

# **Howard League** for Penal Reform

## **Howard League for Penal Reform's submission to the Justice Committee inquiry on public opinion and understanding of sentencing**

20 July 2022

### **1. Summary**

- 1.1. From its parliamentary and public affairs work, the Howard League for Penal Reform is familiar with the current, counterproductive relationship between perceived public opinion (in the absence of public education or deliberative approaches) and sentencing policy.
- 1.2. The Howard League also runs a specialist legal service for young people aged 21 and under in custody. In its legal work, the Howard League has found that sentencing policy and practice is often misunderstood even by people who have themselves been sentenced.
- 1.3. The Sentencing Academy's recent research on public knowledge finds that most people do not know that the prison population has soared since the 1990s or that sentences have been getting longer (Sentencing Academy, 2019). The considerable human and economic costs of longer prison terms cannot be evaluated by a public which is not even aware of them.
- 1.4. This response highlights four barriers to improved public awareness about sentencing, all of which undermine public confidence in the criminal justice system:
  - a. the politicisation of sentencing, which disincentivises honest communication with the public
  - b. public reliance on representations of criminal justice in the media and popular culture, which appeal to their audiences' existing perceptions (or to what they will find shocking or exciting)
  - c. the inaccessibility of the law in the absence of widespread public legal education, which leaves members of the public and even people who have themselves been sentenced unsure how sentences work
  - d. the lack of deliberative engagement on sentencing, and the tendency to only discuss sentencing in relation to individual, high-profile cases.
- 1.5. These barriers could be addressed through more meaningful engagement with the public on sentencing. A citizens' assembly on sentencing would be a good start, as proposed by the recent Independent Commission into the Experiences of Victims and Long-Term Prisoners.

- 1.6. The general direction of sentencing policy should be informed by public judgment – the views of a representative sample of the public who are given the chance to learn and deliberate – rather than by superficial public opinion polling.

## **2. Since the 1990s, sentencing has become deeply politicised**

- 2.1. For the past three decades, the main political parties have refused to communicate honestly about the trade-offs involved in sentencing and criminal justice policy, or the impact and outcomes of different sentences. Instead, Labour and Conservative politicians have each focused on trying to prove that they are the tougher party when it comes to criminal justice, politicising sentencing and preventing a more evidence-informed approach (Farrall and Hay, 2010).
- 2.2. In this context, sentencing policy often flies in the face of research evidence about the effectiveness of different sentences. In March 2021, for example, a justice minister made headlines for acknowledging that *“harsher sentencing tends to be associated with limited or no general deterrent effect”* in a parliamentary answer – the day after his department introduced the Police, Crime, Sentencing and Courts Bill, which included provisions for longer custodial terms (Dathan, 2021; HC Deb 19 February 2021, 155490W).
- 2.3. The Sentencing Academy’s research on public knowledge of sentencing practice, which is cited in the Committee’s call for evidence, underlines the extent of political parties’ failure to inform the public about sentencing policy and practice. We now know that most people do not realise that prison sentences have been getting longer, and that the public underestimate the severity of existing sentencing policy (Sentencing Academy, 2022).
- 2.4. The Sentencing Academy research shows that public engagement on sentencing must include education and deliberation, as people do not currently understand the policy and practice which they are being asked to assess.
- 2.5. When MPs cite their constituents’ general strength of feeling on sentencing as a reason to support tougher legislation, as in the debates on the Police, Crime, Sentencing and Courts Bill, they may be simply confirming their constituents’ misperceptions about how sentences currently work – and, by extension, further undermining public confidence in the criminal justice system (HC Deb 15 March 2021, cols. 117, 123; HC Deb 5 July 2021, cols. 598, 667).

## **3. Public perceptions are influenced by misleading information in the media and popular culture**

- 3.1. As most people do not have direct experience of the criminal courts, public perceptions of sentencing are heavily influenced by media coverage and popular culture (Sentencing Council, 2019). Yet this content caters to consumer demand, which is based on what readers and viewers expect, think they know, or will find attention-grabbing. The most influential representations of sentencing are not designed to inform people about how the criminal justice system works.
- 3.2. During the extensive Rethinking Crime and Punishment project in the early 2000s, which aimed to improve the quality of public debate on the criminal justice system, Open University researchers carried out focus group and survey research on the media with nearly a hundred participants.
- 3.3. The research found that media representations undermined people's confidence in community sentencing. It also found that public understanding of someone's reasons for offending – which is often absent from media coverage – could have a significant impact on attitudes.
- 3.4. Nearly six in ten people agreed that community sentences were portrayed as *“a joke punishment that doesn't work”* on TV, and that prison was represented as the only solution to serious crime. Forty-four per cent of participants agreed that they had a less punitive reaction when a programme explored someone's background and reasons for offending. The researchers also noted that:

*Statements made in focus group discussions and in questionnaires are often contradictory and ambivalent views emerge when the details of specific cases are discussed* (Rethinking Crime and Punishment, 2003).

