



Children on remand

Remand briefing two: Voices and lessons

Howard League for Penal Reform

Key points

- Almost three quarters of the children who are remanded to custody do not end up receiving a custodial sentence.
- Children benefit from lawyers who specialise in working with children. More should be done to support and encourage all children at risk of remand to have specialist legal representation.
- Children on or at risk of remand require intensive support from their local authorities to ensure that there is always a viable alternative to custody.
- Children in care do not trust local authorities. This trust deficit needs to be repaired so that local authorities can fulfil their statutory obligations and provide robust and successful alternatives to custody, increasing children's low expectations of children's services.
- More needs to be done to support children who are suspected victims of modern slavery and to protect them from contact with the criminal justice system. Too often referrals to the National Referral Mechanism are simply noted and result in delays rather than additional support.
- Children who seek help from professionals should be provided with support even if they are unable to give details of exactly whom they are afraid of.
- A child's first appearance in court is often the most important. Children's services and youth offending teams responsible for the child need to be there, regardless of the operational difficulties that may pose.
- The criteria for remanding children needs to be aligned to the wider criminal justice system to reduce the discrepancy between the number of children remanded and those who go on to get a jail term.
- There should be better guidance on remand decision-making for judges and magistrates that aligns with the overarching sentencing principles for children. This should include active consideration of the impact on a child's education and mental health.
- The Bail Act 1976 should be amended to remove the option of remanding a child to prison for their own welfare.
- More time and attention should be given to explaining remand decisions for children. Judges and magistrates should write down their reasons and explain them to the child, face to face.
- The cases of children who are remanded to custody should be prioritised and expedited to reduce uncertainty and harm.
- Specialist designated mental health support should be provided for children on remand so that any emerging needs can be identified and prioritised.

Introduction

In Spring 2021 the Howard League launched a project to understand and support children on remand in prison with their unmet legal support needs. The aim was to understand, in discussion with professionals, why children had been remanded to custody and to see if they could be supported to get bail. Alongside legal casework, the Howard League talked to children about their experiences on remand and their perceptions of what led to it.

The Howard League's first project briefing, *What's wrong with remanding children to prison?* (2021c), summarised the legal issues faced by children on remand and followed a legal briefing, *Ending the detention of unsentenced children during the Covid-19 pandemic, a guide for practitioners* (2020b).

In January 2022 the Ministry of Justice published a review of remand which identified the critical importance of keeping the use of remand to a minimum and confirmed many of the findings from the first briefing.

This briefing focuses on the experiences, voices and lessons to be learned from five young people that the Howard League met with in Autumn 2021 who had been remanded to a children's prison.

Five voices

All five young people were from racially minoritised communities and had come into contact with the criminal justice system while they were in care. Names have been changed to protect their identity (see box). Their stories echo the Howard League's work on the criminalisation of children in residential care, which described children's experiences of living in homes where they were not loved or cared about (Howard League, 2018).

- **Joshua**, aged 17, a Black British child who had been in care before coming to prison, had been convicted of several offences and was on remand awaiting sentence.
- **Tosin**, aged 18, a Black British young adult who had been in care before coming to prison, had been remanded around a year earlier and was waiting trial, but being assessed for a possible transfer to hospital for a mental disorder.

- **Abdul**, aged 17, a mixed white and Asian child was awaiting trial. He had been in care and was a victim of trafficking.
- **Hassan**, aged 16, a British Asian child who had been in care before coming to prison and was awaiting sentence.
- **Aaron**, aged 16, a mixed white and Black child, who had been in care before coming to prison and was awaiting sentence.

Failed by statutory services

The Howard League found in its first project briefing that remand decisions punish children for the mistakes made by the services around them. In this phase of the project children talked in depth to Howard League lawyers how they had been failed by the professionals tasked with looking after them long before they entered the criminal justice system.

Inadequate protection from exploitation

One of the most shocking examples came from Abdul, a child who had experienced criminal exploitation prior to being remanded to custody. Abdul's exploiters had often threatened to hurt his family members if he did not do what they asked, and they were determined to punish him for having lost their drugs. But when Abdul tried to get his family moved out of the area, professionals did nothing. He explained that it had:

"probably been a whole year I've been telling everyone, move my mum out of the area, move my mum out of the area, and no one cared or listened or anything. I obviously couldn't tell them then what was happening or I'd be in more shit. I told social workers, YOT workers just saying please I'm not safe and they said why, why?"

