

Howard League for Penal Reform

Written evidence submitted by the Howard League for Penal Reform to Labour Policy Forum consultation

Safe and Secure Communities | The criminal justice system

The Howard League for Penal Reform is a charity working for less crime, safer communities and fewer people in prison. Established in 1866 and named after the prison reformer John Howard, the charity was at the forefront of the campaign to abolish capital punishment and helped to create the probation service.

Today, through research, campaigning and legal work, and with the support of our members, including members in prison and their families, we promote solutions that deliver better justice and minimise the harms of prison, for prisoners, victims and society at large.

Executive summary

- The way to ensure safe and secure communities is to tackle the causes of crime and reoffending through preventative forms of community justice, improving rehabilitation within the prison community, and not seek solutions to social problems solely through the penal system;
- Short prison sentences are counter-productive and much less effective than community sentences at reducing crime;
- The criminal justice system is facing unsustainable pressures, with the prison population expected to increase by over 26 per cent within the next five years. A Royal Commission should be established, so that sentence inflation can be tackled to support recovery and build a better system;
- Effective probation services are run in very different ways from prisons and should be independent, with visible leadership in the community;
- Over the last two decades, the vision for the justice system has been maximalist and expansionist. Yet staffing levels are at crisis point and prisons across the estate are overcrowded as a result;
- An effective approach to justice must prioritise improving the state of prisons so that they are safe and offer positive regimes which are more likely to protect the public, and not exacerbate the underlying causes of crime;
- The prison system faces severe resource shortages, which need to be urgently addressed with a view to improving pastoral care and mental health provision in particular;
- The public widely believe that poor mental health should be provided with adequate support, and not dealt with through the criminal justice system;
- Open prisons are overlooked as a vital component of the journey to rehabilitation and as a powerful tool in preventing reoffending;
- Women and Black, Asian and minority ethnic groups are disproportionately impacted by the current failings of the criminal justice system.

1. What approach should the Labour Party take to improving justice?

Sentence reform

1.1 Currently, many low-level and non-violent offences are dealt with through the issuing of short sentences. Last December, non-violent offences accounted for 38 per cent of all custodial sentences (MoJ, 2023e, p. 27). Short sentences are a catastrophe for everyone. They do nothing to help victims and nothing to help the person sentenced – indeed, they are likely to compound the issues that led them to crime in the first place. If someone needs support to move away from non-violent crime, they will have better access to the services that can help them if they are being supervised in the community.

1.2 As of December last year, four per cent of people were serving a sentence of less than a year and 16 per cent were serving a sentence of up to four years (MoJ, 2023a, table 1.6). In 2018, the Ministry of Justice’s own research found that sentences under 12 months without supervision on release were associated with higher levels of reoffending than community orders (Hillier & Mews, 2018, p. 1). Proven reoffending numbers from January to March 2021 show that adults released from a custodial sentence of less than 12 months had a proven reoffending rate of 54 per cent (MoJ, 2023d, p. 1).

1.3 The criminal justice system is facing unsustainable pressures as the number of people in prison continues to rise. At the beginning of this month, there were 83,990 people in prison – just 1,200 short of the system’s useable operational capacity (MoJ, 2023c).

1.4 These pressures are not the result of increasing short sentences alone. Long-term imprisonment is also on the rise, with average life sentence tariffs doubling in the past twenty years (MoJ, 2023a). Determinate sentences of over four years increased by over 20,000 between 1993 and 2020 (MoJ, 2020, p. 6). Crucially, there is no evidence that longer sentences improve penal aims, making it even more difficult to justify the cost to the taxpayer. Indeed, in their recent report on the effectiveness of sentencing, the Sentencing Council concluded “*the current evidence does not suggest that increasing the length of immediate prison sentences is an effective way to reduce reoffending*” (Sentencing Council, 2022, p. 6).

1.5 A Royal Commission should be established so that sentence inflation can be tackled to support recovery and build a better system. Labour should also review recommended tariff lengths for life sentences to break the trend of a rise in unnecessary and ineffective long sentences contributing to the increasing prison population.

Probation services

1.6 Current failures in probation services urgently need addressing. The probation inspectorate recently found that six out of 10 people are released without settled accommodation and just eight per cent of those able to work went on to do so. The upshot of this is a 30 per cent recall rate, with four in 10 of those being recalled within 28 days of release (HMIP, 2022).

