

## Howard League for Penal Reform's response to Her Majesty's Inspectorate of Probation's consultation on its inspection framework and programmes for 2021–2022

April 2021

### Summary

1. The Howard League welcomes the opportunity to respond to the inspection framework and programmes for 2021–2022. The work carried out by the Inspectorate is important and has the capacity to transform practice, especially now that probation services have been unified.
2. All inspection reports and research should consider lived experience, racial disparities and the barriers to making complaints about probation.
3. The inspectorate's focus on children and young adults is welcome, especially as the recruitment of 20,000 additional police officers and the provisions in the Police, Crime, Sentencing and Courts Bill are likely to bring more children and young adults into the criminal justice system and keep them there for longer. Priorities for children and young adults should include:
  - a. Rethinking the inspection standards offending frameworks for children in line with the six constituent elements proposed by Professor Goldson and Dr Briggs in *Making Youth Justice* (2021), which have been shown to reduce custodial detention for children.
  - b. Inspecting transitions for children who turn 18 in the criminal justice system incorporating the consensus that turning 18 is not a "cliff edge". Inspections should include arrangements for supervision in custody and the community, as well as relationships between YOTs, probation and leaving care services.
  - c. Research on the over-use of Approved Premises for young adults.
4. Approved Premises should be inspected, focussing on quality, safety and outcomes, given the key role they are intended to play in protecting the public.
5. The increased rate of recall is resulting in many people spending prolonged additional periods in prison and limited time on licence in the community. It should be monitored and challenged with a focus on how it is experienced by people who have been recalled to prison.
6. The Inspectorate should focus on problem gambling, including conducting a mapping exercise about the provision and support for people who are identified as problem gamblers at all stages of the criminal justice journey, as well as effective practice and gaps in the current system. The Howard League has established the pioneering Commission on Crime and Problem Gambling, which shows that this is an area about which there is little active engagement in the criminal justice system including probation. While there is increasing general awareness, there is no clear understanding of prevalence of problem gambling as it intersects with crime.

## **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 The Howard League's legal team works directly with children and young adults in prison. We have drawn on our legal work in responding to this consultation.
- 1.4 The Howard League welcomes the Inspectorate's programme of work for 2021–2022 and has several suggestions about how it could be improved. All inspection reports and research should consider lived experience, racial disparities, and the barriers to making complaints about probation. The Inspectorate should bring the inspection standards for YOTs in line with research evidence and should start inspecting Approved Premises. The Inspectorate should also improve practice by monitoring and challenging the rising recall rate and by exploring the role of probation in understanding the link between crime and problem gambling and in the penal system's response to it.
- 1.5 The Howard League would welcome the opportunity to provide further information about any of the points below.

## **2. All future research and inspection reports should consider lived experience, race and the barriers to making complaints about probation**

- 2.1 The Howard League has three overarching recommendations about the future research and reports produced by the Inspectorate.
- 2.2 The Inspectorate should use methodologies which capture and learn from the experiences of people on probation, such as focus groups or depth interviews. The Howard League has found this critically important in its work and research, including research into probation. For example, the Howard League partnered with Liverpool John Moores University and the Foundation for Creative Technology, Liverpool to create *Probationary*, a board game which explores the lived experience of being on licence to probation (Howard League, 2019).<sup>1</sup> *Probationary* was produced through workshops with men on licence and reflects real experiences of being subject to probation. The process of creating and playing the game gave the research partners (including the Howard League) invaluable insights into life on licence. In subsequent work to disseminate and embed the research findings, for example with the Ministry of Justice and Prisons and Probation Ombudsman, there have been concerns voiced about the disconnect between policy, practice and the lived experience – to the extent that concerns have been raised about its impact and efficacy.

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<sup>1</sup> <https://howardleague.org/wp-content/uploads/2019/06/Probationary.pdf>