- 3.5. In the two decades since the Open University research, the media landscape has changed in ways which further undermine public understanding. The decline of the regional press means that fewer journalists are locally based and have the time and capacity to spend their time in courtrooms covering cases. Instead, local newspapers rely on press releases from prosecuting authorities and regurgitate sensational national stories.
- 3.6. A recent report by the Charitable Journalism Project finds that under-resourced local papers have lost the respect of their communities, and that they are seen as *“repeating institutional lines by publishing press releases uncritically”*. Instead, local attention has shifted towards social media. As one participant put it: *“The Gazette office is shut now. So it's Facebook”* (Barclay et al, 2022).
- 3.7. Social media in general, and Facebook in particular, are widely acknowledged to be an unreliable source of information and are unlikely to challenge public misconceptions about sentencing.

#### **4. The law on sentencing is poorly understood, in the absence of public legal education**

- 4.1. In the absence of widespread public legal education, sentencing policy and practice are poorly understood by the public – particularly when it comes to minimum custodial terms (“tariffs”) for life sentences and what it means to be released on licence. The differences between sentences for the same crime, for example due to different aggravating and mitigating factors, are also difficult for non-lawyers to understand.
- 4.2. In 2011, a mixed-methods study of public knowledge and attitudes to sentencing for murder found that participants underestimated the amount of time people convicted of murder spent in custody, overestimated reoffending rates, and did not understand tariffs or the life licence.
- 4.3. These misunderstandings masked the fact that the public broadly agreed with sentencing policy for murder: despite the refrain that *“life doesn’t mean life”*, only a minority of participants felt that people should be imprisoned for the rest of their natural lives.
- 4.4. The researchers concluded that the term ‘life sentence’ causes confusion and undermines confidence in the system, as the public are not opposed to fixed-term minimum sentences for murder but do not understand why this is referred to as a life sentence (Mitchell and Roberts, 2011).
- 4.5. In its legal work with young people in prison, the Howard League finds that even people who have themselves been sentenced have not been properly informed about what their sentences are and how they work.
- 4.6. As one young adult who took part in the Howard League’s legal participation work put it: *“I still remember thinking about not really understanding what they were saying.”* Another remembered not understanding the terminology used by the judge (Howard League, 2018).
- 4.7. Young people have told the Howard League that they did not know what type of sentence they could expect to receive until their sentencing hearing, and many remain unsure about how their sentence works in practice even once they are in prison.
- 4.8. Young people also frequently tell us that other people who have done the same thing (as they understand it) have received lesser sentences and that they do not feel this is fair, even though it is likely explained by each person’s aggravating and mitigating factors. As we noted in our work on sentencing young adults, this sense of disempowerment and injustice has a knock-on effect for people’s progression in prison.
- 4.9. Public misunderstandings of the law on sentencing severely undermine public confidence in the criminal justice system. People perceive the system to be letting people off, and politicians and the media too often reinforce this belief rather than exploring where it comes from.
- 4.10. The media focus on sensational stories means that the public are less aware of lower-level cases, and of the many people who are sent to prison when

they do not pose a risk of harm to the public. This prevents meaningful public scrutiny of sentencing.

- 4.11. The legal doctrines which determine how someone is sentenced can also be opaque. The Howard League can facilitate private evidence to the Committee about the legal doctrine of strict liability, and how this can conflict with public expectations.
- 4.12. The Howard League is especially concerned by cases prosecuted under the legal doctrine of joint enterprise, which the government currently does not even collect data on (HC Deb, 8 June 2022, 11833W).
- 4.13. Again, even people who are themselves sentenced under joint enterprise do not understand how it works. Qualitative research carried out with young people in joint enterprise cases finds that they do not know what constitutes guilt, and that many young people stay silent in police interviews because they are afraid of the uncertain, but life-changing, legal risks of a prosecution under joint enterprise. In turn, this silence is interpreted as proof of guilt (Hulley and Young, 2021).

