

Howard League for Penal Reform's response to the Draft Framework on Prisoners' Property

May 2021

Summary

1. The Howard League welcomes the opportunity to respond to the consultation on the draft policy framework on prisoners' property. The focus of this response relates to the principles that should underpin the property framework to ensure it is fair and just.
2. The importance of personal property to people in prison cannot be overestimated. Personal property takes on an increased and sometimes highly emotional importance when a person is expected to spend all but a few hours a day confined to a cell in a highly regulated environment. The framework should recognise this and reinstate the express aim in the existing policy for people in prison to "lead as normal and individual an existence as possible".
3. The policy must ensure that property that is essential to enable fundamental rights, such as legal correspondence, is properly protected.
4. The enhanced focus on procedural justice is welcome but must be accompanied by tangible requirements to ensure it is meaningful and minimises the risk of people in prison being or feeling unfairly treated.
5. When things do go wrong, it is essential that complaints are dealt with fairly. The Howard League welcomes the express onus on prisons to deal with property complaints efficiently, thoroughly and sensitively. The procedural justice requirements should clearly extend to this process.
6. The Draft Framework should amend the rules on volumetric controls so that educational materials are not included within the two box limit.
7. The Howard League welcomes the adjustments for people in prison who are transgender. Justice and fairness require that the property system is sufficiently flexible to allow for reasonable adjustments for all people in prison who require additional items to meet their needs.

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. The Howard League has a programme of work on justice and fairness in prisons:¹ the fair administration of property rights in prison is central to achieving environments where people feel safe and respected.
- 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. We have had sight of the response of the Prison Reform Trust and concur with their detailed observations and recommendations. The focus of this response relates to the principles that should underpin the property framework to ensure it is fair and just.
- 1.4. The Howard League would welcome the opportunity to provide further information about any of the points below.

2. The importance of property to people in prison cannot be overestimated and the policy must reflect this.

- 2.1. The importance of personal property to people in prison cannot be overestimated. Personal property takes on an increased and sometimes highly emotional importance when a person is expected to spend all but a few hours a day confined to a cell in a highly regulated environment.
- 2.2. This is recognised by the Prisons and Probation Ombudsman (PPO) in the 2019/2020 Annual Report, "items of personal property are hugely important to prisoners and some, such as photographs or religious items, are irreplaceable" (PPO, 2020, p.10)². Personal property can provide people in prison with an important link to life outside prison and is a great source of comfort.
- 2.3. The Howard League has seen the devastating impact that problems with property can have. In one case, a prison lost the last letter written by a young adult's mother before

¹ <https://howardleague.org/our-work/transform-prisons/justice-and-fairness-in-prisons/>

² https://s3-eu-west-2.amazonaws.com/ppo-prod-storage-1g9rkjhkimgw/uploads/2020/11/6.6752_PPO_Prisons-and-Probation-Ombudsman-Annual-Report-2019_20_v8_WEB.pdf

she died and then failed to consult the prisoner in the complaints process, leaving him frustrated and with a deep sense of injustice.

- 2.4. Another young autistic person who relied on a notebook to write everything down that was important to him had this removed on the basis that it contained some information that the prison considered he should not have. This caused him great distress. The Howard League had to intervene to question the lawful basis for removing this property and ask that a more proportionate response was considered, such as redacting or removing the information of concern, before the notebook was returned.
 - 2.5. These are just two examples where property issues have caused distress and failed to support an environment where people in prison are treated with dignity and humanity, resulting in a breakdown of trust that leaves the person in prison feeling helpless and as if they do not matter.
 - 2.6. The recent report by the Inspectorate of Prisons has made clear the dire impact that COVID-19 has had on education in prisons. As the report explains, "since the end of the March 2020, the majority of prisoners have been locked in their cells for most of the day every day" (HM Inspectorate of Prisons, 2021, p.5).³ At the start of the pandemic, many people in prison spent as little as 45 minutes per day out of their cells, rising to 90 minutes between July and October. Although children were returned to part-time education in July, "overall, prisoners did not feel that they could meaningfully engage in education during the COVID-19 restrictions" (HM Inspectorate of Prisons, 2021, p.20).⁴ In these circumstances, property takes on an even greater importance than normal.
 - 2.7. The framework should recognise the central importance of property for people in prison and reinstate the express aim in the existing policy for people in prison to "lead as normal and individual an existence as possible". By not including this outcome, the Draft Framework misses an opportunity to help people in prison to prepare for life back in the community, making the already very difficult process of transition even harder. The Draft Framework should therefore reintroduce this aim.
 - 2.8. The outcomes at paragraph two of the draft framework should recognise the personal significance of property. It should be a requirement that property is dealt with in ways that recognise the potential emotional and personal significance of items to individuals and that lack of access to property can adversely impact people's mental health and well-being.
3. **The policy must ensure that property that is essential to enable fundamental rights, such as legal correspondence, is properly protected.**
 - 3.1 In addition to the personal significance of some items, certain items of property are essential to enable the meaningful application of fundamental rights such as access to