- 2.3 The Howard League welcomes the forthcoming thematic report on the quality of service delivery to Black and mixed heritage boys: it will usefully add to the emerging evidence base from the Inspectorate report on race equality in probation and the Youth Justice Board's recent analysis of racial disparities in remand and sentencing, which found that Black boys were assessed as riskier by practitioners (HMI Probation, 2021; Youth Justice Board, 2021).<sup>2</sup> In future, the Inspectorate should consider race in all its work. It should also disaggregate data about outcomes by race wherever possible, rather than grouping all Black and minority ethnic people together.
- 2.4 The Prison and Probation Ombudsman (PPO) has repeatedly highlighted the low number of complaints it receives about probation. The Inspectorate should seek to understand why this is the case, particularly in cases where its own inspection reports do find significant failings. For example, the Inspectorate's recent report on race equality expressed disappointment in the quality of service delivery to Black and minority ethnic people on probation. The report considered whether participants felt able to discuss race with their probation officers, but it did not consider whether they felt able to make complaints. One participant nonetheless stated that she did not feel comfortable talking about race with her white probation officer and that she had "made complaints in the past about police and it goes nowhere so there is no point trying to do it here" (HMI Probation, 2021, p. 48).<sup>3</sup>
- 2.5 Probation officers have a huge amount of power over people on licence, including the power to deprive them of their liberty through recall. Future work should seek to reduce this imbalance of power by improving the complaints process. The Inspectorate should seek to understand the current barriers to people on probation making complaints and how they can be overcome.
- 3. The focus on children and young adults is welcome, especially as more young people are likely to enter and remain in the criminal justice system over the next few years**
- 3.1 The Howard League welcomes the Inspectorate's focus on children and young adults, especially as changes in law and practice are likely to bring more young people into the criminal justice system and to keep them there for longer. The Ministry of Justice's prison population projections expect the number of children in prison to increase by 77 per cent by 2023, as a result of the recruitment of 20,000 additional police officers (Ministry of Justice, 2020).<sup>4</sup> This will in turn increase the number of children and young adults on licence. The provisions in the Police, Crime, Sentencing and Courts Bill will further increase the number of children who are supervised in the community, as the Government's impact assessment recognises (Ministry of Justice, 2021).<sup>5</sup>
- 3.2 The Inspectorate should rethink the inspection standards for YOTs, in line with the six constituent elements proposed by Professor Goldson and Dr Briggs in *Making Youth Justice: Local penal cultures and differential outcomes – lessons and prospects for*

<sup>2</sup> <https://www.justiceinspectors.gov.uk/hmiprobation/wp-content/uploads/sites/5/2021/03/Race-Equality-in-Probation-thematic-inspection-report-v1.0.pdf>; <https://www.gov.uk/government/publications/ethnic-disproportionality-in-remand-and-sentencing-in-the-youth-justice-system>

<sup>3</sup> <https://www.justiceinspectors.gov.uk/hmiprobation/wp-content/uploads/sites/5/2021/03/Race-Equality-in-Probation-thematic-inspection-report-v1.0.pdf>

<sup>4</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/938571/Prison\\_Population\\_Projections\\_2020\\_to\\_2026.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/938571/Prison_Population_Projections_2020_to_2026.pdf)

<sup>5</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/967780/MOJ\\_Sentencing\\_IA\\_-\\_DTO\\_002\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/967780/MOJ_Sentencing_IA_-_DTO_002_.pdf)

*policy and practice* (Goldson and Briggs, 2021).<sup>6</sup> The authors show that differences in custodial detention rates for children can be explained by six constituent elements of YOTs: the quality of their leadership, whether they focus on welfare or offender management, their perceptions of diversion, their perceptions of custodial detention, their use of knowledge and evidence, and whether they are conscious of children's rights.

- 3.3 Currently, the inspection standards do not assess perceptions of diversion or custodial detention, do not mention rights, and do not value penal welfare over offender management. This is problematic: it recently led to a situation where the Inspectorate reached conclusions that were at odds with the national performance indicators for YOTs. The performance indicators focus on reducing the number of children who enter the justice system, the number of children who are sentenced to custody and the number of children who reoffend. However, the Inspectorate's most recent annual report on YOTs criticised those which focused on diversion and were too close to children's services (Her Majesty's Inspectorate of Probation, 2020).<sup>7</sup>
- 3.4 New inspection standards for YOTs should be introduced. These standards should reflect the findings of *Making Youth Justice* by assessing YOTs' perceptions of diversion and custodial detention, whether they follow a welfare-led approach, and whether staff are aware of children's rights and research evidence on children's offending and desistance. The Inspectorate should expect staff to be familiar with the UN Convention on the Rights of Child and the well-established findings from the Edinburgh Study of Youth Transitions and Crime, which demonstrate that "the key to tackling serious and persistent offending lies in minimal intervention and maximum diversion" (McAra and McVie, 2007, p. 319).<sup>8</sup>
- 3.5 The Howard League welcomes the planned thematic inspection on transitions from YOTs to adult probation services. Since 2017, the Howard League has been carrying out a programme of work with the Transition to Adulthood (T2A) Alliance on the need for a distinct approach to sentencing young adults.<sup>9</sup> This work has highlighted the scientific evidence that young adults are still developing into their mid-twenties and the legal consensus that there is no "cliff edge" at 18. The inspection should incorporate the evidence about young adult development and the recognition that a distinct approach is needed for young adults in the criminal justice system.
- 3.6 Inspections should consider arrangements for supervision both in custody and the community. The process of transition from children's to adult services is common: between 2017 and 2019 over 1000 young people transferred from the children's estate to the adult estate (FOI 20018002). In the experience of the Howard League legal team that process is often difficult. The Howard League has set out a number of its concerns about the transition process for young people in custody in submissions to the Youth Custody Service consultation on transitions.<sup>10</sup> The role of YOT and probation in this process deserves careful examination.
- 3.7 Relationships between YOTs, probation and leaving care services should be carefully examined. Though care leavers are hugely overrepresented among people in prison and on probation, probation officers do not necessarily have the training or knowledge