Abdul had previously received a positive National Referral Mechanism decision confirming he was a victim of modern slavery. Professionals knew that he was being exploited. Abdul could not understand why they would not keep him or his family safe because he felt unable to give names. The Howard League has experience of a number of cases where authorities have refused to act to keep children safe because details have not been provided, even though children may be understandably scared of providing such information.

By the time the Howard League met with Abdul he had been remanded to prison for his own welfare as the court had considered he would be safe in custody. Yet Abdul explained that his exploiters were giving orders to other children in the prison and he felt he was at even greater risk. He remained worried about his family who had still not been moved.

Distrust and trauma

Young people described overwhelmingly negative and traumatic experiences of their contact with children's services, creating a long-term sense of distrust. These experiences affected how they felt about living in residential care placements on bail or if they were given a community sentence. As Tosin, an 18-year-old care leaver, put it: *"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"*.

Joshua was awaiting sentencing for an offence which had taken place in a semi-independent care home. He had not liked the home: there were always workers and *"random young people"* around, the placement did not provide food (children had to buy this themselves out of their care allowances) and the children did not trust one another. One boy even called the police on another child over a minor dispute. Joshua's offence was related to an argument with the boy who had called the police.

Joshua admitted that he had *"overreacted"* in the argument but explained the reasons for this. Joshua had himself been attacked and knocked out in a children's home when he was 13 and the argument had reminded him of that experience. Joshua's experiences in both care and custody had led him to believe that nobody could be trusted to protect him, and that he needed to do whatever he could to protect himself. He told the Howard League that his social worker had even *"admitted to me that the system is a failure"*.

The Howard League has found that children in prison regularly report a sense of distrust in local authorities and trauma from experiences in care. This in turn leads to very low expectations about getting appropriate help in the future.

Unmet need and unstable placements

Tosin told the Howard League that *"when I was in care it started out alright"*. When he first came into care as a teenager he lived in a foster placement which he liked. But after a friend of his committed a serious offence when they were together children's services decided to move him out of the area. This was the first of nine placements which included foster care, children's homes and secure welfare beds. Tosin explained that the placements had been hard for him because he was autistic and staff were inadequately supporting him.

Abdul estimated that he had lived in 15 or 20 care homes. He linked his criminal exploitation back to the time when *"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, I never was at home. I was put in a care home at 11, in care homes in different areas and I kept moving away 'cause I was so young and didn't know"*. When a Howard League lawyer asked if he was on a full care order (which requires family court proceedings), Abdul explained that *"they went to court over me but they failed me"*.

Hassan described the most positive experience of residential care. He had been living in a semi-independent placement when he was remanded into custody. The placement was supportive, he felt happy and stable there, and the provider was happy to accommodate him on bail or release. However, at his first court appearance a different youth offending team was present who failed to put forward a bail package. He was remanded to prison.

The Howard League is aware that as the number of youth court sittings have decreased, the risk increases of having youth offending teams present at first appearances who have no knowledge of the child. Criminal defence lawyers have told the Howard League that once a child has been remanded to custody it becomes harder to persuade the court to grant bail. In Hassan's case, even once his home youth offending team came to court and a bail package including his previous placement was put forward, it was not accepted by the court.

The legal process is unfair and confusing

While sentencing decisions are mostly based on the evidence about a specific offence, remand decisions are based on the children themselves,

their histories and perceptions about how risky they are (van den Brink, 2021). This is an anomaly in the court process which, in all other respects, focuses on what the child has done, rather than who they are. This difference in approach between remand and sentencing decisions may explain why the majority of children who are remanded are not ultimately sentenced to a prison term.

Unexpected and excessively long

Some of the young people told the Howard League that they had not expected to be remanded and did not feel that it was fair, especially as time went on. Joshua had spent 16 of the previous 18 months in custody on remand, first in a secure training centre and then in two young offender institutions. He had never received a custodial sentence. Joshua pointed out *"they are always saying I'm likely to commit further offences because of my previous record from when I was young"*. Yet the previous charges against him had all been dropped or had led to community sentences. He did not have a history of offences which had been serious enough to merit imprisonment. The initial and subsequent remand decisions made no sense to him.

The Howard League often finds young people do not understand the rationale for the decisions keeping them in prison on remand and therefore struggle to come to terms with them.

