

July 2014

The Howard League for Penal Reform's submission to the Independent Review into Self-Inflicted Deaths in NOMS Custody of 18-24 year olds

Introduction

We welcome the opportunity to engage in Lord Harris' review. The review is a unique opportunity for expert scrutiny of systemic failings in the penal system that have culminated in the tragic deaths of so many young adults in custody.

This inquiry is the only opportunity to examine the wider context surrounding young adults in prison. Inquests and inquiries have hitherto only considered their treatment in prison that immediately led to death but no one has asked the critical question about whether they should have been in prison in the first place. From the inquest and inquiry into the murder of Zahid Mubarek to the death of Greg Revell a couple of weeks ago, the question about the remand and sentencing decisions and practices of the courts need to be questioned as a contributory factor that led directly murder and suicide. Far too many young men are remanded and sentenced to prison unnecessarily and unless an independent inquiry looks at the route into custody as well as the treatment whilst inside, the problem will not be solved and lives will continue to be lost.

Far too many teenagers and young adults are remanded to custody by the courts but do not subsequently get a prison sentence and far too many are sentenced to prison for short periods of time. This review has the opportunity to scrutinise the wider context and make recommendations that will have a real impact so as to reduce the risk of deaths in custody.

The Howard League for Penal Reform believes that there are too many young adults in prison who should not be there at all. The crime rate continues to fall. While the child custody population has fallen by two-thirds since 2008, there has only been a minimal fall in the number of young adults in prison. It is critical that we build on the successes for children across the system by ensuring that a different approach is taken for young adults from the first point of contact with the police to sentencing.

This contributes to overcrowding, swallows up scarce resources and causes untold misery. Our report, *Breaking point: Understaffing and overcrowding*^[1] charts cuts in prison officer numbers by 30 per cent in the past three years, matched by the high rates of suicide, serious assaults and rioting. The number of call-outs for the National Tactical Response Group, which deals with serious incidents, rose by 72 per cent between 2010 and 2013.

There is much to be done to prevent the increasing number of suicides by young people in prison and soon after release. Our submission draws on our policy, participation and legal work with young adults in prison.

Summary of submission

Many young adults face avoidable problems in prison that may increase the likelihood of suicide. Despite claims from the Ministry of Justice as to the need for prisoners to make use of their time, most young adults are cooped up for excessive periods of time each day with nothing to do. The inadequate provision of meaningful or, indeed, any activity at all for this group is exacerbated by the hopelessness caused by the new incentives and privileges regime. The scheme, introduced in November 2013, makes it impossible for most prisoners to be rewarded for good behaviour or motivation. Others are paralysed by violence, racism, homophobia and insufficient interventions to meet their needs or allow them to progress in prison.

The Howard League for Penal Reform has identified a number of warning signs that we believe should trigger anxious scrutiny of a young person's well being. When young people with mental health problems, learning difficulties, histories of abuse and victimization are sent to prison the authorities should not use segregation but should make sure that young people benefit from monitoring and support for their own safety. The caseload of our legal team shows that too many vulnerable teenagers are subjected to adjudications and physical interventions in prison. When the state takes a young person into its care, it must adhere to the highest standards to protect and safeguard them and to enable them to flourish.

Finally, we believe that even where young people's needs and concerns are known, the current system is inadequate. Disciplinary processes are used inappropriately to deal with issues of profound concern. Measures to monitor risk of self-harm are not sensitive or tailored to the needs of individuals and are not meaningful. Safeguarding procedures for young adults are virtually non-existent.

About the Howard League

Founded in 1866, the Howard League is the oldest penal reform charity in the UK. The Howard League has over almost 10,000 members, 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 the UK government.

The Howard League campaigns for less crime, safer communities and fewer people in prison. We aim to achieve these objectives through conducting and

^[1] July 2014, available at <http://www.howardleague.org/breaking-point/>

commissioning research and investigations aimed at revealing underlying problems and discovering new solutions to issues of public concern. The Howard League's objectives and principles underlie and inform the charity's parliamentary work, research, legal and participation work as well as its projects.

Since 2002 the Howard League for Penal Reform has provided the only legal service dedicated to representing children in custody. We also provide a dedicated legal service for young adults in prison (under 21) and, where appropriate, comment on the particular considerations that are required to ensure that this age group is dealt with fairly and appropriately.

