

Howard League for Penal Reform

Howard League for Penal Reform's submission to the Universal Periodic Review

31 March 2022

Key points

- Far from reducing the prison population, the UK government has committed to building 20,000 additional prison places in the next four years and developing a pipeline of future places after that.
- Rates of violence and self-harm rose significantly between the last Universal Periodic Review and the beginning of the Covid-19 pandemic, which artificially suppressed some kinds of conflict in prison. The government's response to the pandemic risks learning the wrong lessons about prison safety.
- The 23-hour lockdowns adopted during the pandemic breached international standards for the treatment of people in prison and have stored up problems for the future. Proposed changes to the Human Rights Act will further erode the rights of people in prison.
- The UK government has failed to address ethnic inequalities in the use of imprisonment. Instead, the government's Police, Crime, Sentencing and Courts Bill will exacerbate the problem, while the Prisons Strategy White Paper entirely overlooks race and ethnicity.

Introduction

During the last Universal Periodic Review, the UK government supported recommendations which required it to:

- reduce the current and future prison population
- address rates of violence, self-harm and suicide in prisons
- improve how people are treated in prison and other places of detention, and comply with international standards for detainees' rights
- address inequalities experienced by ethnic minority groups.

This submission describes the UK's progress against these recommendations. It explains that the UK government has failed to introduce measures which would meaningfully address any of the problems identified in 2017. The submission is about the criminal justice system in England and Wales.

- 1. Far from reducing the prison population, the UK government has committed to building 20,000 more prison places by the mid-2020s**

Supported recommendation: Take concrete measures to reduce the current and future prison population, as well as to improve prisoner safety (134.158)

- 1.1. Far from taking measures to reduce the current and future prison population, the UK government is pursuing measures which will send more people to prison and keep them there for longer. This is a manifesto commitment from the Conservative Party at the general election in 2019, which they are now pursuing in government.
- 1.2. The Ministry of Justice has projected that 97,500 people will be held in English and Welsh prisons by 2026, a 14 per cent increase on the prison population at the end of March 2017 (Ministry of Justice, 2021). Meanwhile, the government is proudly refurbishing, extending and building to make space for an expanded prison population (Ministry of Justice, 2022a).
- 1.3. In 2019, the then-Justice Secretary and Prisons Minister argued for a “*shift away from ineffective short prison sentences towards more effective ways of rehabilitating offenders*” (Ministry of Justice, 2019a). The Ministry of Justice published research showing that short prison sentences were associated with higher rates of reoffending than community sentences, using statistically matched cohorts (Ministry of Justice, 2019b). However, this agenda was dropped following a change of leadership at the Ministry of Justice.
- 1.4. In May 2017, when the UN Human Rights Council published its last assessment of the UK, nearly 85,000 people were held in prisons in England and Wales (Ministry of Justice, 2017a). By the end of February 2020, on the eve of the Covid-19 pandemic, the prison population had dropped by only two per cent. The number of people held in prison was 12 per cent higher than the certified normal accommodation (CNA) threshold, meaning that prisons remained overcrowded (Ministry of Justice, 2019c).
- 1.5. The number of people in prison dropped during the first wave of the pandemic and has remained under 80,000 since then. The ‘churn’ of people on short sentences slowed down: between July and September 2020, the number of people coming into prison on a sentence of six months or less was 36 per cent lower than the same quarter the year before. The number of people leaving prison after a sentence of this length was 30 per cent lower (Ministry of Justice, 2020b).
- 1.6. The fall in the prison population has helped to reduce overcrowding, though it remains a problem in some prisons. At the end of February 2022, Leeds prison held 1.7 times as many people as it could safely accommodate, while Durham and Lincoln held 1.6 times as many people as the CNA threshold (Ministry of Justice, 2022a).
- 1.7. The UK government cannot be credited for the reduced prison population during the pandemic. Though the government announced its intention to release up to 4,000 people in April 2020, only 316 people were released for Covid-related reasons – 54 through compassionate release and 262 through the End of Custody Temporary Release Scheme (Ministry of Justice, 2020a). The government chose to suspend the early release scheme at the end of August 2020 and did not restart it, despite severe further waves of the virus in late 2020, early 2021 and the winter of 2021/22.