³ <https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2021/02/What-happens-to-prisoners-in-a-pandemic.pdf>

⁴ <https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2021/02/What-happens-to-prisoners-in-a-pandemic.pdf>

justice. As Lord Bingham put it in the case of *Regina (Daly) v Secretary of State for the Home Department* [2001] 1 AC 532:

“Any custodial order inevitably curtails the enjoyment, by the person confined, of rights enjoyed by other citizens. He cannot move freely and choose his associates as they are entitled to do. It is indeed an important objective of such an order to curtail such rights, whether to punish him or to protect other members of the public or both. But the order does not wholly deprive the person confined of all rights enjoyed by other citizens. Some rights, perhaps in an attenuated or qualified form, survive the making of the order. And it may well be that the importance of such surviving rights is enhanced by the loss or partial loss of other rights. Among the rights which, in part at least, survive are three important rights, closely related but free standing, each of them calling for appropriate legal protection: the right of access to a court; the right of access to legal advice; and the right to communicate confidentially with a legal adviser under the seal of legal professional privilege.” (paragraph 5)

- 3.2 The fundamental right of access to justice necessitates the receipt and retention of legal correspondence and relevant papers. The Howard League is aware that in recent years, there have been a number of barriers to people in prison receiving legal correspondence and keeping legal papers despite the very clear law protecting this. Many prisons are now creating convoluted systems requiring security codes for legal correspondence which delay the transmission of such post or are refusing to provide legal correspondence to people in prison until the origin of the letter has been checked. In some cases, legal correspondence has been opened and photocopied. A member of the Association of Prison Lawyers, of which the Howard League is a member, recently reported that in one prison a person was forced to open their legal correspondence in front of an officer, read it and then have it promptly destroyed. The Howard League has come across a number of instances where people in prison have been refused access to their own parole dossiers and one instance where a child was restrained when officers tried to forcibly remove his dossier from him.
- 3.3 The property framework should expressly outline the need for access to and retention of legal correspondence and papers to be protected property.
- 4. The enhanced focus on procedural justice is welcome but must be accompanied by tangible requirements to ensure it is meaningful**
 - 4.1. The Howard League welcomes the enhanced focus on procedural justice in the Draft Framework. However, it must be accompanied by tangible requirements to ensure it is meaningful.
 - 4.2. In the prison environment, the power imbalance is heavily weighted in favour of the prison. In the words of the former chief inspector of prisons, Nick Hardwick, people in prison are uniquely vulnerable because "there is a power imbalance between the

prisoner and the jailer. If I am a warder and you are a prisoner I can use physical force on you. But also you are dependent on me for absolutely every aspect of your life" (Hardwick, 2014)⁵.

- 4.3. The increased transparency introduced by the provisions by requiring officers to clearly explain the reasons behind decisions and the rationale for the rules should help people in prison to understand the rules and rationale so they feel that they are being treated fairly and can challenge the rules with greater ease if they are incorrectly implemented.
- 4.4. The Howard League remains concerned that the Framework fails to put in place procedures to ensure that procedural justice goes beyond the concept into everyday practice. The current framework does not provide a comprehensive overview of what a person in prison is entitled to in respect of property and what processes should happen to ensure that property rights are respected and protected. The framework variously refers to a number of other frameworks, rules and governor discretion. The first step in ensuring procedural justice is clarity as to what is allowed and what should happen so prisons can be properly held to account. This should be set out in the framework.
- 4.5. Some aspects of the draft framework are too vague. For instance, in the section regarding temporary confiscation of property, officers are required to tell the prisoner the reasons for the confiscation with "as much detail for this decision as possible" (Draft Framework, 4.17). However, there is no procedure by which an officer must demonstrate that they have fulfilled this requirement or by which a prisoner can challenge it. A useful step towards procedural justice in these scenarios would be to require the officer to provide full written reasons explaining why the property had been confiscated.
- 4.6. While the increased focus on transparency is welcome, it is unclear why the Draft Framework does not carry over the best practice statement in the current PSI (12/2011) (which this framework will replace) which says that the prison's local facility/ in possession list is to be displayed:

"in the Reception area and on wings and to be available in a variety of languages appropriate to the establishment's population. Governors should also make suitable provision for prisoners who may be unable to read the list due to visual impairment, learning difficulties, or any other disability" (PSI 12/2011, 2.4).