Remand for welfare and protection

The law still allows courts to remand people to prison for their own "protection" (for adults) or "welfare" (for children). In its work with the All-Party Parliamentary Group on Women in the Penal System, the Howard League has called for the repeal of the relevant provisions in the Bail Act 1979 for both adults and children and has argued that remanding someone to prison cannot keep them safe from exploiters, whose reach often extends into the prison environment (Howard League, 2020c). This point is illustrated by Abdul's experience who found being remanded to custody particularly unfair and traumatic.

For Abdul, the remand decision was another example of professionals failing to keep him safe. The court had remanded him to custody because they believed that this would protect him from reprisals. Yet Abdul felt that he was at even greater risk in prison and would have been safer in an

out-of-area bail placement: *"The courts put me in prison to keep me safe and they didn't manage to do that because now I've got people from outside, older guys giving orders to young people in here. I just feel unsafer innit because I feel like people will get me ... if I'm out of the area no-one will find me or see me, in here anyone can tell anyone to get me."*

Each year children are remanded for their own welfare, when in fact there are strict legal duties on local authorities to provide alternative care. The prison estate for children is not equipped to provide the support that is required in such cases. The Ministry of Justice's failure to consider abolishing this option was a missed opportunity (Howard League, 2022).

Judged out of context

Two children had been convicted and were awaiting sentencing. Both questioned the courts' ability to understand and factor in the context of their offending. Aaron thought that his offence should be viewed as self-defence, as he had acted to protect his friend from older teenagers. He explained that *"I feel like the judge kind of judged me unfair... it's circumstances, you get me, they're three older boys"*. Joshua similarly felt that he had acted out of self-preservation. Both children had experienced repeated trauma in their family homes, in care and in their social environments, and professionals suspected that both of them had been exploited to run drugs (though they did not see it this way). Neither felt that anyone else would keep them or their friends safe.

When the children's past experiences were considered they felt that this was in solely negative terms. Sentencers could form an opinion about a child based on past offences, like the judge who told Aaron that *"if I see you again, I'll send you to jail"*. This undermined children's faith in the legal system and gave them the impression that judges acted on their own personal feelings.

In its guide for antiracist lawyers, *Making Black lives matter in the criminal justice system*, the Howard League explained that courts frequently fail to understand the contexts and unmet needs of Black defendants. Police intelligence is too often taken at face value by sentencers, despite the poor quality of much police data and the stark racial inequalities in policing (Howard League, 2021b). Meanwhile, professionals perceive Black children as older than

they are – a process known as “adulthoodification” – and overlook their vulnerabilities (Davis and Marsh, 2020).

Race had been overlooked as a factor for both Joshua and Aaron, both of whom were Black boys. Joshua explained that he had been charged with racial abuse towards the white police officers who had arrested him, ignoring the broader context of racial disparities in policing and that he had been targeted by police in the past because of his race.

While the Sentencing Council has produced detailed guidance as to how sentencers should factor the context of a child’s offending into the sentence, there is no such guidance to support judges and magistrates to take the wider picture into account in remand decisions.

Too uncertain

The young people found legal proceedings confusing and anxiety-inducing, especially where they were facing multiple charges. This was even though most of the young people in the sample had specialist lawyers who were very engaged and fought tirelessly on their behalf.

Joshua had found his legal cases especially hard to follow. He had two sets of charges, one more serious and one less serious. The youth court sent all the charges to the Crown Court. The Crown Court sent the less serious charges back to a different youth court and the more serious charges to a different Crown Court. When Joshua’s caseworker at the prison contacted the particular Crown Court that she had been told the more serious case had been sent to, she was told there was no record of the case number. It took many weeks to establish where and when the case on the more serious charges would be heard.

When the Howard League met with Joshua and his caseworker, they were still waiting for a court date. Joshua explained that the uncertainty would have been difficult for anyone, but that it was especially difficult for him because he was autistic and needed to know what was going on and when things would happen. The waiting was affecting his mental health.

Tosin also had two charges, though one criminal solicitor was representing him for both. He had been scheduled to attend court the day that he met with the Howard League, but when he was asked about this he explained that *“I’m not sure, I think my case got*

adjourned, I don’t know which case”. Tosin had recently turned 18 and was due to transfer to the adult estate midway through his court proceedings. He was being temporarily held in the youth estate for a psychiatric assessment to see whether he should be transferred to hospital, following concerns raised by the prison mental health team that he was autistic.