- 1.8. Instead, the reduced prison population is an artificial product of court backlogs and – as departmental projections show – will be reversed as soon as courts manage to process more people. Sentencing decisions by the independent judiciary are another contributing factor, following *R v Manning* [2020] EWCA Crim 592 (where the Lord Chief Justice held that Covid restrictions in prison could be considered in deciding whether to suspend a prison sentence).
- 1.9. The government could implement recommendation 134.158 by maintaining and building on the current reduced prison population. A shift away from the use of short prison sentences – as endorsed by the Justice Secretary in 2019 – would be a first step in this direction.
- 1.10. Instead, the recent Prisons Strategy White Paper promises not only 20,000 new prison places in the next five years, but a further *'pipeline of accommodation beyond our current build programme'* (Ministry of Justice, 2021b). At the same time, the government's Police, Crime, Sentencing and Courts Bill inflates sentences and restricts judicial discretion (Howard League, 2021).

2. The government's response to Covid risks learning the wrong lessons about prison safety

Supported recommendations:

Initiate a prison reform plan to improve the deteriorating conditions in United Kingdom prisons, including addressing the increase in homicides and assaults (134.159)

Review current prison safety and conditions and consider developing an action plan to address increases in self-harm and suicide as well as overcrowding in prisons in the United Kingdom (134.160)

- 2.1. Between the last UN Periodic Review and the beginning of the Covid-19 pandemic, rates of self-harm and assault rose steeply. In the year to March 2017, there were 40,414 self-harm incidents and 26,642 assaults in prison (Ministry of Justice, 2017b). By the year ending March 2020, this had risen to 64,552 self-harm incidents and 31,568 assaults – equating to one self-harm incident every eight minutes and an assault every 17 minutes (Howard League, 2020a). The number of self-inflicted deaths fluctuated over this period.
- 2.2. Rates of (recorded) self-harm and violence dropped at the beginning of the pandemic, when most people in prison were locked in their cells for up to 23.5 hours a day. However, the number and rate of self-harm incidents remained higher than it had been at the time of the last UN Periodic Review. At the end of March 2021, there were 7,500 fewer people in prison than in March 2017. Yet there had been 12,000 more self-harm incidents over the previous 12 months (Ministry of Justice, 2021c).
- 2.3. The pandemic artificially suppressed violence in prisons by confining people to their cells. However, recent inspection reports have suggested that more recently – as restrictions drag on and become increasingly out-of-step with the

community – frustration with restrictions has itself been linked to violence (HM Inspectorate of Prisons, 2021; HM Inspectorate of Prisons, 2022a; Her Majesty's Inspectorate of Prisons, 2022b).

- 2.4. In February and March 2022, the Howard League invited its members in prison to share their experiences during the pandemic. Some members who are in prison expressed scepticism about the fall in recorded violence and self-harm. One man told us that in his prison, bullying and threats had remained commonplace: *“Prisoners threatened prisoners behind doors, a lot of scores to be settled.”* Others thought that self-harm had risen, but that people had nobody to talk to about it and did not get any support.
- 2.5. The responses included mixed views about changes to association (time to socialise in prison). Some were in prisons where smaller-group association was possible and appreciated it, but others got either a very limited association period or none at all.
- 2.6. The government's Prisons Strategy White Paper risks learning the wrong lessons from the pandemic. It suggests that mass, unstructured association causes violence and bullying, and that prison governors may wish to replace it with structured and small-group activity (Ministry of Justice, 2021b). However, in the many prisons which do not have enough staff to facilitate socialising in small groups, this could simply lead to more time in cell.
- 2.7. There have been serious safeguarding failures in youth custody since the last UPR. In its stakeholder report for the last UPR, the Howard League described revelations of child abuse, coercion and the falsification of records at Medway secure training centre (Howard League, 2016). Medway finally closed in 2019. Last year, inspectors found that the two remaining secure training centres, Oakhill and Rainsbrook, were unable to keep children safe. Urgent notifications were issued for both (Ofsted, 2021a; Ofsted, 2021b).