1.7 The government has reversed its disastrous part-privatisation of probation and brought probation services back into the public sector. An incoming Labour administration should go further and give probation back its own identity, independent of His Majesty's Prison and Probation Service (HMPPS). Probation must be properly resourced and appropriately structured to do the vital job of keeping the public safe.

1.8 The Howard League recommends that a Community Justice Agency should be established, to provide leadership and a national strategic focus for probation. This would make recommendations on best practice with a mission to increase public confidence in community sentencing and probation supervision. Probation services would then be delivered locally through a network of Community Justice Partnerships.

1.9 Probation services should be targeted at those who will most benefit, and delivered in ways to help people desist from crime. Service delivery should be run in a way that makes help accessible, encourages compliance, and prioritises timely completion – over supervision for its own sake and models which promote incarceration by encouraging breach and recall.

Improving prison regimes

1.10 It is impossible to address rising reoffending rates without first tackling the slipping standards in prison regimes. If those inside are not able to access rehabilitative programmes within the prison that prepare them to re-enter into the community, they are more likely to pose a risk to the public on release. Therefore, improving prison regimes and addressing staff shortages should form the foundation of the Labour Party's approach to improving justice.

1.11 The restricted regimes imposed in prisons initially in response to the pandemic are still operating today across much of the estate, largely due to staff shortages. People can be left in their cells for up to 23 hours, unable to exercise, receive visits or attend education. This removes their access to a healthy and supportive environment, thereby preventing them from moving on from crime and returning to the community.

1.12 The National Framework for Prisons and Services was decommissioned in June last year and HMPPS has now moved to a local risk-based approach. This includes through Covid controls such as vaccines and surveillance. The government's Living with Covid strategy says "*Covid control measures will no longer directly limit the delivery of regime, except when there is an outbreak or significant risk of increased transmission...Governors may apply additional control measures only where required and proportionate to responding to local circumstances.*"

1.13 Across the estate, people are held in their cells much longer than has ever been the norm. Gavin Backhouse is currently serving at HMP Berwyn and wrote to Inside Time this month about the prison's regime. He said "*...in the last week (168 hours) I have been allowed out of my cell for a mere four hours. We've had no domestic time in over two-weeks, meaning we cannot clean our cells or speak to our friends*"

(InsideTime, 2023, p. 5). Children calling the Howard League's advice line report that they are rarely out of cell for more than two hours a day on weekends.

1.14 Cases like Gavin's show the culture of lockdown regime remains in some prisons. Indeed, the key finding for two recent broadly favourable HMIP reports – HMP/YOI New Hall and HMP/YOI Garth – was that prisoners were spending far too long in their cells and purposeful activity was limited (HMIP, 2023a). In its snapshot of the prison system, published in November last year, the government said only 18 out of 120 prisons were running “green regime” – that is, full delivery of activities and services.

Addressing staff shortages and overcrowding

1.15 The reality is these regimes remain in place because prisons do not have enough staff to enable reversal of limited activity. Prisons today are under intense pressure and, while the government has plans to build more, there are insufficient staff to run the ones we already have. A Howard League report found that between 2010 and 2013, the number of frontline prison officers dropped by 30 per cent (Howard League, 2014). Whilst the HMPPS annual report for 2021-22 shows an increase in recruitment of band 3 to 5 officers by 52 per cent the previous year, the number of band 3 to 5 officers leaving HMPPS increased by over 60 per cent the previous year. Retention is a key problem – half of officers (49 per cent) who left the service in the last year had stayed in the role for less than three years. Over a quarter (26 per cent) left after less than a year (HMPPS, 2022).

1.16 The prison system as a whole has been overcrowded in every year since 1994. Its population is projected to rise to up to 106,200 by 2027 (MoJ, 2023f). We cannot even staff the prisons we have now, let alone a prison system projected to increase by around a fifth in the next few years. Without a stable and manageable prison system, questions around preparing people for release are difficult to effectively answer. Ideally, prison should be reserved for those who commit serious and violent crime who pose a real threat to the public.

Addressing the mental health crisis

1.17 Research from More in Common UK has found that the general public believe better support should be made available for those suffering from mental health problems, and that – crucially – the criminal justice system is not best placed to offer this support. Indeed, 60 per cent believe mental health issues are being mistaken for crime (Kimaram *et al.*, 2023, p. 32).