## **5. People must be given the chance to learn and deliberate on sentencing policy, and should have a greater (local) stake in the system**

- 5.1. The Howard League endorses the conclusions of the recent Independent Commission into the Experiences of Victims and Long-Term Prisoners, led by Revd James Jones. In particular, the proposal for a citizens' assembly on sentencing policy would address the pitfalls of current public engagement on sentencing.
- 5.2. The Commission notes that sentencing is usually only discussed in the "*highly-charged emotional context of one particular horrific crime*". It argues that we instead need a national debate which considers the content of sentences as well as their length, and which engages with both expert bodies and ordinary citizens (Independent Commission into the Experience of Victims and Long-Term Prisoners, 2022).
- 5.3. Deliberative engagement is particularly useful for contentious issues with low levels of public understanding (Fishkin et al, 2000), and there are recent UK precedents for deliberative engagement on crime. Criminal justice policy was deliberated on as part of the Citizens' Assembly of Scotland, and participants' recommendations are currently being taken forward by the Scottish government (Scottish Government, 2021).
- 5.4. Similarly, the London Borough of Waltham Forest recently published the recommendations of its citizens' assembly on hate crime. The council used a civic lottery to convene a representative selection of residents, who heard

from a range of subject matter and lived experience experts and explored how to stop hate in the borough (Waltham Forest, 2022).

- 5.5. Research evidence suggests that taking part in deliberation has a lasting impact. As a study on attitudes to people who have committed sex offences concludes:

*[T]he deliberative process is not just another input of information into a person's life that makes their attitudes fluctuate until the effects of that input wear off; on the contrary, once a participant has the opportunity to become better informed and to think in depth about the issue, the change in attitudes is solid (Marteache, 2012).*

- 5.6. The Howard League has long supported a shift towards greater localism in the criminal justice system, which would encourage deliberative engagement and increase the public's investment and understanding. Problem-solving 'community courts' are one potential example of local justice, though they can mean that people who have committed low-level offences are given more intensive sanctions (Commission on English Prisons Today, 2009).
- 5.7. As part of the Rethinking Crime and Punishment project, the Howard League began to host annual awards to promote good practice in alternatives to custody – and has continued to do this ever since. Greater public awareness about community initiatives and sentencing options could improve confidence in community sentences, particularly at a local level.
- 5.8. The Ministry of Justice and/or the Sentencing Council could also be more proactive in educating the public about sentencing. In the early 2010s, the Ministry of Justice hosted an interactive website called 'You be the Judge'. Users could consider the facts of real-life cases, pass sentence themselves, and compare their choice to that handed down by the judge.
- 5.9. The Howard League notes that the Sentencing Council is "*considering the possibility of developing a revised version*" of You be the Judge. We would welcome this as a tool for public education.

## **6. Public judgment, rather than public opinion, should inform sentencing policy**

- 6.1. The Howard League believes that public engagement on sentencing must move away from superficial public opinion polling, and towards methods which give participants the chance to learn and reflect. In an article which advocates the use of deliberative polling on criminal justice issues, the criminologist David Green distinguishes between:

*shallow, unconsidered public opinion, and reflective, informed public judgment ... Only methods embracing deliberation and fostering the conditions to achieve public judgment are sufficient to generate the kind of informed and considered public preferences that could justify*

*the level of political deference public preferences currently receive ... Typical assessments of public opinion provide a poor justification for policy, and remain susceptible to exploitation by those of all ideological affiliations with axes to grind (Green, 2006).*

- 6.2. The framing of questions about criminal justice has a significant impact on how people respond, triggering shared cultural models about who commits crime, why, and how they should be treated (O'Neil et al, 2016). As a result, standard public opinion polling is subject to manipulation and does not allow people to explore the contradictions in their views.
- 6.3. Public opinion polling should have a very limited impact on sentencing policy and practice, as it is unable to distinguish between views which are based on misunderstandings about the criminal justice system and settled opinion. However, deliberative engagement with the public should feed into the general direction of sentencing policy, including policy decisions about the content and length of sentences.
- 6.4. The sentences handed down in particular cases should not be based on public opinion, but on specific aggravating/mitigating factors and expert legal judgment. Significantly, in research on citizen participation in criminal justice carried out as part of the Howard League's *What is Justice?* series, participants suggested that they would not trust other members of the public to be directly involved in sentencing and agreed that these decisions should be made by experts (Behan et al, 2016).
- 6.5. Informed public judgment should be considered alongside other sources of information, such as research evidence. Policymakers should also reflect on the human and economic costs of sentencing policy, including how their decisions impact prison overcrowding and opportunities for rehabilitation.