3. The rights of people in prison have not been upheld over the past two years and are now under further attack

Supported recommendations:

Continue its efforts to improve treatment of inmates (134.162)

Adherence to international standards for respect for detainees' rights and the conditions of detention (134.137)

Pursue cooperation with the international human rights mechanisms (134.54)

- 3.1. The UN Standard Minimum Rules on the Treatment of Prisoners, also known as the Mandela Rules, define solitary confinement as *“the confinement of prisoners for 22 hours or more a day without meaningful human contact”* and prolonged solitary confinement as *“solitary confinement for a time period in excess of 15 consecutive days”* (United Nations General Assembly, 2016).

- 3.2. During the Covid-19 pandemic, tens of thousands of men, women and children in prison have been held in conditions which amount to prolonged solitary confinement. Between spring and autumn 2020, most adult prisoners were locked in their cells for an average of 22.5 hours a day. The inspectorate felt that the *'most disturbing effect of the restrictions was the decline in prisoners' emotional, psychological and physical well-being'*. Restrictions remained in place long after they had been eased in the community, leading to a widespread sense of frustration and injustice (HM Inspectorate of Prisons, 2020: 4).
- 3.3. Though restrictions have varied across different prisons and at different stages of the pandemic, inspection reports continue to describe severely restricted regimes. A recent report for HMP Thameside found that men were locked in their cells for 22.5 hours each day on one of the houseblocks, while a report for HMP & YOI Foston Hall found that women could at best expect two hours out of cell each day (HM Inspectorate of Prisons, 2022c; HM Inspectorate of Prisons, 2022d).
- 3.4. The most recent reports describe inspections carried out in autumn 2021, before the emergence of a new variant that winter. From late 2021, the new variant drove up infection rates in prison. Nearly four thousand new cases were recorded in prisons in December 2021 and nearly seven thousand new cases in January 2022 (HM Prisons and Probation Service, 2022a; HM Prisons and Probation Service, 2022b).
- 3.5. In response to the Howard League survey, members described how they had been affected by the most recent wave, as well as the 21 months beforehand. One reported that: *"Omicron spread through the prison like a knife through butter. It was very rapid."* Another explained that: *"It has taken 2 years for things to get back to normal. But we only got back into a lockdown again."* Respondents had found the depth and length of confinement dehumanising – several compared themselves to animals or suggested that prisons were simply warehousing people – and felt that the restrictions had significantly impacted their wellbeing and mental health.
- 3.6. Staffing has been a significant problem in the most recent phase of the pandemic. The highest number of staff off sick with Covid was recorded at the end of December 2021, when more than 2,000 prison and youth custody staff were categorised as absent due to Covid-19 sickness (HM Prisons and Probation Service, 2022c). Staff shortages due to sickness, burnout and resignations have slowed down the easing of restrictions. One Howard League member explained that they had also led to a qualitative deterioration in relationships: staff were now withdrawn, detached and indifferent, dehumanising people in his prison by treating them in a purely utilitarian way and/or taking out frustrations on them.
- 3.7. Troublingly, the rights of people in prison are now under attack from another direction, through the UK government's proposals to reform the Human Rights Act. The government's proposals defy international law on effective remedies and positive obligations, with grave implications for people in prison.

