

13 September 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)**

September 2016

Introduction

Founded in 1866, the Howard League for Penal Reform is the oldest penal reform charity in the world and is the leading non-governmental organisation dealing with penal reform in the United Kingdom. It was awarded special consultative status with the United Nations in 1947.

The Howard League provides an expert legal service to children and young adults (under 21) in prison. We are an independent charity which accepts no grant funding from the UK government.

Our submission relates to the jurisdictions of England and Wales only.

1. Children's rights in prison

The Howard League provided a full submission to the United Nations Committee on the Rights of the Child.¹

Whilst the number of children in prison has reduced significantly, those that remain tend to:

- be spending longer in prison
- come disproportionately from BME communities
- have complex needs and contact with the care system
- be at increased risk of the use of force and solitary confinement
- have virtually no access to effective redress.

The average length of time spent in prison by children on average has increased from 85 days in 2012/13 to 90 days in 2013/14. For children serving long term sentences the average time increased from 302 days to 409 days. Children in England and Wales can be sentenced to life (see below).

45 per cent of the children in custody are black and minority ethnic (BME). This is despite the fact that the proportion of BME children arrested has fallen in line with the reduction in child

¹Howard League (2016) Submission to the United Nations Committee on the Rights of the Child on the UK government's compliance with the UNCRC available at http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/GBR/INT_CRC_NGO_GBR_21063_E.pdf

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arrests². BME children reported a poorer experience than white children in the latest survey of children in custody by Her Majesty's Inspectorate of Prisons (HMIP) and the Youth Justice Board (YJB)³.

Children in prison tend to have complex needs that are not being met and high levels of contact with the care system. Howard League commissioned research shows that this may well be because children in care, especially those in residential homes, are far more likely to be criminalised than other children⁴.

The Howard League review of the Carlile Inquiry ten years on⁵ has shown that restraint, solitary confinement and strip-searching continue to be used on children. Despite a decrease in the number of children in custody, the rate of restraint has more than doubled in the last five years. In the year ending March 2015, children in England and Wales were restrained 4,837 times. Data provided to parliament in 2016 revealed that in the five years to March 2015, children sustained 4,284 injuries as a result of restraint.

The Howard League⁶ reported that the majority of children in penal custody are detained in institutions where restraint is routinely used to get children to do as they are told. This is unlawful. Data on the MMPR (Minimising and Managing Physical Restraint), the new system of restraint for use in children's prisons, showed that the use of force for good order and discipline accounted for between 20-28 per cent of total incidents of use of force in young offender institutions (YOIs).

At Cookham Wood prison, the Inspectorate of Prisons found that children were only receiving association on alternate days and some children were only out of their cells for two hours a day following the imposition of a restricted regime. HMIP found that a quarter of the boys at Feltham prison were on restricted regimes, which meant they were "*in effect experiencing solitary confinement on their residential units*".

There is no central data on the number of children placed in segregation units in prisons. Data from the HMIP inspection of Feltham prison⁷ showed that there had been 295 instances of segregation in the six months prior to the inspection, an increase of 37 per cent since the previous inspection. Boys identified as at risk of self-harm and suicide were locked up for too long with little to do and prison documents confirmed that a number had self-harmed because of the isolation of these restricted regimes.

In 2006, the Howard League recommended that the routine strip-searching of children should end and be replaced by a risk-led approach⁸. Following successful and continued lobbying by the Howard League, the Ministry of Justice introduced pilots using a risk-based approach. In 2014, the prison rules were changed so that children are not automatically strip-searched on arrival. The Howard League legal work with children in prison has revealed that in practice too

² Howard League (2015) Child arrests in England and Wales 2014. London: the Howard League

³ HMIP and YJB (2015) Children in custody 2014-15. An analysis of 12-18-year-olds' perceptions of their experience in secure training centres and young offender institutions. London: HMIP and YJB

⁴ The Howard League (2016) Criminal care: children's homes and criminalising children. London: the Howard League

⁵ Howard League (2016) The Carlile Inquiry 10 years on: the use of restraint, solitary confinement and strip-searching on children. London: the Howard League

⁶ ibid

⁷ HMIP (2015) Report on an unannounced inspection of HMYOI Feltham (Children and young people) 27 July -2 August. London: HMIP

⁸ Howard League (2006) The Lord Carlile of Berriew QC: an independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children's homes

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many children are still being strip-searched. There are particular concerns about boys being strip-searched under restraint, an issue also highlighted by Her Majesty's Inspectorate of Prisons.

