

## Submissions on the Youth Justice Charter

### About the Howard League for Penal Reform

Founded in 1866, the Howard League is the oldest penal reform charity in the world. The Howard League has around 7,500 members and 14,500 supporters, including prisoners and their families, lawyers, criminal justice professionals and academics. The Howard League has consultative status with both the United Nations and the Council of Europe. It is an independent charity and accepts no grant funding from government.

The Howard League runs the only dedicated legal advice line for children and young people in custody in England and Wales, receiving hundreds of requests every year for legal assistance from or on behalf of children and young people aged 21 and under. We regularly advise and support children and young people about issues in custody such as treatment, conditions, education and resettlement. Our advice line number is free to contact and is pre-approved as a contact number for all children in custody.

Given our unique experience through the advice line of speaking directly to children in custody, the focus of our response is on Part 4 'Life in Custody' and Part 6 'Complaints'. We highlight some key overarching points in our response, as well as addressing some of the standards individually.

### Overall impressions and wider context

The Howard League welcomes the development of a Youth Justice Charter as a document with positive potential to set out standards and expectations for children in contact with the youth justice system.

We welcome the inclusion of Universal Standards at the beginning of the document. We consider that more could be made of ensuring that some of these values are embedded throughout the document. For instance, whilst Universal Value 2 is about being treated equally, there are no other references within any of the standards to taking into account an individual's protected characteristics, or addressing discrimination. There is a wealth of evidence that BAME children, particularly Black children, are over-represented in the youth justice system.<sup>1</sup> We consider that reference should be made throughout individual standards, or additional standards be incorporated into each Part of the charter, that explicitly refer to protected characteristics as things to be taken into account, for example in Part 4(1), bullet point two, and/or references to address discrimination.

In keeping with Universal Standard 3 'My rights and responsibilities will be explained to me in a way I can understand', we would welcome this document being available in

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<sup>1</sup> On 8 September 2017, into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System was published, with David Lammy identifying the youth justice system as his "biggest concern". [The Lammy Review \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/644447/the-lammy-review.pdf) P4. Six years later, the number of children and young people from Black, Asian and Minority Ethnic remains disproportionately high with those from non-White backgrounds currently making up 50% of the youth custody population (with Black young people alone representing 26% of the population). August 2023 data - [Youth custody data - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/youth-custody-data)

multiple languages and formats (easy-read, video etc) to ensure that it is accessible to as many children and young people as possible.

The standards are more thorough and developed in some areas than in others. For instance, we support the vision created through the standards in Part 5 'Leaving Custody', which emphasises the importance of a timely resettlement plan being in place, developed in consultation with the child, at least six weeks before release. In contrast, we consider that the standards are significantly underdeveloped in other areas: in particular, around regime in custody (Part 4) and complaints (Part 6). We suggest some additions to these sections in particular below.

Finally, we note that the 'Helpful Links' section is currently to be completed. We consider that alongside this and the 'Glossary', consideration should be given to including a list of external organisations that young people who are in contact with the youth justice system may wish to contact for further support. This list could be tailored to correspond with each of the five parts of the guide. We would welcome The Howard League's advice line details being included as part of this list for Parts 4, 5 and 6.<sup>2</sup>

#### **Part 4: Life in Custody**

We make the following comments on Part 4:

***Custody standard 1: I will understand why I am being placed in custody, for how long and where I will be staying.***

- *You can stay in contact with your lawyer while you are in custody and you can meet with them in private, although any letters you send to them can be read by the staff.*

***Custody standard 7: I will be allowed to write to, call and receive visits from my family while I am in custody.***

- *Custody officers are allowed to read your letters to check the content is safe.*

It is incorrect that letters sent between a child and their lawyer can be read by staff, due to legal privilege. Rule 17(1) of the YOI Rules sets out the general rule that a prisoner can correspond privately with their legal adviser and any court, and such correspondence "may only be opened, read or stopped by the governor in accordance with the provisions of this rule" – namely if there is reasonable cause to believe either that it contains an illicit enclosure (17(2)), or its contents may endanger security of the institution, the safety of others, or is of a criminal nature (17(3)). See also PSI 49/2011 – Prisoner Communication Services.

Both custody standards should make it clear that legal correspondence is privileged.

***Custody standard 5: I will be allowed time out of my room***

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<sup>2</sup> The Howard League's access to justice service provides legal advice to children and young people aged 21 and under. The number is 0808 801 0308 and it is usually open Mondays and Tuesdays 11am – 1pm, and Thursdays and Fridays 10am – midday. See for more detail <https://howardleague.org/legal-work/advice-line/>

- *There are different rules about spending time out of your room depending on where you are staying, and these will be explained to you.*
- *Typically, education and exercise will be conducted outside of your room, and there will be common areas for you to use as well.*

While it is inevitable that different regimes will be available to children depending on the type of secure establishment that they are held in, we are concerned that this standard as it is currently drafted is no standard at all. There is no expectation set in the standard that time out of cell ought to be guaranteed on a daily basis as provided in PSI 08/2012 for example, which refers to a minimum of 1 hour outside activity every day, and that opportunities for association suitable for the age group must be offered. The standard as it is currently drafted would permit the practice of solitary confinement. (Solitary confinement is widely defined as spending 22 hours or more a day without meaningful human contact<sup>3</sup> and is recognised to have a “profound, and lasting, adverse impact on health and wellbeing”.<sup>4</sup>)

A much more ambitious standard is required as a starting point for children that recognises the importance of time out of cell for mental and physical health and personal development, including the importance of socialising with others. Furthermore, education, including physical education, should always be available with a teacher (which would necessitate being outside of their room). Any private, personal study should be in addition to education classes, as it would be in the community, rather than a substitution for it. See further below our comments about the amount of education children should expect to receive.