## References

- Barclay, S. et al (2022). *Local News Deserts in the UK: What effect is the decline in provision of local news and information having on communities?* Available at <https://publicbenefitnews.files.wordpress.com/2022/06/local-news-deserts-in-the-uk.pdf>.
- Behan, C. et al (2016). *Justice is more than just criminal justice: Perspectives on criminal justice institutions and citizen participation.* Available at <https://howardleague.org/wp-content/uploads/2016/04/Justice-is-more-than-just-criminal-justice.pdf>.

- Commission on English Prisons Today (2009). *Do Better, Do Less: The report of the Commission on English Prisons Today*. Available at <https://howardleague.org/wp-content/uploads/2016/04/Do-Better-Do-Less-low-res.pdf>.
- Dathan, M. (10 March 2021). 'Longer jail terms don't stop crime, admits Chris Philp, justice minister', *The Times*.
- Fishkin, J. et al (2000). 'Deliberative polling and public consultation', *Parliamentary Affairs* 53:4, 657–666.
- Green, D. (2006), 'Public Opinion Versus Public Judgment About Crime: Correcting the "Comedy of Errors"', *British Journal of Criminology* 46, 131–154.
- HC Deb 19 February 2021, 155490W, <https://questions-statements.parliament.uk/written-questions/detail/2021-02-19/155490>.
- HC Deb 15 March 2021, cols. 117, 123, <https://hansard.parliament.uk/commons/2021-03-15/debates/3F59B66E-E7A1-484B-86E3-E78E71D0FE0F/PoliceCrimeSentencingAndCourtsBill>.
- HC Deb 5 July 2021, cols. 598, 667, <https://hansard.parliament.uk/commons/2021-07-05/debates/24D0FCFD-C6AB-4854-A9A0-2629FA4AEE20/PoliceCrimeSentencingAndCourtsBill>.
- HC Deb, 8 June 2022, 11833W, <https://questions-statements.parliament.uk/written-questions/detail/2022-06-01/11833>.
- Howard League for Penal Reform (2018). *Sentencing Young Adults: Making the case for sentencing principles for young adults*. Available at <https://howardleague.org/wp-content/uploads/2019/01/Sentencing-Young-Adults.pdf>.
- Farrall, S. and Hay, C. (2010). 'Not so Tough on Crime?: Why Weren't the Thatcher Governments More Radical in Reforming the Criminal Justice System?', *British Journal of Criminology* 50:3, 550–569.
- Independent Commission into the Experience of Victims and Long-Term Prisoners (2022). *Making sense of sentencing: Doing justice to both victim and prisoner*. Available at <https://icevlp.org.uk/wp-content/uploads/ICEVLP-Making-sense-of-sentencing-web-copy.pdf>.
- Martreache, N. (2012). 'Deliberative processes and attitudes towards sex offenders in Spain', *European Journal of Criminology* 9:2, 159–175.
- O'Neil, M. et al (2016). *New Narratives: Changing the Frame on Crime and Justice*. Available at [https://www.frameworksinstitute.org/wp-content/uploads/2020/06/UKCJ\\_MM\\_July\\_2016\\_Final.pdf](https://www.frameworksinstitute.org/wp-content/uploads/2020/06/UKCJ_MM_July_2016_Final.pdf).
- Rethinking Crime and Punishment (2003). *Media and the shaping of public knowledge and attitudes towards crime & punishment*. Available at



<https://web.archive.org/web/20080905201958/http://www.rethinking.org.uk/latest/pdf/briefing4.pdf>.

Scottish Government (2021). *Citizens' Assembly of Scotland - Doing Politics Differently report: Scottish Government response*. Available at <https://www.gov.scot/publications/citizens-assembly-scotland-scottish-government-response-doing-politics-differently/>.

Hulley, S. and Young, T. (2021). 'Silence, joint enterprise and the legal trap', *Criminology & Criminal Justice*, OnlineFirst.

Waltham Forest (2022). *Waltham Forest Citizens Assembly: Recommendations Report*. Available at [https://www.walthamforest.gov.uk/sites/default/files/2022-04/KD\\_WFCA\\_Recommendations\\_Report.pdf](https://www.walthamforest.gov.uk/sites/default/files/2022-04/KD_WFCA_Recommendations_Report.pdf).