

Howard League for Penal Reform's submission to the Commission on Young Lives' Call for Evidence

November 2021

Summary

1. The Howard League welcomes the opportunity to respond to the Commission on Young Lives' Call for Evidence.
2. In its legal and policy work, the Howard League has spoken to many young people who did not feel safe or loved in care. The care system does not prevent unnecessary criminalisation and fails to meet the needs of children who are in trouble with the law.
3. Black children experience "adultification" in the care and criminal justice systems and are less likely to have been supported by early help services.
4. Over the past five years, work by the Howard League and others has driven down the number of children living in children's homes who are unnecessarily criminalised. However, children in residential care are still disproportionately drawn into the criminal justice system.
5. In its legal and policy work, the Howard League has found that children in residential care are especially vulnerable to exploitation. The Howard League still sees cases where children are blamed and penalised for their own exploitation and are perceived as placing themselves at risk.
6. If a child's corporate parent fails to protect them from exploiters, it teaches the child that they cannot rely on professionals to keep them safe. Some children's offending histories can be understood as an attempt to instead protect themselves.
7. Howard League lawyers often find that children who are sent to prison do not receive their social care entitlements. Some social workers wrongly close children's cases following sentence, even though they are entitled to longer term support as care leavers.
8. The shortage of suitable care placements is especially acute for children in the criminal justice system, who are often othered and are not recognised as children in need of social care support. In some cases, Howard League lawyers are told that the local authority has contacted hundreds of providers, all of whom have refused to take a particular child.
9. There is often insufficient planning for children leaving prison. If a placement is only found at the last minute, professionals cannot arrange mental health support and education in the community. The rush to find a placement also leads to children being placed in deeply inappropriate accommodation, including caravans and barges.

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 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 runs a legal service for young people aged 21 and under in custody. Howard League lawyers frequently advocate for the social care rights of young people in custody, to ensure that they get the right support both in custody and on release. The Howard League is carrying out a project to help children who have been remanded to custody with bail and resettlement.
- 1.4 Between 2016 and 2020, the Howard League carried out a programme of policy work to end the criminalisation of children in residential care. The Howard League spoke to children who had been criminalised in care about their experiences and worked to improve practice in policing and the care system.¹
- 1.5 The Howard League has drawn on its legal and policy work in responding to this consultation.
- 1.6 The Howard League would welcome the opportunity to provide further information about any of the points below.

2. The care system does not prevent criminalisation or meet the needs of children who are in trouble with the law

- 2.1 When a child comes into care, the local authority becomes their corporate parent. The statutory guidance sets out the key question which local authorities should be asking themselves, as corporate parents: "*Would this be good enough for my child?*" (Department for Education, 2018).²
- 2.2 The Howard League has heard about many experiences of care which could not possibly be considered good enough. In 2018, the Howard League published a briefing on the stories of four children who were criminalised while in residential care (Howard League, 2018).³ The stories described homes where children felt neither loved nor cared about, and where staff called the police for minor issues instead of recognising and

¹ See <https://howardleague.org/programme-to-end-the-criminalisation-of-children-in-residential-care/>.

² Department for Education (2018), *Applying corporate parenting principles to looked-after children and care leavers: Statutory guidance for local authorities*, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/683698/Applying_corporate_parenting_principles_to_looked-after_children_and_care_leavers.pdf.

³ Howard League (2018), '*This is our story*': *Children and young people on criminalisation in residential care*, available at <https://howardleague.org/wp-content/uploads/2018/12/This-is-our-story.pdf>.

meeting children's needs. One child described his time in residential care as *"one of the most dehumanising things that I have ever had to experience in my life"*.

- 2.3 Howard League lawyers find that young people are often apprehensive about the accommodation or support they will receive from children's services on release from custody, because they have had such poor experiences in care. As one extremely vulnerable care leaver recently told the Howard League: *"If the council gave me a placement maybe I can stay there, but I don't really like staying in placements the council give me because I don't think they treat me very well"*. He went on to explain that his past placements had been hard because he was autistic and was not given the right support.
- 2.4 The failings of the care system are compounded when children get into trouble with the law. The Howard League often works with children whom professionals have effectively given up on. For example, one child in the Howard League's remand project explained that he was on a full care order but was receiving no financial support from children's services. In the view of the child's criminal defence lawyer, the local authority saw him as *"just another kid lost in the system"*. Children in this situation are treated with an air of resignation, as if their outcomes are already set in stone. In contrast, case law and Sentencing Council guidelines recognise that young people are capable of significant change in a short space of time (Sentencing Council, 2017; Emanuel et al, 2021).⁴
- 2.5 The behaviours which children are criminalised for are often a response to multiple and frequent rejections, both before entering the care system and when they are in care (Howard League, 2017).⁵ Children's services, care providers and the government must create a system where children feel safe and genuinely cared for, and where past experiences of abuse and rejection are not compounded by experiences in care. As the Independent Review of Children's Social Care has argued in its interim report, children need *"a place of safety and love that can support them to thrive ... a system that prioritises and creates loving relationships"* (Independent Review of Children's Social Care, 2021: 54).⁶