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<sup>6</sup> <https://howardleague.org/publications/making-youth-justice/>

<sup>7</sup> <https://www.justiceinspectors.gov.uk/hmiprobation/wp-content/uploads/sites/5/2020/11/HMI-Probation-Youth-Annual-Report-2020.pdf>

<sup>8</sup> <https://journals.sagepub.com/doi/pdf/10.1177/1477370807077186>

<sup>9</sup> <https://howardleague.org/legal-work/sentencing-young-adults/>

<sup>10</sup> [https://howardleague.org/wp-content/uploads/2020/10/Child\\_transitions\\_response\\_2020\\_10.pdf](https://howardleague.org/wp-content/uploads/2020/10/Child_transitions_response_2020_10.pdf); [https://howardleague.org/wp-content/uploads/2019/02/HL-response-on-transition-from-youth-to-adult-services\\_2019\\_02\\_26-final.pdf](https://howardleague.org/wp-content/uploads/2019/02/HL-response-on-transition-from-youth-to-adult-services_2019_02_26-final.pdf)

to effectively support care-experienced people (Fitzpatrick and Williams, 2016).<sup>11</sup> Within the Howard League's legal service, lawyers often find themselves informing probation staff about the leaving care rights of young adult clients.

- 3.8 The Inspectorate should consider on the over-use of Approved Premises for young adults, especially 18 year olds. In 2019, the Howard League requested data about the number of 18 year olds placed in Approved Premises via the Freedom of Information Act. The data suggested that around seventy 18 year olds were placed in Approved Premises each year between 2016 and 2018 (FOI 190503005). A further request showed that the number was increasing: fifty 18 year olds were placed in Approved Premises in the first six months of 2019 (FOI 190711001). There is no research evidence about the experiences of young adults in Approved Premises or whether outcomes differ by age.
- 3.9 The Inspectorate should explore whether probation services ought to consider alternative placements for young adults who have been assessed as high-risk, including supported accommodation for care leavers. In 2016, the Laming Review found that around half of children in custody had been in care (Laming, 2016).<sup>12</sup> As the young adults who are released to Approved Premises often began their prison sentences as children, this group is especially likely to have leaving care rights.

#### **4. Approved Premises should be subject to inspection**

- 4.1 Approved Premises are hostels for people who are judged to need additional supervision after their release from prison. They are intended to play a key role in protecting the public and in rehabilitating people who have committed high-risk offences. However, unlike prisons, Secure Children's Homes and Secure Training Centres, they are not subject to regular inspections.
- 4.2 The Inspectorate carried out a thematic inspection of Approved Premises in 2017. The inspection report found that the quality of rehabilitation and resettlement work was mixed, especially where people had been placed out-of-area and had no opportunity to reintegrate into the communities which they would be living in afterwards. While the Inspectorate praised the prompt recall process in Approved Premises, it noted some worrying trends within this: for example, recall rates were nearly twice as high for women (Her Majesty's Inspectorate of Probation, 2017).<sup>13</sup> In 2016, the Howard League published a report on homeless people in the criminal justice system which warned about women's experiences of out-of-area placements. Three-quarters of the women interviewed for the report were living away from their home area (Howard League, 2016).<sup>14</sup> The Howard League also intervened in the Supreme Court in the case of Coll in 2017, which found that the distribution of Approved Premises for women was discriminatory.<sup>15</sup> Nothing has changed since then to improve the situation.
- 4.3 Approved Premises can only be effective if they are successful at supporting their residents to move successfully into the wider community as well as having robust systems in place to ensure that people comply with their licence conditions. At present, there is no way to tell whether this is the case for any given hostel. The 2017 report observed that there was significant variation in the quality of rehabilitation and resettlement work, but that it was unable to compare hostels within the scope of a