Context

The safety of young adults in prison needs to be considered in the wider context of the changing criminal justice landscape. There are currently 85,428 people in prison⁷. The population has doubled since 1993⁸ and many prisons are subject to chronic overcrowding with the majority of prisons holding more people than they are designed to do safely⁹. The Ministry of Justice estimates that its Offender Rehabilitation Act 2014 will cause 13,000 people to be recalled or committed to custody, at an additional cost of £16 million per year.¹⁰ It is likely that a significant proportion of these people will be young adults, thereby exacerbating their hopelessness.

The pace of change within the secure estate is unprecedented with prisons opening, closing and changing the type of prisoners they accept at an alarming rate. In the past few months the Howard League for Penal Reform has been informed of at least three establishments that are planning to close their young adult wings.

On top of this, prisons have been required to cut their budgets. In the financial year 2013-14 the NOMS budget was £274 million less than the year before¹¹. This has meant losing more experienced staff. In November the Secretary of State introduced a tough new regime for all adult prisoners.¹² The policy was justified as a means of dealing with the public perception of '*prisoners spending their days languishing in their cells watching TV, using illegal mobile phones to taunt their victims on Facebook or boasting about their supposedly easy life in prisons.*' Yet in reality, the new regime has made it virtually impossible for most prisoners to progress through the incentive levels and get out of their cells. Only those with a specific 'job' can be

⁷ As of 4 July 2014 the prison population in England and Wales is 85,428
Reference: Ministry of Justice 2014. *Population and Capacity Briefing for Friday 04/07/2014*. London: Ministry of Justice <https://www.gov.uk/government/publications/prison-population-figures-2014>

⁸ Reference: Ministry of Justice (2013) *Story of the Prison Population: 1993 – 2012 England and Wales*. London: Ministry of Justice
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/218185/story-prison-population.pdf

⁹ Reference: Ministry of Justice (2014) *Prison Population Monthly Bulletin - May 2014*. London: Ministry of Justice <https://www.gov.uk/government/publications/prison-population-figures-2014>

¹⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/208171/updated-rehabilitation-bill-impact-assessment.pdf

¹¹ Reference: National Offender Management Service (2014). *National Offender Management Service Annual Report and Accounts 2013–2014*. London: The Stationary Office
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/322699/NOMS_AR_2014_web.pdf

¹² <https://www.gov.uk/government/news/major-shake-up-to-prisoner-incentives>

on the highest level in most prisons and in most prisons, there are only a fixed number of such posts. The rate of self-inflicted deaths among young adults has doubled since the scheme was introduced. Between November 2013 and April 2014 ten young adults took their own lives compared to five in the six months prior to the introduction of the scheme.

As of March 2013, there were **18,534 young adults aged between 18 and 24 in custody**. While the number of young adults has reduced over the past year, in our view, there are still too many young adults in prison who should not be there. Approximately one fifth of young adults in prison are on remand.

Research to be published shortly by the Howard League will show that 70 per cent of people remanded to prison by magistrates do not get a prison sentence.

Many young adults receive very short prison sentences. The average custodial sentence length of young adults aged 18-20 sentenced in magistrates courts in 2013 was 2.2 months. In 2013, 2,133 young adults were sentenced to custody by magistrates¹³.

Between January 2011 and May 2014, 44 young adults took their own lives in prison. Of these, 16 (36 per cent) young adults were on remand at the time of their death.

Problems faced by young adults in prison

Research undertaken by the T2A Alliance (2009) demonstrates that young adults are a distinct group with acute needs¹⁴:

- Over half of young adults are unemployed on arrest and a third have a basic skills deficit compared with a quarter of those over 25 years of age;
- Young adults in the criminal justice system are more likely to abuse alcohol than both older and younger prisoners;
- Young adults are more likely than older prisoners to have been in the care system.

Further, evidence shows that people mature at different rates, and many young adults in the criminal justice system exhibit development levels more characteristic of far younger people. Brain development continues into the mid to late 20s, affecting reason, judgement and impulse control, and young people with the most troubled or traumatic childhoods often take longer to mature¹⁵.