1.18 To begin with, both local mental health services and the police should also be better equipped to reduce the number entering prison as a key preventative measure. Currently, the grey area of responsibility between the police and the NHS for incidents of mental health crisis often leads to the former's intervention. Four in five Britons think there should be better mental health services to relieve pressure on the police and, when asked what the best improvements would be for how we deal with crime, survey respondents said “*more investment in mental health services and facilities for criminals*” (Kimaram *et al.*, 2023, p. 33).

1.19 Within prison, mental health support is virtually non-existent. In response to the Prisons Strategy White Paper, the Howard League highlighted research showing declining mental health in prisons, in part due to long periods of segregation, and also because of little support from professionals. One woman in prison responded to our survey by describing being in a “*mental health crisis*” following a long period of isolation. She said mental health provisions were “...*almost non-existent. Prison officers are not trained to cope with ever increasing poor mental health of prisoners. [There is a] lack of medically trained staff*” (Howard League, 2022).

1.20 Over two thirds (67 per cent) of people surveyed by inspectors said they needed help with their mental health in their current prison, but only a third (35 per cent) received any. In 2019, a third of prison officers had not received adequate mental health awareness training (HMPPS, 2022).

1.21 Alongside introducing measures to prevent people entering the criminal justice system because of poor mental health, and to improve current mental health provision within prisons, work needs to be done on removing those with acute mental health problems from the system.

1.22 An incoming Labour government should commit to measures in the draft Mental Health Bill currently before Parliament and introduce further necessary policy with similar intent. Namely, statutory time limits for transfer from prisons and other places of detention to secure hospitals should be tightened to reduce unnecessary delays and deliver swift access to treatment. Whilst current NHS guidelines aim for a 28-day time limit, this target is rarely met. Work should be done to ensure any new statutory time limits will be achieved – without negative impact on practice or resources – to ease a wholly inappropriate burden on the prison estate and lead to improved safety in penal custody.

1.23 Prisons and police stations should not be used as ‘places of safety’ and remand for own protection. Legislative change should be introduced to prevent those who are in mental health crisis from being placed in prison when, in reality, the majority of these cases end up in hospital anyway. In oral evidence to the APPG on Women in the Penal System, the prisons inspectorate revealed that three women’s prisons had identified nearly 70 women who had been remanded over the previous year because of mental health problems. Half of those with recorded outcome were eventually transferred from the prison to a secure hospital (Howard League, 2022a).

Category D prisons

1.24 Open prisons play an important role in reducing crime by allowing a return to the community in a limited and controlled way. They also give those serving an incentive to work towards their release and offer them and their families important hope of progression within the prison system.

1.25 The current Secretary of State for Justice has made changes to parole processes to make transfers to open prisons much harder, through tougher criteria. He also gave himself a veto over each transfer and has since blocked the transfer of nine in 10 of all Parole Board recommendations for a move to an open prison. Between June and November last year, of 140 prisoners the Parole Board

recommended for transfer to an open prison, only 14 were accepted by the Ministry of Justice. This offers a stark comparison to the previous 12 months, in which only 34 of 549 recommendations by the Parole Board were rejected. With these changes, a 94 per cent acceptance rate has turned into an 87 per cent rejection rate (Halliday, 2023, p. 4).

1.26 While introduced in the name of public protection, this will increase risk to the public. In a recent intervention, Martin Jones – CEO of the Parole Board – said *“when a prisoner is afforded a successful period in open conditions it makes the public safer, and increases the chance that the individual can succeed on release by their gradual reintegration back into society...it is hard not to be concerned that the Secretary of State since June 2022 has chosen not to accept the board’s advice in a much higher proportion of cases”* (Halliday, 2023, p. 8).

1.27 The importance of hope of progression for a person in prison, whilst harder to quantify, should not be overlooked as a key motivator in embracing good behaviour and working towards release. We have seen evidence of this amongst the IPP (imprisonment for public protection) cohort. In 2021, those serving indeterminate sentences made up 11 per cent of all self-harm incidents recorded, despite only making up three per cent of the entire prison population as a whole (MoJ, 2023e). Similarly, a lack of a clear sense of progression within the prison system undoubtedly contributes to the mental health crisis amongst those incarcerated, as well as their loved ones.