<sup>11</sup> <https://journals.sagepub.com/doi/full/10.1177/1748895816659324>

<sup>12</sup> <http://www.prisonreformtrust.org.uk/Portals/0/Documents/In%20care%20out%20of%20trouble%20summary.pdf>

<sup>13</sup> <https://www.justiceinspectrates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2017/07/Probation-Hostels-2017-report.pdf>

<sup>14</sup> <https://howardleague.org/wp-content/uploads/2016/04/No-fixed-abode-report.pdf>

<sup>15</sup> <https://howardleague.org/news/approvedpremises/>



thematic inspection. It recommended that Her Majesty's Prison and Probation Service "establish systems to measure take-up of hostel places, service quality and outcomes and use this information to improve the effectiveness of the estate" (Her Majesty's Inspectorate of Probation, 2017, p. 11).<sup>16</sup> However, there is no sign of this information in the published probation data.

- 4.4 As the 2017 report noted, the public are generally unaware of Approved Premises. Public confidence in probation has recently been undermined by scandals such as the case of Joseph MacCann (Her Majesty's Inspectorate of Probation, 2020).<sup>17</sup> Inspection reports which assessed hostels' quality, safety and outcomes could increase public confidence in the supervision of people who have committed serious offences.

## **5. The Inspectorate should commission research to monitor and challenge the increase in recalls**

- 5.1 The Inspectorate should monitor the impact of the rising recall rate, building on the thematic inspection of recalls last year (Her Majesty's Inspectorate of Probation, 2020).<sup>18</sup> The number of recalls increased by 20 per cent between 2017 and 2019 (Ministry of Justice, 2018; Ministry of Justice, 2020).<sup>19</sup> The recall rate increased again between 2019 and 2020: while the number of people released from prison dropped by 15 per cent, the number of recalls only went down by six per cent (Ministry of Justice, 2021).<sup>20</sup>
- 5.2 The Howard League acknowledges the legitimate concerns about recall which arose after the Joseph MacCann case. However, the consequences of recalling people to prison during a pandemic are too great for practice in this area to be shaped by the most shocking and high-profile cases. In its thematic inspection on recalls, the Inspectorate warned against a "fear-based culture" which leads to "unduly risk-averse decision-making" (Her Majesty's Inspectorate of Probation, 2020, p. 35).<sup>21</sup> The Inspectorate should monitor and challenge this culture. The thematic report offered useful insight into staff perceptions of recall: future work should explore the experiences of people who have experienced recall to prison, given that this group is acknowledged to be at a higher risk of suicide and self-harm (Prison and Probations Ombudsman, 2014).<sup>22</sup>
- 5.3 The Howard League's legal team works with many children and young adults who are recalled to prison. In the year to 31 March 2021, Howard League lawyers assisted young people in over 50 recall cases. This included young people who were recalled because they had been late to appointments or had broken the Covid-19 rules in their accommodation. One young person told us that he had been recalled after missing a YOT appointment because he was visiting his mother in hospital. Another young person, who suffers from Foetal Alcohol Spectrum Disorder, was recalled after he failed to understand and follow the conditions of his licence: the consequences of this for him are documented in the Howard League's submission to the Ministry of Justice

<sup>16</sup> <https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2017/07/Probation-Hostels-2017-report.pdf>

<sup>17</sup> <https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2020/06/Independent-review-of-the-case-of-Joseph-McCann.pdf>

<sup>18</sup> <https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2020/11/Recall-thematic.pdf>

<sup>19</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/702297/omsq-q4-2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/702297/omsq-q4-2017.pdf);  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/882163/Offender\\_Management\\_Statistics\\_Quarterly\\_Q4\\_2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/882163/Offender_Management_Statistics_Quarterly_Q4_2019.pdf)

<sup>20</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/981738/Offender\\_Management\\_Statistics\\_Quarterly\\_Q4\\_2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/981738/Offender_Management_Statistics_Quarterly_Q4_2020.pdf)