- 3.8. Under the proposed Bill of Rights, people may be denied remedies for human rights abuses based on their past conduct. The consultation document describes litigation brought by people in prison as evidence of a *‘culture of rights decoupled from our responsibilities as citizens’* (Ministry of Justice, 2021d: 35). As the Howard League has previously argued, rights-based approaches promote a sense of personal responsibility and agency among people in prison (Howard League, 2020b). The proposals instead suggest that people are defined by their contact with the criminal justice system and cannot move forwards with their lives.
- 3.9. The consultation document also questions the value of positive obligations to protect people from violations of their rights, referring to cases which HM Prison and Probation Service (HMPPS) chose to settle. In the Howard League’s view, this highlights the failure of HMPPS to act lawfully rather than any problem with positive obligations (Howard League, 2022).

4. The government has failed to address the acute racial inequalities seen in the criminal justice system, particularly in youth custody

Supported recommendation: Take effective measures to address inequalities experienced by ethnic minority groups and combat discrimination (134.95)

- 4.1. In 2017, David Lammy MP published his review of the treatment and outcomes of Black, Asian and minority ethnic people in the criminal justice system, which had been commissioned by the then Prime Minister (Lammy, 2017). The government accepted his recommendations (Ministry of Justice, 2017c). Yet five years on, racial inequalities in imprisonment have remained the same for adults and have become even worse for children (Ministry of Justice, 2021e).
- 4.2. David Lammy described the youth justice system as his biggest concern. At the time, four in ten children in youth custody were from racially minoritised backgrounds. The most recent annual data shows that racial inequalities have become even starker. Less than half of the children held in custody in 2020/21 were white, 29 per cent were Black and 14 per cent were mixed-race. Six in ten children remanded to custody were from racially minoritised backgrounds and more than a third were Black (Youth Justice Board, 2022). In comparison, the Office for National Statistics estimates that five per cent of all 10–19-year-olds are Black and that four per cent are mixed-race (ONS, 2021).
- 4.3. Analysis commissioned by the Youth Justice Board shows that Black children are more likely to be sentenced or remanded to custody than children from other ethnic groups, even when demographic and offence-related factors are controlled for (Youth Justice Board, 2021). Later in 2021, a thematic report by HM Inspectorate of Probation found that the quality of youth offending services’ casework with Black and mixed heritage boys was inadequate (HM Inspectorate of Probation, 2021).
- 4.4. People from Gypsy, Roma and Traveller (GRT) backgrounds are also starkly overrepresented in youth custody and the wider criminal justice system. The

Lammy Review found that 12 per cent of children in secure training centres were from GRT backgrounds, compared to 0.1 per cent of the general population (Lammy, 2017). A findings paper by HM Inspectorate of Prisons reported that around five per cent of people responding to their prison surveys identified themselves as Gypsy, Roma or Traveller (HM Inspectorate of Prisons, 2014).

4.5. The Police, Crime, Sentencing and Courts Bill is likely to deepen racial inequalities, particularly through the introduction of stop and search without due cause via Serious Violence Reduction Orders – Black people are currently stopped at seven times the rate of white people – and the criminalisation of Gypsy, Roma and Traveller communities through new laws on trespass and encampments (Criminal Justice Alliance, 2021). Meanwhile, while noting disparate impact in its Impact Assessment, substantively the Prisons Strategy White Paper fails to address racial inequalities and discrimination in prison.

Cases

R v Manning [2020] EWCA Crim 592

References

Criminal Justice Alliance (2021). *How the PCSC Bill will entrench racial inequality in the criminal justice system: an overview*. Available at <https://www.criminaljusticealliance.org/wp-content/uploads/Ten-ways-the-PCSC-Bill-will-entrench-racial-inequality-FINAL.pdf>.

HM Inspectorate of Prisons (2014). *People in prison: Gypsies, Romany and Travellers*. Available at <https://www.justiceinspectrates.gov.uk/prisons/wp-content/uploads/sites/4/2014/04/gypsies-romany-travellers-findings.pdf>.

HM Inspectorate of Prisons (2020). *What happens to prisoners in a pandemic?* Available at <https://www.justiceinspectrates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2021/02/What-happens-to-prisoners-in-a-pandemic.pdf>.