3. Black children experience adultification in the care and criminal justice systems

- 3.1 Black children experience *"adultification"* in the care and criminal justice systems. Adultification is when children are treated as older than they really are: their needs and vulnerabilities are overlooked and they are represented as perpetrators rather than (also) victims. Services often fail to recognise Black children as victims of sexual or criminal exploitation because of adultification (Davis, 2019; Davis and Marsh, 2020).⁷
- 3.2 Her Majesty's Inspection of Probation recently published a thematic inspection of the experiences of Black and mixed-heritage boys in the youth justice system. The review

⁴ Sentencing Council (2017), *Sentencing Children and Young People*, available at <https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/sentencing-children-and-young-people/>; Emanuel, D., Mawer, C. and Janes, L. (2021), 'The Sentencing of Young Adults: A Distinct Group Requiring a Distinct Approach', *Criminal Law Review* 3, 203–217, available at https://howardleague.org/wp-content/uploads/2021/03/CLR_Sentencing_young_adults.pdf.

⁵ Howard League (2017), *Ending the criminalisation of children in residential care: Briefing one*, available at <https://howardleague.org/wp-content/uploads/2017/07/Ending-the-criminalisation-of-children-in-residential-care-Briefing-one.pdf>.

⁶ Independent Review of Children's Social Care (2021), *The Case for Change*, available at <https://childrensocialcare.independent-review.uk/wp-content/uploads/2021/06/case-for-change.pdf>.

⁷ Davis, J. (2019), 'Where are the Black girls in our CSA services, studies and statistics?', *Community Care*, available at <https://www.communitycare.co.uk/2019/11/20/where-are-the-black-girls-in-our-services-studies-and-statistics-on-csa/>; Davis, J and Marsh, N. (2020), 'Boys to men: the cost of "adultification" in safeguarding responses to Black boys', *Critical and Radical Social Work* 8:2, 255–159.

described a high level of unmet need: services had failed to recognise Black children's vulnerabilities and provide appropriate support earlier in their lives. For example, though Black and mixed-heritage boys were more likely to be involved with social care than children from other ethnic groups, they were less likely to have been referred to early help services. Children's unmet needs were compounded by a failure to challenge racism within the youth justice system. Staff had normalised Black children's experiences of racism, particularly racism from police, and failed to address it in their assessments, pre-sentence reports or multi-agency meetings (Her Majesty's Inspectorate of Probation, 2021).⁸

3.3 In June, the Howard League published a guide for anti-racist lawyers, *Making Black lives matter in the criminal justice system* (Howard League, 2021).⁹ The guide explains how structural racism shapes Black clients' experiences at every stage of the criminal justice system, including through the adultification of Black children, and provides practical advice about how lawyers can challenge anti-Black racism.

4. Work by the Howard League and others has reduced the criminalisation of children in residential care

4.1 Work by the Howard League, other charities, local authorities, police forces and children's homes has successfully driven down the number of children who are criminalised in residential care. Children who are living in residential care are now three times less likely to be criminalised than they were in 2014 (Howard League, 2021).¹⁰ There are now national and regional protocols for reducing the criminalisation of children in care and care leavers, including protocols for London, Northumberland and West Mercia.

4.2 These improvements in practice must be maintained and built upon. Though fewer children are being criminalised for minor incidents which do not warrant a police response, systematic failings in the care system continue to put children at risk of criminalisation and exploitation.

5. Children in residential care are especially vulnerable to exploitation

5.1 In its legal and policy work, the Howard League has found that children living in residential care are especially vulnerable to criminal exploitation. This is often linked to missing episodes (Howard League, 2020).¹¹ As one child on the Howard League's remand project explained, *"I got put into care and I kept running away from my care homes and then I got mixed up with the wrong people, I was 11, 12 years old and always missing"*. The child had been recognised as a victim of modern slavery by the National Referral Mechanism two years earlier, but he had not been given the support which he needed to escape from his exploiters. He was now stuck in prison, haunted by nightmares about the men who had exploited him and terrified that he would be attacked in prison on their instructions.

5.2 Too often, children are blamed and penalised for their own exploitation. Children are perceived as placing themselves at risk by going missing, even if they have been placed

⁸ Her Majesty's Inspectorate of Probation (2021), *A thematic inspection of the experiences of black and mixed heritage boys in the youth justice system*, available at

<https://www.justiceinspectors.gov.uk/hmiprobation/inspections/black-and-mixed-heritage-boys/>.

⁹ Howard League (2021), *Making Black lives matter in the criminal justice system*, available at <https://howardleague.org/publications/making-black-lives-matter-in-the-criminal-justice-system/>.

¹⁰ See <https://howardleague.org/blog/children-in-residential-care-now-three-times-less-likely-to-be-criminalised/>.