<sup>21</sup> <https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2020/11/Recall-thematic.pdf>

<sup>22</sup> [http://www.ppo.gov.uk/app/uploads/2014/07/Risk\\_thematic\\_final\\_web.pdf](http://www.ppo.gov.uk/app/uploads/2014/07/Risk_thematic_final_web.pdf)

on neurodiversity (2021).<sup>23</sup> These recall decisions have not taken into account the dire conditions in custody during the pandemic, or the greater adjustment which young people released in the past year have had to make – in stark contrast to the duty imposed on sentencers to consider these things (R v Manning, 2020).<sup>24</sup> Young people have not been able to ease themselves back into the community through release on temporary licence: instead, many have been kept in conditions amounting to solitary confinement for months at a time.

5.4 The Howard League knows from its legal service how devastating recall can be, especially for young people who have been trying their best to follow strict licence conditions. The Inspectorate should explore these experiences and consider what steps are taken to ensure recall is avoided wherever possible. It is concerning that the probation guidance published earlier this year no longer prompts staff to consider alternatives to recall as it did previously.

5.5 The Howard League has found that YOTs often request a fixed-term recall without realising that, once a child has been recalled, it is up to the Secretary of State to decide how long they should spend in custody. As a result, YOTs often unintentionally trigger recalls of children to prison for long periods. This can mean that children miss out on crucial social care entitlements in the community.

5.6 The Inspectorate should consider the utility of fixed-term recalls. The Ministry of Justice has found that any sentences of under a year are counterproductive: in this context, it is hard to see the rationale for sending someone to prison for a month (Ministry of Justice, 2019).<sup>25</sup> The Howard League has found that some YOTs view fixed-term recalls as a “short sharp shock” which will force children to behave. However, there is no evidence that this works and significant evidence to suggest the contrary: criminal justice involvement is not only harmful to children but increases the risk that they will reoffend (Goldson and Briggs, 2021; McAra and McVie, 2007).<sup>26</sup>

## **6. The Inspectorate should conduct a mapping exercise about provision and support for people who are identified as problem gamblers**

6.1 The Howard League is carrying out a pioneering three-year Commission on Crime and Problem Gambling. The Commission is chaired by Lord Peter Goldsmith QC and brings together professionals and academics who are interested in this previously neglected area.

6.2 The Commission has found that while problem gambling is a common and important criminogenic need, it is not fully recognised and addressed in any part of the criminal justice system. Though the Offender Assessment System records whether people consider they have a problem with gambling, this has not led to greater awareness or support. The probation service and other criminal justice agencies would benefit from improved understanding of the links between crime and problem gambling: without this understanding, the rehabilitation of problem gamblers will be undermined and the criminal justice system will miss an important opportunity to reduce offending.

6.3 The findings emerging from research commissioned on the perceptions and treatment of problem gamblers by sentencers has highlighted the paucity of awareness and

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<sup>23</sup> <https://howardleague.org/wp-content/uploads/2021/01/Howard-League-response-on-neurodiversity-15.01.2021.pdf>

<sup>24</sup> <https://www.bailii.org/ew/cases/EWCA/Crim/2020/592.html>

<sup>25</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/814177/impact-short-custodial-sentences.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814177/impact-short-custodial-sentences.pdf)

<sup>26</sup> <https://howardleague.org/publications/making-youth-justice>; <https://journals.sagepub.com/doi/pdf/10.1177/1477370807077186>

training on the specific relationship between crime and problem gambling.<sup>27</sup> It suggests that this relationship is not explored regularly in the courtroom. It is rarely brought up by lawyers, in pre-sentence reports or factored into community sentences. The Inspectorate should build on the work of the Commission by conducting a mapping exercise about the provision and support available to people who are identified as problem gamblers at all stages of the criminal justice journey. An initial mapping exercise should highlight examples of good practice as well as gaps in the existing provision, so that they can be built upon in future work.

## **7. Conclusion**

- 7.1 The thematic inspections and reports produced by the Inspectorate are a vital way to gather knowledge about how probation services are working on the ground and, through this, improve practice. The Howard League appreciates the opportunity to feed back on the Inspectorate's proposals and would be happy to discuss any of its suggestions further.

**Howard League for Penal Reform  
30 April 2021**

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<sup>27</sup> See <https://howardleague.org/commission-on-crime-and-problem-gambling/research-commissions/research-commission-sentencing/>