There is some evidence that a surprising number young adults in custody are grieving from the death of loved ones. This is a common emerging theme in our young adult legal casework. A study in HM Prison Cardiff has highlighted the

¹³ Reference: Ministry of Justice (2014) *Criminal Justice Statistics quarterly December 2013*, Sentencing table A5.5. London: Ministry of Justice

<https://www.gov.uk/government/publications/criminal-justice-statistics-quarterly-december-2013>

¹⁴ Helyar-Cardwell, V., & Catch22 (2009) *A New Start: Young Adults in the Criminal Justice System*, London: <http://www.t2a.org.uk/wp-content/uploads/2011/09/T2A-A-New-Start-Young-Adults-in-the-Criminal-Justice-System-FINAL.pdf>

¹⁵ The Royal Society (December 2011) *Brain Waves Module 4: Neuroscience and the Law*, London: https://royalsociety.org/~media/Royal_Society_Content/policy/projects/brain-waves/Brain-Waves-4.pdf

prevalence of a history of bereavement within the young adult group and the resulting adverse impact on mental health¹⁶. The Howard League for Penal Reform has been asked to assist several young people in custody to attend the funerals of loved ones. Young people are routinely refused access to see dying relatives and often have to endure an intense struggle to be allowed to attend funerals. The application of the prison service policies concerning this is rigid and mechanical, often ignoring the fact that many young people have unusually close relationships with extended family. Applications are often not dealt with expeditiously causing great stress and anxiety for young people who are desperate to show their respect to relatives who have died and are unable to appeal decisions made at the eleventh hour. One young person represented by our legal team was given a formal warning for pestering officers about the progress of his application to attend his grandmother's funeral. Another young person who went into custody aged 14 was denied a visit to his dying mother. He was subsequently allowed to attend her funeral but officers escorting him did not get him there on time and he missed his mother's burial.

We are also concerned that there is no evidence that young adults who experience the death of other young people in prison are adequately supported. One young person told our U R Boss project that nobody came to speak to him after his friend was found hanging in his cell or asked if he wanted to talk to anyone about how he felt. He told us that he had wanted to talk to someone about it. The Howard League for Penal Reform legal team is aware that this is not a unique experience. Another young advisor has blogged about the exposure to death and self harm in prison¹⁷:

*"A girl tried killing herself the other day. The first time I saw that it f**king traumatised me, I thought she was dead. She was hanging, they had to cut her down. You see self-harm a lot in here. The first time I saw someone with their wrists slit open I thought it was horrible. Then you normalise it. It's like cutting your wrists wide open and bleeding everywhere is normal. Then you see it and think 'for f***s sake' and have a giggle."*

It appears that many young people are reliant on the listener system for support in processing the impact of deaths in custody and that listeners themselves are not sufficiently supported. One young advisor to the U R Boss project who had been a listener with the Samaritans for six months in a YOI talked of his experience of helping people through a rough patch & listening without giving advice - which he said was sometimes hard to do. He wasn't called out a lot but when he was he saw a lot of suffering & some 'pretty gruesome scenes'. He said part of his work was to support people who had witnessed self-harm or suicide attempts. He said people with mental health conditions are frequently locked up with people who don't & he thinks this isn't safe or responsible for either party. He said more mental health support is needed & more awareness of people's vulnerabilities from the prison.

Young adults are also much more likely to be exposed to violence in custody. Assaults and fights occur most frequently in the younger age groups. The most

¹⁶ Finlay, I. G., and Jones, N. K. (July 2000) *Unresolved grief in young offenders in prison*

¹⁷ <http://www.urboss.org.uk/blog/you-see-a-lot-of-self-harm-here-quiete-a-few-deaths>

recent safety in custody statistics show that in 2013, 61% of prisoner assailants and 66% of fighters were aged 24 and under¹⁸.

Young adults account for a disproportionate number of incidents of self-harm in prisons. In 2013, 18-24 year olds accounts for 36.7 per cent of recorded incidents of self-harm, despite making up only 22 per cent of the prison population.

Bullying and violence are rife in the young adult estate. Our legal team and young advisors tell us that anti-bullying schemes do not work and if anything can result in rough justice and further resentment with anyone accused of bullying being automatically downgraded and victims of bullying not feeling safe.