1.28 The latest government data shows 647 empty bed spaces in men’s open prisons (MoJ, 2023c). The government does not seem to appreciate the benefit of utilising these vacant spaces, as they were intended.

2. What are the specific implications of policy proposals in this area for women and Black, Asian and minority ethnic people?

Women

2.1 Tens of thousands of women are arrested unnecessarily each year, including many who have been victims of abuse and violence. 68 per cent of women in prison have committed a non-violent offence, with more serving sentences for theft than for criminal damage, arson, drug offences, possession of weapons, robbery, and sexual offences combined. The number of women being incarcerated for a very short sentence has risen from a third of all custodial sentences issued for less than six months in 1993, to half in 2021 (MoJ, 2023).

2.2 Baroness Corston’s seminal report into women in the criminal justice system concluded that imprisonment was disproportionate and inappropriate for the vast majority. Imprisonment is particularly harmful for women, who account for only four per cent of the prison population (3,313 out of 83,990), but about a third of all incidents of self-injury behind bars (in Q3 of 2022, 15,230 incidents of self-harm were recorded, of which 4,807 – 37 per cent – were women) (MoJ, 2023e). Academic research shows women released from prison are more likely to reoffend and reoffend sooner, than those serving community sentences.

2.3 An HMIP report on HMP Eastwood Park, published on 3 February, described the prison as holding “*acutely mentally unwell women...[in] cells with scratches and bloodstains on the wall.*” Inspectors said the conditions were the worst they had ever seen. 83 per cent of the 348 women held in HMP Eastwood Park suffer from mental health problems and have reportedly very high instances of self-harm (HMIP, 2023).

2.4 If a woman is in trouble, we should do all that we can to guide them away from crime. Women’s centres do this by offering a range of services to reduce the root causes of offending. Research shows almost all women report a significant improvement in their life since receiving help from a women’s centre, and re-offending among them is reduced to less than five per cent (Scott & Frost, 2019). However, women’s centres are currently few and far between, with around just fifty in the UK, often with limited capacity. This causes particular trouble with visiting and women navigating an unknown environment. A Labour government should commit to long-term and sustainable funding for women's centres in the community.

Black, Asian and minority ethnic people

2.5 Racial disproportionality in the criminal justice system has been a longstanding concern for the Howard League, as we frequently see examples of discrimination through our legal work to support children and adults in prison.

2.6 Whilst the majority of the prison population as a whole are from White backgrounds, people from racially minoritized communities are significantly overrepresented with 27 per cent from a minority ethnic group. Black men are 26 per cent more likely than White men to be remanded in custody and 60 per cent more likely to plead not guilty. Black and Asian people in prison are more likely to be serving long sentences than other groups (UK Parliament, 2020/21).

2.7 This problem is particularly profound for children. The proportion of children in prison from Black, Asian or minority ethnic backgrounds has never been higher, increasing from about one-quarter in 2010 to over half in 2020. Black, Asian and minority ethnic young people are more likely to be remanded to custody than their White counterparts (Lammy Review, 2017, p. 60). This is a growing problem, with 61 per cent of Black, Asian and minority ethnic children making up the remand population in September 2022 (Howard League, 2021, p. 2).

2.8 A child charged with an offence can be released on bail or – if bail is refused – remanded to Local Authority Accommodation. If neither options are possible, the child will then be remanded to Youth Detention Accommodation. The decision to remand a child into custody is governed by the Legal Aid, Sentencing and Punishment of Offenders Act (YJB, 2022, p. 35). While sentencing decisions focus more on evidence and the offence, remand decisions focus on the perception of the defendant’s risk to others, which relies on assumptions and therefore can rely on bias.¹

¹ Data from a FOI request by the Howard League for Penal Reform (reference 221116008).

3. Recommendations

3.1 In all possible and appropriate cases, diversion or custodial alternatives should be used – and developed in the long term – instead of short sentences. Local authorities should be given adequate resources to implement such alternatives.

3.2 A Royal Commission should be set up to address sentence inflation and the threshold for custody should be raised to end the use of costly and ineffective short prison sentences.

3.3 A Community Justice Agency should be created, dedicated to ensuring probation services are effectively delivered through a network of local partnerships.

3.4 Statutory guidelines should be introduced across the prison estate, ensuring a minimum amount of time outside of cell offered each week.