HM Inspectorate of Prisons (2021). *Report on an unannounced inspection of HMP Erlestoke*. Available at <https://www.justiceinspectrates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2021/12/Erlestoke-web-2021.pdf>.

HM Inspectorate of Prisons (2022a). *Report on an unannounced inspection of HMP & YOI Styal*. Available at <https://www.justiceinspectrates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2022/01/Styal-web-2021.pdf>.

HM Inspectorate of Prisons (2022b). *Report on an unannounced inspection of HMP & YOI Foston Hall*. Available at <https://www.justiceinspectrates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2022/02/Foston-Hall-web-2021.pdf>.

HM Inspectorate of Prisons (2022c). *Report on an unannounced inspection of HMP Thameside*. Available at <https://www.justiceinspectrates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2022/02/Thameside-web-2021.pdf>.

HM Inspectorate of Prisons (2022d). *Report on an unannounced inspection of HMP & YOI Foston Hall*. Available at <https://www.justiceinspectors.gov.uk/hmiprisons/wp-content/uploads/sites/4/2022/02/Foston-Hall-web-2021.pdf>.

HM Inspectorate of Probation (2021). *The experiences of black and mixed heritage boys in the youth justice system*. Available at <https://www.justiceinspectors.gov.uk/hmiprobation/wp-content/uploads/sites/5/2021/10/The-experiences-of-black-and-mixed-heritage-boys-in-the-youth-justice-system-thematic-report-v1.0.pdf>.

HM Prisons and Probation Service (2022a). *HM Prison and Probation Service Covid-19 Statistics, December 2021*. Available at <https://www.gov.uk/government/statistics/hmpps-covid-19-statistics-december-2021/hm-prison-and-probation-service-covid-19-statistics-december-2021>.

HM Prisons and Probation Service (2022b). *HM Prison and Probation Service Covid-19 Statistics, January 2022*. Available at <https://www.gov.uk/government/statistics/hmpps-covid-19-statistics-january-2022/hm-prison-and-probation-service-covid-19-statistics-january-2022>.

HM Prisons and Probation Service (2022c). *HM Prison and Probation Service workforce quarterly: December 2021*. Available at <https://www.gov.uk/government/statistics/her-majestys-prison-and-probation-service-workforce-quarterly-december-2021>.

Howard League for Penal Reform (2016). *United Kingdom Universal Periodic Review of Human Rights Submission by the Howard League for Penal Reform to the Office of the United Nations High Commissioner for Human Rights (OHCHR)*. Available at <https://howardleague.org/wp-content/uploads/2016/09/Final-UN-periodic-review-on-headed.pdf>.

Howard League for Penal Reform (2020a). *Howard League responds to prison safety statistics*. Available at <https://howardleague.org/news/howard-league-responds-to-prison-safety-statistics/>.

Howard League for Penal Reform (2020b). *Justice does not stop at the prison gate: Justice and fairness in prisons*. Available at <https://howardleague.org/wp-content/uploads/2020/02/Justice-and-Fairness-in-Prison-briefing-one.pdf>.

Howard League for Penal Reform (2021). *Police, Crime, Sentencing and Courts Bill: Howard League for Penal Reform's committee stage briefing*. Available at https://howardleague.org/wp-content/uploads/2021/06/2021_05_27_PCSC_Bill_Howard_League_committee-stage-briefing.pdf.

Howard League for Penal Reform (2022). *Response to the Ministry of Justice's consultation on proposals to reform the Human Rights Act 1998*. Available at <https://howardleague.org/wp-content/uploads/2022/03/Howard-League-for-Penal-Reforms-response-to-the-consultation-on-proposals-to-reform-the-Human-Rights-Act-1998.pdf>.

Lammy, D. (2017). *An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System*. Available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf.

Ministry of Justice (2017a). *Population bulletin: monthly May 2017*. Available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/618128/prison-population-may-2017.rtf.