Recent HMIP reports have repeatedly highlighted the high levels of bullying and use of force in the adult estate¹⁹.

The combination of inadequate mental health support and the absence of opportunities for young adults to progress and develop, now exacerbated by the new incentives scheme, means that the needs of young adults are not met in prison.

Young adults in prison have very limited control over their lives and find it very hard to get their voices heard, either in the first instance or in order to complain. The impact of this sense of powerlessness is difficult to gauge but we believe it has a significant impact on young people's welfare.

Nor can young adults access alternative support. Most are detained far away from home. Children who have transferred from the juvenile estate face particular problems, losing a great deal of support from statutory services with all the people involved in their care changing, sometimes overnight. Even those who are entitled to leaving care support from children's services find it hard to access that support in the young adult estate.

Warning signs

There are a number of prison procedures that should act as 'warning signs' that a young person is in trouble and may need specialist help. These include where a young person is segregated, placed on self-harm or suicide watch (an ACCT), subjected to restraint and frequent adjudications.

Segregation and ACCT

Under the YOI Rules it is permissible for young adults to be segregated. The impact of segregation has been widely accepted as damaging. The European Committee

¹⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/305614/safety-in-custody-to-dec-2013.pdf

¹⁹ See for instance, (Durham) <http://www.justiceinspectors.gov.uk/hmiprison/inspections/hmp-durham/#.U4icryjLLP0>; (Holme House) <http://www.justiceinspectors.gov.uk/hmiprison/inspections/report-on-an-unannounced-inspection-of-hmp-holme-house-19-30-august-2013-by-hm-chief-inspector-of-prisons/#.U4icxyjLLP0> and (Parc) <http://www.justiceinspectors.gov.uk/hmiprison/inspections/report-on-an-unannounced-inspection-of-hmp-yoi-parc-9-19-july-2013-by-hm-chief-inspector-of-prisons/#.U4ic3CjLLP0>

for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ('CPT') in its annual report of 10 November 2011 found solitary confinement, defined as confining a prisoner to their cell for 22-24 hours per day, can be "*extremely damaging*" to mental and physical health and should not be applied as punishment for a period any "*higher than 14 days*". The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, has reported in similar terms, with reference to the limit being 15 days before "*the harmful psychological effects of isolation can become irreversible*"²⁰.

The Howard League for Penal Reform legal team receives many calls from young adults who are segregated without understanding the reasons or knowing how long it will last for.

The Howard League for Penal Reform **recommends** that young adults should only be segregated in rare and extreme circumstances and only for a matter of hours.

Many of the young people who take their own lives in prison are subject to an ACCT plan at the time of their deaths. A recent PPO report found that many ACCT plans are poorly put together and inadequately monitored²¹. The report criticised the prison service for the poor communication between departments and patchy recording of information which accompanied many ACCTs. In regard to young people in particular it highlighted that families were seldom involved and kept up to the date with ACCT plans and processes, even though it was clear that the involvement of family members would have been beneficial in many situations.

The Howard League for Penal Reform **recommends** that staff focus on the individual young person and their needs when delivering the ACCT and supporting young people through a crisis.

Too many young people are not identified as being at risk. The recent death of 18 year old Greg Revell in Glen Parva is a shocking example. Despite evidence that he had mental health problems and had attempted suicide previously, he was placed alone in a cell and took his own life on his second night in the jail.

The Howard League **recommends** that much more intensive and supportive induction system be introduced with enhanced staffing, and, that improved training be given to health care staff.

In 2013 the PPO published a short review on the deaths of children and young adults held in STCs and YOIs. This report also contained several criticisms of the ACCT system. These mostly concerned a lack of child-centeredness and conflicts between care or safeguarding and discipline or control mechanisms, such as adjudications and the rewards system. The report recommended that ACCT processes should be more child-centred and involve senior managers, families and outside agencies as part of an effective care planning approach to managing young people at risk of self-harm and suicide²².