The on-going degrading treatment of children in penal detention was exposed in January 2016 by the BBC's *Panorama* programme, presenting its undercover investigation at the privately run Medway Secure Training Centre. The programme revealed child abuse, coercion and the falsification of records at Medway. Kent Police are investigating and have arrested eleven people. The Government commissioned a report by an independent Medway Improvement Board,⁹ which revealed deep-seated concerns. However, the centre remains open, along with two other privately run STCs.

The Howard League has raised concerns with the government about the suitability of MCTNovo to run Rainsbrook STC given its record of human rights violations in its prisons in the US.

Opportunities for children to challenge their treatment and seek redress have been severely curtailed since legal aid cuts in 2013. Alternative systems, such as access to children's advocacy services and the Prisons and Probation Ombudsman, have not adequately addressed this gap. For example, the PPO¹⁰ still receives very few complaints from children, and the advocates have been criticised in the Medway Improvement Board report.

2. Lifers and indeterminate sentences

England and Wales imprisons more people with indeterminate sentences (life and Imprisonment for Public Protection (IPP)) than the other 46 countries of the Council of Europe combined.

Latest figures show that there are 11,505 people serving indeterminate sentences, 7,372 serving life sentences and 4,133 serving IPPs¹¹. This compares to 4,530 in 2001 and 2,708 in 1991¹².

As the number of people serving indeterminate sentences has increased, so too has the length of time they spend in prison. In 2005 the average minimum tariff for a mandatory life sentence was just under 16 years; by 2014 the average minimum tariff was almost 21 years – a 32 per cent increase in less than a decade¹³. The average tariff for non-mandatory life sentences increased by 75 per cent over the same time period, from just over six years to almost 11 years¹⁴. There does not appear to be any explanation for these significant increases in tariff length other than sentence inflation. The Howard League has recommended that the UK government take action to reverse sentence inflation and that a review of recommended tariff lengths for life sentences should be undertaken¹⁵.

IPPs were introduced in 2005 and abolished in 2012. The sentence is widely discredited: denounced by all political parties and the courts. Former Home Secretary David Blunkett, who oversaw the introduction of IPPs, has also publicly stated his regret at the injustices the sentences resulted in. However, latest figures show that 4,133 people remain in prison serving an IPP sentence¹⁶; 1,353 of whom have been in prison for at least five years over their tariff

⁹ Medway Improvement Board (2016) Final report of the Board's advice to the Secretary of State for Justice. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/523167/medway-report.pdf

¹⁰ PPO (2015) Learning lessons from PPO investigations. Why do women and young people in custody not make formal complaints? London: PPO

¹¹ Ministry of Justice 2016

¹² Home Office 2001

¹³ Ministry of Justice 2015

¹⁴ ibid

¹⁵ Howard League (2016) Faint Hope: what to do about long sentences. London: the Howard League

¹⁶ Ministry of Justice 2016

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expiry date¹⁷. Prisoners serving IPP sentences can only be released by the Parole Board if they can demonstrate that the risk of serious harm to the public is no more than minimal - the same test that is applied to life sentence prisoners. However, IPPs tend to have fairly short minimum terms and the prison and probation services have struggled to find the resources to deliver effective interventions and resettlement work during the minimum tariff period. This is compounded by an overstretched Parole Board with a large backlog of hearings has resulted in thousands of IPP prisoners being stuck in prison years beyond their punishment term or following recall.

The psychological impact of the IPP sentence has been documented in numerous reports¹⁸. Recent figures from the Ministry of Justice show that IPP prisoners are much more likely to self-harm than other prisoners, including those serving life sentences¹⁹. It is crucial that the government acts to speed up the release process for the remaining IPP prisoners and plans are put together for their support in the community.