¹¹ Howard League (2020), *Victims not criminals: protecting children living in residential care from criminal exploitation*, available at <https://howardleague.org/wp-content/uploads/2020/03/Victims-not-criminals.pdf>.

in a completely unfamiliar area and are travelling back to their homes and friends. The dysfunctional structure of the social care “market” exacerbates this problem (Crest Advisory, 2020).¹² Children’s services have told Howard League lawyers that they are unwilling to provide accommodation because they cannot keep a given child safe from missing episodes or exploitation. In one recent case, children’s services explained that they did not support bail for this reason – as if the child was likely to be safer in the hostile, unsafe young offender institution which he was being held in.

6. Children’s offending can be driven by a sense that nobody else will protect them from harm

6.1 When local authorities fail to keep children safe from exploiters, this teaches the child that they cannot rely on anyone else to protect them. In the Howard League’s experience, children can then end up offending in an attempt to protect themselves.

6.2 Researchers at the University of Bedfordshire have found that children in care have different pathways into, through and out of custody than children who are not in care. In research interviews, children in care represented their offending behaviour as *“a logical consequence of the need to survive ... fuelled by a sense that they needed to look after themselves in the absence of what they saw as an alternative support network”* (Marie-Day et al, 2020: 43).¹³

7. Children do not get their social care entitlements in prison

7.1 All children on remand are legally in the care of their local authority as “looked after” (see section 104 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012). As “looked after” children in prison, children should have detention and placement plans. However, Howard League lawyers often find that detention placement plans for children remanded to custody often go uncompleted and are wrongly viewed as unimportant, particularly for children who were not already looked after (but who are likely at their most vulnerable on remand and clearly need social care support).

7.2 Howard League lawyers find that social care support is often reduced when children are sentenced and that children who are entitled to leaving care rights have their files closed in error. This reflects a worrying – and unlawful – assumption that children’s services do not have to fulfil their responsibilities to children once they have received a prison sentence.

8. The shortage of placements is especially acute for children in or on the edge of the criminal justice system

8.1 Although it is clear in law that children in or on the edge of the criminal justice system should be provided with the same care and support as any other child in need, this does not always happen. The shortage of care placements has created a buyer’s market, which has made children involved with the criminal justice system harder to place. A research report published by the Department for Education found that while demand is outstripping supply across the system, children’s homes are increasingly reluctant to accept children who present with complex needs and challenging behaviour. Providers

¹² Crest Advisory (2020), *County Lines and Looked After Children*, available at <https://www.crestadvisory.com/post/report-county-lines-and-looked-after-children>.

¹³ Marie-Day, A. et al (2020), *Surviving incarceration: the pathways of looked after and non-looked after children into, through and out of custody*, available at <https://uobrep.openrepository.com/bitstream/handle/10547/623926/Survivingincarcerationfinal.pdf?sequence=3&isAllowed=y>.

worry that if something goes wrong, it could affect their Ofsted rating (Greatbatch and Tate, 2020).¹⁴ The market in care placements must not be allowed to limit children's access to accommodation and support.

8.2 Howard League lawyers frequently support young people with resettlement on release for prison: this is the most common issue raised on the Howard League's legal advice line. In its resettlement work, the Howard League is sometimes told that local authorities have contacted hundreds of providers, all of whom have refused to take a particular child. In one case, Howard League lawyers scrutinised a list of the providers which a local authority had made referrals to. The list included providers which were entirely unsuitable, as the child did not meet their criteria and could not possibly be accommodated by them – for example, providers which only accommodated children of a different age or gender. In other cases, Howard League lawyers have seen referrals that are only about the worst things the child has ever done and fail to acknowledge any of the positive characteristics of the child.

9. There is too little advance planning for children leaving prison

9.1 In its resettlement work, the Howard League finds that there is little advance planning for children who are leaving prison. Unless a release address is identified in advance, professionals cannot plan for a child's education and mental health support on release, and children cannot use release on temporary licence or the mobility scheme to visit the place where they will be living. This undermines the Youth Justice Board's commitment to constructive resettlement. As early release often depends on the child having suitable accommodation and support in the community, the lack of advance planning can also leave children trapped in custody past their early release date.

9.2 Over a decade on from the landmark ruling in *G v Southwark*, which confirmed that all children in need without a home are entitled to become "looked after", Howard League lawyers are contacted on a regular basis about children who face imminent release from custody without a suitable package of accommodation and care in place. Children are often so anxious about the lack of any placement at all, especially when their liberty rests on a placement being identified, that they have incredibly low expectations. Many hardly even dare to think about what kind of care and support they want: children regularly tell Howard League lawyers that they just want somewhere to live.

9.3 Last-minute placements can be entirely inappropriate for children, including unregistered crisis placements in barges and caravans. In one particularly shocking case, the Howard League worked with a child who was placed on a barge even though he was afraid of water.

13. Conclusion

13.1 The care system should be reformed so that children feel safe and loved in residential care, are not unnecessarily criminalised, and are given the right support if they do get in trouble with the law.

**The Howard League for Penal Reform
30 November 2021**

¹⁴ Greatbatch, D. and Tate, S. (2020), *Use of unregulated and unregistered provision for children in care*, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/865184/Use_of_unregulated_and_unregistered_provision_for_children_in_care.pdf.