3.5 An incoming Labour government should design a prison officer recruitment and retention strategy and introduce immediate measures in the meantime to address the staffing crisis.

3.6 An urgent review should be commissioned to survey the extent of the mental health crisis within the criminal justice system and how to remove those with mental health problems from the system, with a view to devising policy proposals introducing preventative measures.

3.7 There should be a minimum number of mental health professionals required per number of prisoners across the estate, with statutory obligations for prisons to meet this requirement.

3.8 In the short term, an incoming Labour government should utilise spaces in open prisons, recognising them as a key aspect of rehabilitation. In the long term, greater funding and resources should be funnelled into Category D prisons, as well as rehabilitative and preventative initiatives.

3.9 The changes made by the current Secretary of State to the criteria for transfers to open prisons should be reversed, allowing greater discretion within the Parole Board's decision making. The power given to the Secretary of State to veto transfers should also be removed.

3.10 Women's centres must be properly funded and available across the country.

3.11 An incoming Labour government must be sure to include the voices of women and Black, Asian and minority ethnic groups in forming policy around the criminal justice system. These groups should be consulted with on any further developments.

3.12 There should be an independent review into remand decision-making, investigating the efficacy and adequacy of current remand criteria, with a view to introducing better guidance for decision-makers on the various avenues for remand.

4. Conclusion

4.1 The Howard League recognises the importance of this consultation and would welcome the opportunity to discuss its terms and approaches with Labour Policy Forum.

References

- Halliday, M. (2023) [Bromley Briefings Prison Factfile, January 2023](#)
- Hillier, J. & Mews, A. (2018) [Analytical summary 2018](#)
- HM Inspectorate of Prisons (2022) [Offender management in Custody](#)
- HM Inspectorate of Prisons (2023) [HMP/YOI Eastwood Park](#)
- HM Inspectorate of Prisons (2023a) [Reports published Week commencing 6 March 2023](#)
- HM Prison and Probation Service (2022) [HMPPS Annual Report and Accounts 2021-22](#)
- Howard League for Penal Reform (2014) [Breaking Point: Understaffing and overcrowding in prisons](#)
- Howard League for Penal Reform (2021) [What's wrong with remanding Children to Prison?](#)
- Howard League for Penal Reform (2022) [Inquiry into women's health and wellbeing in prisons](#)
- Howard League for Penal Reform (2022a) [The mental health consequences of imprisonment during the Pandemic](#)
- InsideTime (2023) *Issue No. 285 March 2023*
- Lammy Review (2017) [Lammy review: final report](#)
- Ministry of Justice (2020) [Story of the Prison Population 1993-2020, England & Wales](#)
- Ministry of Justice (2023) [Justice in Numbers Pocketbook, March 2023](#)
- Ministry of Justice (2023a) [Offender management Statistics quarterly: July to September 2022](#)
- Ministry of Justice (2023b) *Prison Population: 31 December 2022, Offender Management Statistics quarterly: July to September 2022*
- Ministry of Justice (2023c) [Prison Population Figures: 2023, Population Bulletin: monthly January 2023](#)
- Ministry of Justice (2023d) [Proven reoffending Statistics quarterly Bulletin, January to March 2021](#)

Ministry of Justice (2023e) [Safety in Custody quarterly: update to September 2022](#)

Ministry of Justice (2023f) [Prison population projections: 2022 to 2027](#)

Kimaran, A. (2023) [Where are the Police? Britons' Attitudes to Anti-Social Behaviour and the Police](#)

Office for National Statistics (2023) [Crime Survey for England and Wales estimates of personal and household Crime, Anti-Social Behaviour, and Public Perceptions, by Police Force Area, Year ending September 2022](#)

Scott, S. & Frost, S. (2019) [Why Women's Centres work: an Evidence Briefing](#)

Sentencing Council (2022) [The Effectiveness of Sentencing Options and Reoffending](#)

UK Parliament (2020) [House of Lords Written Questions HL3861](#)

UK Parliament (2021) [House of Lords Written Question HL14483](#)

Youth Justice Board (2022) [Youth Justice Statistics 2021/22, England & Wales](#)

Howard League for Penal Reform
1 Ardleigh Road, London, N1 4HS
Tel: 020 7249 7373
Email: info@howardleague.org
Web: www.howardleague.org