England and Wales is one of the few jurisdictions in Europe to sentence children to life sentences. 'Detention at Her Majesty's Pleasure' (HMP) is a mandatory life sentence for all children convicted of murder. Discretionary life sentences for children convicted of 'grave crimes' (those which if convicted of one as an adult would attract a sentence of at least 14 years) are also available to the judiciary.

The number of people in prison serving indeterminate sentences imposed for an offence committed as a child is difficult to obtain as the Ministry of Justice do not centrally record the information, but it is believed to be several hundred. 361 children received HMP sentences between 1995 and 2013. A further 354 were sentenced to discretionary life sentences or Detention for Public Protection (DPPs) between 2005 and 2012.

There are a number of people sentenced to the equivalent of an IPP as children who are still stuck in the system. The Howard League is aware of at least one person who was given a minimum term of less than one year aged 15, which he has now served ten times over.

3. Recall

The use of recall in England and Wales, the process by which people are administratively returned to prison after having been released on licence, is excessive. The number of people in prison due to recall has increased by 55 times since 1993²⁰. In the last 12 months alone the recall population has increased by 15 percent²¹. The recent increase is largely due to the changes brought in by the Offender Rehabilitation Act 2014, which enabled the majority of the probation service to be sold to private companies and for the first time extended licence conditions to people who had served short sentences of less than 12 months.

There is a lack of due process in the recall system. In the majority of cases the initial decision to recall to custody is made by a single probation officer and invariably rubber stamped by the Secretary of State for Justice. The reasons for which people can be recalled are broad and often vague. They include: failing to be 'of good behaviour', 'failure to keep in touch' and 'drugs/alcohol', amongst others. These encompass a wide range of behaviours which would be of no interest to the authorities if a person were not on licence. If a person is recalled due to suspicion they have committed a further offence, they are not entitled to be released

¹⁷ Letter from Michael Gove to Bob Neill

¹⁸ For example, Howard League (2013) *The Never-Ending Story: indeterminate sentences and the prison regime*: the Howard League

¹⁹ Ministry of Justice 2016

²⁰ Ministry of Justice 2013 – story of the prison population 1993-2012

²¹ Ministry of Justice 2016

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immediately if charges are not subsequently brought. A lack of suitable accommodation and support means that prisoners who would otherwise be eligible for release following recall are often stuck in prison.

There are real risks that in the new partly privatised probation system, decisions will be motivated by financial factors. The National Audit Office (NAO) has expressed concerns that private companies will be less motivated to trigger breach proceedings as such actions would affect their 'results'. Conversely, the Howard League is concerned companies could be encouraged to trigger recall as early as possible to avoid investing in people who they think are doomed to fail²².

The recall and breach system therefore requires significant reform. The Howard League argues that the possibility of recall to prison as a consequence of a breach of licence should be removed. Further criminal activity can be dealt with separately through the usual channels. Other community penalties can be imposed for breaches of licence that do not amount to a criminal offence.

4. Prison overcrowding

Prisons in England and Wales have long been overcrowded. The problem has been intensified in recent years due to a combination of prison closures and a rising prison population²³. 74 of the 118 prisons currently operational (excluding immigration removal centres) are holding more people than they are designed to hold safely²⁴. Across the estate as a whole there are 8,206 more people than the system can accommodate under the Certified Normal Accommodation measure, the Ministry of Justice's own assessment of the number of people that can be held in safe and decent conditions. Latest figures show that this equates to 22,272 people in overcrowded cells²⁵.

The Ministry of Justice has stated that the current policy to build nine new prisons in the coming years will help tackle the overcrowding problem. However, all previous attempts to build out of an overcrowding crisis have failed as the prison population continues to rise. New prisons therefore simply create an even larger, overcrowded system. Instead of building new prisons the government should focus on reducing the number of people in prison.

5. Violence and deaths in prison

There has been a decline in safety in prison custody since 2012 and a rise in the levels of assaults, self-harm and deaths.