In order to maintain procedural justice, people in prison must be able to understand the rules and have access to documentation that demonstrates they have been complied with. There should therefore be a requirement in the Draft Framework for all decisions about property to be clearly recorded in a way that is accessible to all people in prison. Policies relating to property should be provided to people in prison in a way that is sensitive to the needs of people with disabilities or those who struggle to read English.

⁵ <https://www.independent.co.uk/news/uk/politics/chief-prisons-inspector-nick-hardwick-interview-you-need-make-rehabilitation-central-point-9662761.html>

5. Complaints

- 5.1. When things do go wrong, it is essential that complaints are dealt with fairly. The Howard League welcomes the express onus on prisons to deal with property complaints efficiently, thoroughly and sensitively. The procedural justice requirements should clearly extend to the complaints process.
- 5.2. As prisons are the "most absolute expression of the criminal justice system" they need to meet the very highest standards of justice (Howard League, 2020⁶). The current rules allow for arbitrary and unjust outcomes in a place where only the highest standards of justice should be tolerated. The Draft Framework itself recognises that "problems regarding property can have a negative impact on prisoners' perceptions" of issues including "trust in staff and the Prison Service", "the fair and legitimate use of authority", "staff competence" and "wellbeing and distress" (Draft Framework, 3.2).
- 5.3. In every year since 2011, complaints about property have been the most common complaint received by the Prisons & Probation Ombudsman ("PPO"). Property complaints usually have the highest rate of being upheld across all categories of complaints, with a 49% uphold rate reported in the PPO Annual Report 2019/2020. This is indicative of the grossly inadequate complaints system that currently exists in prisons.
- 5.4. The Howard League welcomes the emphasis in the Draft Framework on dealing with complaints thoroughly and efficiently. However, this process should expressly apply the principles of procedural justice and fairness. In the Howard League's experience, people in prison often find pursuing the complaints process in respect of property incredibly long and frustrating. The recommendation of the Draft Framework that there should be a single point of contact in each establishment would assist with this, as would duplicate complaint forms and support for those who cannot read and write.

6. Volumetric control

- 6.1. The Draft Framework should amend the rules on volumetric controls so that educational materials are not included within the two box limit.
- 6.2. The volumetric control restrictions in prison are strict, with people in prison only allowed to have two 15kg boxes of personal items in their possession. This limit currently includes educational materials.
- 6.3. The Draft Framework should be amended so that educational materials do not count towards the volumetric control limits. Educational materials should instead be encouraged so people in prison can use their time in prison to study and gain

⁶ <https://howardleague.org/wp-content/uploads/2020/02/Justice-and-Fairness-in-Prison-breifing-one.pdf>

qualifications. People in prison should not have to choose between educational items and other personal possessions.

7. The need for policy on property to better reflect the need for reasonable adjustments

- 7.1. The Howard League welcomes the adjustments for people in prison who are transgender. Justice and fairness require that the property system is sufficiently flexible to allow for reasonable adjustments for all people in prison who require additional items to meet their needs.
- 7.2. The adjustments for transgender people in prison is a positive step towards recognising the needs of this group within the prison system.
- 7.3. Other groups or people with protected characteristics may also require reasonable adjustments for property. Paragraph 4.16 of the draft framework should be explicit about this and provide further detail. For instance, those with autism may have a particular attachment to property which means not allowing them to have it would have a far greater impact on them than it would to another prisoner. The draft framework says it applies to children but no further mention is made of children, despite the requirements in international and domestic law for a different approach to children in the legal system. The framework should require reasonable adjustments to be made to all those with protected characteristics.

8. Concluding Observations

- 8.1. The importance of personal property to people in prison cannot be overestimated. Clear and accessible rules about property, which are explained to people in prison, will help to create a fairer and more effective environment.
- 8.2. The policy must be backed up with open, accessible and transparent procedures that people in prison can use to ensure that the rules are followed and which allow their voices to be heard.

**Howard League for Penal Reform
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