Ministry of Justice (2017b). *Safety in custody statistics bulletin, England and Wales*. Available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/632625/safety-in-custody-quarterly-bulletin-mar-2017.pdf.

Ministry of Justice (2017c). *Government response to the Lammy Review*. Available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/669206/Response_to_David_Lammy_Review.pdf.

Ministry of Justice (2019a). *Smarter sentences, safer streets: David Gauke speech*. Available at <https://www.gov.uk/government/speeches/smarter-sentences-safer-streets>.

Ministry of Justice (2019b). *The impact of short custodial sentences, community orders and suspended sentence orders on reoffending*. Available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814177/impact-short-custodial-sentences.pdf.

Ministry of Justice (2019c). *Population bulletin: weekly 22 February 2019*. Available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/780794/prison-population-22-feb-2019.ods.

Ministry of Justice (2020a). *HM Prison and Probation Service Covid-19 Official Statistics: Data to 30 September 2020*. Available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/925232/HMPPS_COVID19_SEP20_Pub.pdf.

Ministry of Justice (2020b). *Offender management statistics quarterly: July to September 2020*. Available at <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-july-to-september-2020/offender-management-statistics-quarterly-july-to-september-2020--2>.

Ministry of Justice (2021a). *Prison Population Projections 2021 to 2026, England and Wales*. Available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1035682/Prison_Population_Projections_2021_to_2026.pdf.

Ministry of Justice (2021b). *Prisons Strategy White Paper*. Available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1038765/prisons-strategy-white-paper.pdf.

Ministry of Justice (2021c). *Safety in custody statistics, England and Wales*. Available at <https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-march-2021/safety-in-custody-statistics-england-and-wales-deaths-in-prison-custody-to-june-2021-assaults-and-self-harm-to-march-2021>.

Ministry of Justice (2021d). *Human Rights Act Reform: A Modern Bill of Rights*. Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040409/human-rights-reform-consultation.pdf.

Ministry of Justice (2021e). *Ethnicity and the Criminal Justice System, 2020*. Available at <https://www.gov.uk/government/statistics/ethnicity-and-the-criminal-justice-system-statistics-2020/ethnicity-and-the-criminal-justice-system-2020>.

Ministry of Justice (2022a). *Thousands of new prison places to rehabilitate offenders and cut crime*. Available at <https://www.gov.uk/government/news/thousands-of-new-prison-places-to-rehabilitate-offenders-and-cut-crime>.

Ministry of Justice (2022b). *Population bulletin: monthly February 2022*. Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1060267/prison-pop-february-2022.ods.

Office for National Statistics (2021). *Population estimates by ethnic group, England and Wales*. Available at <https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/ethnicity/datasets/populationestimatesbyethnicgroupenglandandwales>.

Ofsted (2021a). *Urgent Notification: Rainsbrook Secure Training Centre*. Available at <https://www.justiceinspectors.gov.uk/hmiprisons/wp-content/uploads/sites/4/2021/06/Letter-to-Secretary-of-State-Urgent-Notification-Rainsbrook-STC-June-2021-SC.pdf>.

Ofsted (2021b). *Urgent Notification: Oakhill Secure Training Centre*. Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1025203/oakhill-stc-urgent-notification-october-2021.pdf.

United Nations General Assembly (2016). *Resolution adopted by the General Assembly on 17 December 2015*. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/443/41/PDF/N1544341.pdf?OpenElement>.

Youth Justice Board (2021). *Ethnic disproportionality in remand and sentencing in the youth justice system: Analysis of administrative data*. Available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/952483/Ethnic disproportionality in remand and sentencing in the youth justice system.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/952483/Ethnic_disproportionality_in_remand_and_sentencing_in_the_youth_justice_system.pdf).

Youth Justice Board (2022). *Youth Justice Statistics: 2020 to 2021*. Available at <https://www.gov.uk/government/statistics/youth-justice-statistics-2020-to-2021/youth-justice-statistics-2020-to-2021-accessible-version#children-in-youth-custody>.