There were eight homicides in prison in 2015, the highest number of homicides per calendar year since records began in 1978. Data from the Ministry of Justice²⁶ show that in the last 12 months to December 2015 there were: 20,518 assault incidents, up 27 per cent from 16,219 incidents in the same period in 2014. There were 2,813 serious assaults, up 31 per cent from 2,150 in the previous year.

There were 15,511 prisoner-on-prisoner assaults, up 24 per cent from 12,552 incidents in the previous 12 months. Of these, 2,197 were recorded as 'serious', a rise of 31 per cent from 1,682 in the same period in 2014.

²² National Audit Office 2016

²³ Howard League (2014) *Breaking Point: Understaffing and overcrowding in prisons*. London: Howard League

²⁴ Ministry of Justice, prison population monthly statistics

²⁵ Information obtained from a Freedom of Information request to the Ministry of Justice.

²⁶ Ministry of Justice safety in custody statistics.

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The number of recorded self-harm incidents in prison rose from 23,158 in 2012 to 32,313 in 2015, a rise of 40 per cent. 9,458 prisoners reported to have self-harmed, up 1,665 (21%) on the same period in 2014. There were 2,261 hospital attendances as a result of self-harm in 2015, an increase of 504 (29%) on the previous year.

89 people died by suicide in prison in 2015 and the same number in 2014.

In a recent report on Forest Bank prison, Her Majesty's Inspectorate of Prisons²⁷ recorded that some prisoners were 'self-isolating' themselves as they were too frightened to come out of their cells.

6. Solitary confinement in prisons

The Howard League has raised numerous concerns about the use of solitary confinement in prisons. We provided expert evidence and legal argument before the Supreme Court in the case of *R (on the application of Bourgass and another) v Secretary of State for Justice* (2015) UKSC 54, which led to the revision of the Secretary of State's segregation policy. We have also brought numerous complaints about the use of isolation to the Prison and Probation Ombudsman (PPO).

The Supreme Court judgment in *Bourgass* highlighted the risks to the physical health, mental health and even life of a prisoner subject to a prolonged period of solitary confinement, including:

- The disproportionate number of self-inflicted deaths in segregation
- The harmful psychological effects of isolation, which can become irreversible after 15 days
- The symptoms of solitary confinement, ranging from insomnia and confusion to hallucinations and psychosis
- Negative health effects, which can occur after only a few days in solitary confinement and rise with each additional day spent in solitary.

The Harris Review²⁸ into self-inflicted deaths in custody of 18-24 year olds and the Prisons and Probation Ombudsman²⁹ expressed concerns about the use of segregation and special accommodation.

The Howard League submitted a response to the National Offender Management Service's Amendment to the policy on segregation (PSO 1700), raising concerns that the revised rules on segregation did not safeguard children and other vulnerable prisoners against the very real risks associated with segregation.

The Howard League is firmly of the view that the 42 day time limit for an external review of the use of segregation for individuals is too long for all prisoners and that the Rules are unlawful. We urged the Secretary of State for Justice to revise the Rules. The Legislative Scrutiny Committee referred the amendment to the Rules to the attention of the House of Lords and reported that the Secretary of State was reviewing the 42 day policy in early 2016. In recent correspondence with the Howard League, the Minister for Prisons confirmed that the review is yet to commence. The Howard League continues to work with children and young people who are spending prolonged periods in isolation and is not aware of a single decision by the

²⁷ HMIP (2016) Report on an unannounced inspection of HMP Forest Bank, 8-9, 15-19 February 2016. London: HMIP

²⁸ Harris (2015) Changing Prisons, Saving Lives: Report of the Independent Review into Self-inflicted Deaths in Custody of 18-24 year olds. London: HMSO

²⁹ PPO (2015) Learning from PPO Investigations: Self-inflicted deaths of prisoners – 2013/14. London: PPO

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Secretary of State to bring the prolonged isolation of a young person to an end as a result of his external review.

If you require any further information about the points raised above, please do not hesitate to get in touch.

Yours sincerely

Frances Crook

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