the small numbers and geographical spread of women's prisons.

6.4 The release of women to homelessness is a scandal. The criteria could be more specific about what action prisons can take to ensure this never happens, monitoring the numbers has not brought about change.

The Howard League for Penal Reform
12 January 2021

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