²⁰ Report transmitted to the UN General Assembly on 5 August 2011

²¹ http://www.ppo.gov.uk/docs/ACCT_thematic_final_web.pdf

²² http://www.ppo.gov.uk/docs/LLB_FII_03_Child_deaths.pdf

So far this year, three of the eight young adults who have committed suicide in prison were subject to an ACCT at the time of their death. In 2013, five out of thirteen were subject to an ACCT. In 2012, one out of nine was subject to an ACCT. In 2011, 4 out of 16 were subject to an ACCT.

Adjudications

Recent research by the Howard League for Penal Reform shows a huge increase in the use of prison disciplinary procedures. Adjudications before the independent adjudicator have risen steadily by around 1000 each year for the last four years: the latest figures suggest there were 17,500 independent adjudications last year. There are around 100, 000 internal adjudications each year²³.

Lawyers from the Howard League for Penal Reform legal team were shocked to find over 80 adjudications listed in a single day in a young adult jail recently. Breaking down the reasons and circumstances behind adjudications can be important. Adjudications are often a sign that the prison is failing, something is wrong, that the young person does not feel safe or is not coping.

Restraints

The restraint of a young person in custody should be a rare event which takes place due to absolute necessity. There is already comprehensive guidance about the use of restraint and the need for debriefs and reflection following a restraint. However, such incidents do not trigger a holistic review of what might underlie the incident.

Inadequate responses to young adults in trouble

Not only are the warning signs outlined here often not treated as such, but even where the procedure is self consciously designed to respond to a young person's needs, it can often be inadequate or even damaging.

For example, many young people try to avoid going on an ACCT because it is so intrusive and the support that accompanies it is so limited. Sometimes, the ACCT procedures are not thorough enough to protect a young person: The Howard League represented one young woman who slept with a ligature around her neck every night, even while on an ACCT.

Adult safeguarding procedures in prisons are in their infancy. While HMIP recently introduced safeguarding to its expectations, early results suggest that for adults it is simply not working. The Howard League for Penal Reform has a safeguarding policy and will alert both prison and relevant local authorities where we believe a young adult is at risk. Our experience of this has been that prisons rarely respond to these referrals and that local authorities often deny any responsibility for young adults in prison in their area.

²³ Statistics provided to the Howard League for Penal Reform by the Chief Magistrates Office in response to a request under the Freedom of Information Act 2000 on 8 May 2013. Further statistics available on the Ministry of justice website: <https://www.gov.uk/government/publications/offender-management-statistics-quarterly--2>

The law has been developed immensely for care leavers in the community in recognition of the special needs of this group. While the law applies equally to young adults in custody, duties to care leavers are not actively promoted and the prison regime and staff do not readily facilitate input and support from local authorities for this group. This is a missed opportunity.

Conclusion

The Howard League for Penal Reform believes there too many young adults in prison who should not be there at all. Many are locked up on short sentences or remanded only to be released by the court. There should be a concerted effort to reduce the number of young adults in custody to mirror the successes in the vast reduction in the number of children in custody that has reduced by two thirds in the last decade. This will require systemic change from the point of first police contact to sentencing.

For those young adults who remain in the system, it is critical that their specific needs are recognised and met. This cannot be done if young adults are mixed in with the general adult population. Young adults should be provided with small-scale local specialist accommodation designed to meet their needs.

The warning signs we have outlined should be formally recognised as a possible cry for help and trigger a full review of the young person's needs, together with a care plan to meet them.

Safeguarding procedures for young adults must be developed across the prison estate and in conjunction with health and social care.

All young adults in prison should be offered a leaving care service and independent advocacy services that mirror the provision for children.

This review was commissioned in response to growing concern at the number of young people committing suicide in prison at a time when it was planned to abandon the system for holding this age group in separate establishments. Several dreadful inspection reports of prisons holding young adult males led to alarm and seduced decision makers into thinking that the cheaper and more flexible option of just putting young adults into the main prison estate could be sold as a safer option. This would be a mistake.

Trying to solve one problem by causing another is not the answer. The few teenagers and young adults who require custody need more and better trained staff to care for them. The problem should be solved by reducing the number of young adults in prison.

The experiment in Portland that was seen as a success was based on introducing a few handpicked older men to a prison that was run, and run well, for young adults. The young adults shipped into Winchester have put them at risk. Mixing is being proposed in some quarters merely as a cost saving measure. It is not cheaper if people die.

Further information

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