In Abdul’s case, the National Referral Mechanism process for victims of modern slavery added an additional layer of uncertainty. Though he had an earlier positive decision that he was a victim, it was not directly relevant to the circumstances of the offence. He had recently been referred again but had been told that it might take a long time. The timing was crucial, as he had an upcoming court hearing and his lawyers were planning to rely on the statutory defence for child victims of exploitation (Modern Slavery Act 2015, s45(4)). Even though recent caselaw has suggested that such a finding may not be admissible, the evidence used to secure it may be, and it would be difficult to run such a defence in the face of a negative decision.

The harms of remand for children

Historically people in prison on remand have been treated differently from those who have been sentenced to prison. Since 2012 children in prison have been automatically afforded the legal status of being “looked after” under the Children Act 1989 which should mean they receive additional support and attention from children’s social services in their home area. Yet all five young people felt that they were treated the same as children who had been convicted and sentenced to prison and described in detail the harms of imprisonment: violence, unjust treatment, mental ill-health and inadequate education and support (Gooch, 2016). These harms were compounded by the uncertainty the children felt about the future beyond remand.

No consideration of innocence

The young people explained that they were not treated any differently in prison because of their remand status, including when they had not been convicted of an offence and remained legally innocent. Joshua observed that *“they don’t really care about whether you’re remanded”*.

Though children on remand are ordinarily allowed more visits than sentenced children, the ongoing restrictions on visiting due to Covid-19 made this

meaningless at the time of the project. The only remaining difference was that children on remand were allowed to access and spend more money each week.

Alone and lost

Aaron talked about how he had been in care continuously since he was 12. Aaron did not talk much about his experience during this time, but he explained that *"I've been through shit, I've had to look after myself, I can manage"*. Aaron had not been visited at all while he had been in prison. His support network was mainly made up of friends his own age but they were not permitted to visit him. He explained that *"I don't chat to my family and apparently people have to be 18 or over to visit you, so say I have friends that are my age, they can't come visit"*. He could not even talk to his friends as much as he wanted to on the phone, because children's services had cut his care allowance by more than three quarters when he went into custody. Aaron's criminal defence lawyer told the Howard League that the local authority viewed him as *"another kid lost in the system"*.

Exposure to violence

The number of children in the prison had fallen significantly due to Covid-19, although the pandemic introduced new and different problems (Howard League, 2020a). Children told the Howard League that this meant that the prison was not as violent as it had been in the past, or as violent as some other young offenders' institutions. Joshua spoke about the last prison to which he had been remanded, which he described as far more dangerous: *"warzone was an understatement that was just, general alarms, so many fights, the staff there are ridiculously rude, intimidate you ... That place is, trust me, there's never been a day when you don't hear a general alarm or something happen ... mad things going on, bare fights, I witnessed an 8-on-1 [assault] in there"*.

Joshua had been exposed to violence outside prison, but he thought that it had been worse in prison because *"it's near enough every day innit, on the outside you don't really see every other day someone getting injured"*. It was his experience of violence in this environment (as well as in residential care) which he linked to his more recent offence.

Despite the lower numbers of children in prison, the Howard League was told of pervasive and normalised

violence. Aaron described his time on remand as *"not as bad as I thought it would be"* but then went on to add that *"My first week some guy tried stab me you know ... two people just tried fight me innit but I didn't get touched. Apart from that it's just been calm"*.

The children's experiences of violence in custody were all too familiar to the Howard League and resonated with repeated findings from the annual surveys by the Chief Inspector of Prisons that show many children do not feel safe in custody.

Mental health

Both the prison environment and the uncertainty of remand worsened children's mental health. Abdul explained that although he had been told he had been remanded to custody for his own safety, he had never felt less safe. He had begun to get physical symptoms of his anxiety, on top of the pain from his head injury:

"I was getting bad pains in my heart and that they said it's my anxiety affecting my heart and my chest. Since I got here, I never had it in my life but it's got worse and worse 'cause everything's getting to my head isn't it ... I don't sleep, I keep thinking, yeah I'm getting bad headaches bad chest pains and that, my heart's beating fast. I'm waking up in the night, lately I've been getting some bad dreams innit ... I keep waking up from dreams with people killing me, it's like every dream I'm dying and waking up and it's hurting my head."

Joshua also spoke about the impact of prison on his mental health. He described himself as *"hypervigilant"* and explained that he would like therapeutic support, but that *"psychology can't work with me until they know what's going on with my sentence"*. He had been diagnosed with autism spectrum disorder in prison, as had Tosin. As a result, the needs of both children had been neither understood nor met earlier.