***Custody standard 9: I will receive medical care so I can stay fit and healthy***

- *A medical officer will care for your mental and physical health when in custody. They may talk to other experts where needed. If you ask to see the medical officer this will be recorded in writing.*
- *Keeping you safe is everyone’s priority. If they are worried about your safety, they may decide to make special arrangements for your care or supervision and the medical officer will organise this for you.*

We consider that this standard should also include a commitment that a child in custody will receive medical care equal to that they would receive in the community, to meet physical, mental health and neurodiverse needs, as recognised by the

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<sup>3</sup> Rule 44 of The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). This was the definition of solitary confinement adopted by HMIP in its 2020 report on separation of young people.

<sup>4</sup> BMA ‘Solitary confinement and children and young people’, 14 December 2021. Available at: [The use of solitary confinement in the youth secure estate \(bma.org.uk\)](https://www.bma.org.uk/press-releases/solitary-confinement-in-the-youth-secure-estate)

Courts.<sup>5</sup> This principle of equivalence is also set out with NHS guidance: see Standard 6 ‘Universal Health Services’.<sup>6</sup>

***Custody standard 10: I will be able to meet with an ‘advocate’ who is from an outside organisation and who will help me with any issues or concerns about my experience in custody.***

We suggest that an additional bullet point is inserted in this standard to offer children the support to contact a solicitor to help with any issue or concern about their experience in custody.

***Custody standard 13: I will have access to education and learning opportunities which will help prepare me for life after custody.***

- *If you are of school age (16 or less), you will receive at least 15 hours of education or training every week.*

While there is a legal distinction between children of statutory and non-statutory school age, we are concerned about having a standard that distinguishes on the basis of age. This does not reflect the reality of the way education is contracted in the children’s estate. For instance, all YOIs are currently contracted to provide each learner with 15 hours a week regardless of their age. The standard should reflect that, i.e. that children and young people in the youth estate aged 17 and 18 are entitled to access the same level of provision as those of statutory school age, should they want to continue with their education beyond statutory school age.

- *You will be assessed on your reading, writing, maths and IT skills on arrival to help create an education plan for you.*
- *Your education will be tailored to you and will be adjusted if you have any special educational needs.*

We welcome the inclusion of a standard that recognises education will need to be delivered in a way that meets a young person’s individual needs. However, we consider this standard should go further. 80% of children who have been cautioned or sentenced are recorded as having special educational needs.<sup>7</sup> Our joint briefing with IPSEA in 2022 entitled ‘Education inside penal detention for children in England: An overview’ explored the educational needs and experiences of children in prison and sets out their rights and entitlements in custody, including the additional rights of children with special educational needs in custody.<sup>8</sup> This includes the right for an

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<sup>5</sup> Mr Justice Collins in the administrative court in *R (Brooks) v Secretary of State for Justice* [2008] EWHC 3041 said: “...it is accepted, and the law is clear, that prisoners have to be treated in a way which respects their right to proper treatment and it is again accepted by both the Ministry of Justice, who are responsible for the prisons, and the healthcare trusts or whoever (I suppose the Department of Health generally) that prisoners are entitled, insofar as it is possible, to the same attention as would be provided for any person under the terms of the National Health Service (§5).”

<sup>6</sup> See [Health and justice and armed forces service specifications for children and young people in secure settings: Overarching healthcare specification \(england.nhs.uk\)](#) to be read with [rcpch healthcare standards for children and young people in secure settings 2023.pdf](#)

<sup>7</sup> See [Education, children’s social care and offending: local authority level dashboard, Academic year 2019/20 – Explore education statistics – GOV.UK \(explore-education-statistics.service.gov.uk\)](#)

<sup>8</sup> HL and IPSEA briefing [Education-inside-penal-detention-FINAL-2.pdf \(howardleague.org\)](#)

education, health and care needs assessment to be requested where a child or young person is brought or comes to the local authority's attention as someone who has or may have special educational needs (s.71 Children and Families Act 2014). And, where a child or young person aged 18 has an education, health and care plan, the home local authority must arrange appropriate special educational provision for the detained person while he or she is detained in relevant youth accommodation (s. 74(4) Children and Families Act 2014).

### **Part 6 'Complaints'**

We welcome the inclusion of a section on complaints, particularly as thematic reports from the PPO have highlighted how children and young people are less likely to complain to the PPO (now Independent Prisoner Complaint Investigations) than other groups of people in prison.<sup>9</sup>

We consider that the standard would benefit from further development to include:

- All children will be given information about how to complain and who they can complain to as part of the induction process in custody.
- All children can be supported by an advocate to submit a complaint on their behalf (which will be particularly important in ensuring meaningful access to the complaints system for children who struggle to read or write).
- Explicit reference to the Discrimination Incident Reporting Form complaints process for discrimination complaints in custody.
- That complaints should be answered promptly within the required timescales.
- All children should be advised of their right to escalate complaints to external bodies (e.g Ombudsman, IMB) and/or should be supported to access legal advice and support should their complaint not be resolved.

In relation to the wording of the standard:

- *You can't complain about a decision made by the court, but your lawyer can help if you want to.*

We assume that this 'decision' refers to a conviction or sentence and the 'complaint' refers to an appeal. Alternative language here referring a child to their lawyer for advice on appeal would be clearer.

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<sup>9</sup> See [Why Do Women and Young People in Custody Not Make Formal Complaints?](#) (2015) and [Complaints from Young People in Custody](#) (2017).