Hassan described prison as *"traumatising ... even though I take sleeping tablets, at silly o'clock in the morning there are people banging on the pipes not letting me sleep, banging on the walls ... being very rude"*. He had experienced verbal abuse and discrimination, which he was struggling to cope with in the custodial environment. Healthcare staff told us that Hassan was clearly suffering from the impact of recent and historic trauma: one of his closest family members was terminally ill and he had

experienced two other sudden bereavements. The retraumatising prison environment compounded these issues.

Concerns about Tosin's mental health were so acute he was being considered for a transfer to hospital.

The Howard League often finds that young people on remand have serious mental health issues, usually exacerbated by the custodial environment, but that this is rarely factored into the remand decision-making process.

Poor education

Research on desistance shows that education and training can play a particularly dominant role in desistance for children (McMahon and Jump, 2018). Yet, education provided in prisons and secure training centres is minimal, poor-quality and undifferentiated (Howard League, 2021a). Though practitioner assessments suggest that most children in custody have special educational needs, there is very little suitable provision which meets these needs.

All five children wanted to catch up on the education which they had missed out on through school exclusions and involvement in the criminal justice system, but they felt that this was not possible in prison. As Abdul, who had received on-one-one support in school, put it: *"We go to education but you don't learn in education, I asked for one-on-one but they don't have enough staff. You don't learn in a classroom of five boys walking around shouting."* Joshua explained that professionals were working on an Education, Health and Care plan for him, but that he was not learning anything at the moment. Hassan told us that education did not happen every day, but that he was not sure why.

Only Aaron had been more actively participating in education, and this was because he had proactively asked to do more work. He explained that he had *"been trying to get my qualifications by doing portfolios for all the subjects, saying can I have a portfolio to do"*. He had done this for English and Maths so far.

The Howard League is aware that avoiding disruption to a child's education can be a powerful reason for a court to avoid a custodial sentence, but this argument is weakened when a child has already been remanded to custody. Worse still, the duties for children with special educational needs are weaker for children in prison and routinely not

adhered to. Even though the Children and Young Person's Act 1933 expressly requires all courts to consider the impact on a child's education in every decision it makes, this rarely seems to feature in remand decision-making.

Unlocking hope and specialist legal representation

The children spoke about their ambitions for a future outside the criminal justice system: catching up on education and doing GCSEs at college, pursuing music or football, getting an apprenticeship, working in a trade. Yet the uncertainty of remand made it hard for children, prison staff and professionals in the community to meaningfully plan, while the prison environment inhibited their positive sense of self.

It was striking that this cohort of young people were unusual in that most of them had excellent legal representatives who specialised in working with children. They encouraged them to think about the future and what they wanted from their lives.

Many of the solicitors representing this group had already worked hard to ensure suitable accommodation packages were available from the children's local authorities. Yet as the examples in this group showed, even the best solicitor can only do so much: stumbling blocks lie in the unwillingness of courts, the serious nature of some young people's offences, and the discord and disconnect between professionals and services that are meant to help young people facing custody. Risk averse courts and local authorities offering inconsistent provision to children in their care are a few of the many obstacles facing vulnerable children and young people who face the traumatising experience of remand.

The Howard League has often found that excellent packages of support, informed by children's wishes and feelings as the Children Act 1989 requires, combined with specialist legal representation are critically important but not always sufficient to secure bail for children remanded to custody.

Conclusion

Almost three quarters of the children who are remanded to custody do not end up with a prison sentence (Ministry of Justice, 2022). Custodial remand punishes children for the mistakes of the services around them, especially where children are in the care of the local authority and have been repeatedly failed by their corporate parents.

It exposes children to the harms of imprisonment, worsens their mental health and prevents them from working towards their goals with support from professionals, as they could do on bail. The Ministry of Justice's remand review is a good start but will need to be vigorously followed up to ensure that its recommendations are followed.

Remanding a child to prison must be an absolute last resort. Provisions that allow children to be remanded for their own welfare must be scrapped. Children must not be remanded to prison unless their risk cannot be managed in the community and they are very likely to be given a prison sentence.

The Howard League has supported the children whose stories are told in this briefing with bail, resettlement and letters of mitigation to be considered at their sentencing hearings.

A future publication will explain how lawyers can take practical action to prevent children being held in prison on remand.

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About the Howard League for Penal Reform

The Howard League is a national charity working for less crime, safer communities and fewer people in prison.

We campaign, research and take legal action on a wide range of issues. We work with parliament, the media, criminal justice professions, stakeholders and members of the public, influencing debate and forcing through meaningful change.

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