

Communities and Culture Committee

CC(3)-11-09 - Paper 3 – 9 July 2009

Committee Inquiry into Youth Justice in Wales – evidence gathering – The Howard League for Penal Reform

The Howard League for Penal Reform welcomes the opportunity to provide evidence to the inquiry into Youth Justice in Wales.

The Howard League for Penal Reform is the oldest penal reform charity in the world and set up a legal department to represent children and young adults in the penal system in 2002, following a successful judicial review against the Home Office that forced it to recognise that the 1989 Children Act protects children in prison (the 'Children Act case'). The Howard League legal team has represented hundreds of children and young people and has a track record of success in forcing improvement to prison conditions, parole procedures and support on release.

Enclosed with this paper are two relevant recent publications from the Howard League for Penal Reform. These are:

- Punishing children: a survey of criminal responsibility and responses across Europe This report examines and compares different youth justice systems across Europe. It contrasts the welfare-based approach across Europe with that used in England and Wales where punishment is the centre of the response to children in trouble with the law
- To devolve or not to devolve? The pros and cons of making local authorities financially responsible for children in penal custody This briefing paper considers the pros and cons of devolving youth custody budgets and asks a fundamental question: to what extent can altering the financial arrangements effect real change for the better or is this in reality a problem of law, policy and attitudes?

Although the latter report focuses on primarily English debate on the devolution of youth custody budgets to local authorities, the issues it raises are relevant to any consideration of a broader devolution of youth justice policy from Whitehall to Cardiff.

What follows is our response to the key issues that the Committee is considering as part of its inquiry. We have answered some of the questions outlined in your terms of reference and our responses are below. I would take this opportunity at the outset to

suggest that the inquiry's focus on the "secure estate" should not obscure the wider discussion that needs to be had about how Welsh children are treated in the youth justice system. Overly focussing on the current woes in the (largely English) secure estate is the wrong way to frame the discussion. There is an opportunity to say clearly that "Welsh children deserve better" and that this pertains to all aspects of how Welsh children in trouble with the law are treated, not simply in the secure estate but also in the community. Focussing on the "secure estate" leads to descriptions of community based solutions as "alternatives to custody", as if prison is the unalterable premise rather than one option among many. This is particularly important, given that for children in particular prison is also an option that will almost always be inappropriate. Rather than cling to the assumptions and mindset associated with the punitive yet ineffective approach that has emanated from Whitehall, Wales should be looking to fresh and wider thinking in order to take the debate forward and pioneer a distinctively Welsh approach.

- **What action should the Welsh Assembly Government take to improve the experience of Welsh children in the secure estate? Should responsibility for the secure estate be devolved to Wales?**

The Howard League for Penal Reform supports a stronger role for the Welsh Assembly Government in improving the experience of Welsh children in the secure estate. Although the UK government claims to adhere to the United Nation Convention on the Rights of Child (UNCRC) and in particular Article 37b where detention or imprisonment of a child shall be "used only as a measure of last resort" both the very low minimum age of criminal responsibility and the very high numbers of children in custody demonstrates that England and Wales as a jurisdiction is in fact in breach of the UNCRC. Certainly the concluding observations published by the UN Committee on the Rights of the Child in October 2008 reiterated a number of concerns relating to children in custody in England and Wales, including the low minimum age of criminal responsibility and the fact that custody was not being "applied as a measure of last resort" (United Nations Committee on the Rights of Child 2008, 'Concluding observations: United Kingdom of Great Britain and Northern Ireland'). In addition, the widespread use of custody has been ineffective at preventing reoffending and making communities safer – with 77% of children aged under 18 released from custody in 2006 in England and Wales reoffending within a year (Ministry of Justice 2008, 'Reoffending of juveniles: results from the 2006 cohort').

As noted in the paper *To devolve or not to devolve* one of our primary concerns about devolving youth custodial budgets to local authorities is that this will not achieve any positive outcomes without being accompanied by a fundamental review of the use of custody for children. This should not be the case in devolving youth justice policy to Wales, given the Welsh Assembly Government's commitment to a rights-based agenda in its approach to all children and young people. As previously stated, there would be an opportunity for Wales to lead the way in youth justice throughout the UK and to break decisively from the punitive yet ineffective approach that has emanated from Whitehall.

- **How effectively does the *All Wales Youth Offending Strategy* address issues to do with the secure estate? To what extent is the Welsh Assembly Government’s ‘rights based agenda’, in its support to children and young people, delivered to Welsh children in the secure estate?**

The *All Wales Youth Offending Strategy* is in many ways an admirable statement of intent, not least in its insistence that children in conflict with the law should be seen as children first and offenders second. Unfortunately, the *Strategy* is several years old and does not sufficiently address the difficulties in implementing the Welsh Assembly Government’s rights-based agenda when so many Welsh children are not even held in custody in Wales. We would concur with the Children’s Commissioner for Wales in his submission that “there needs to be a more robust discussion with the Welsh Assembly Government and the Youth Justice Board about the rights of Welsh children and young people held in England and how services can be delivered within a rights-based framework” (Children’s Commissioner for Wales 2009, ‘The National Assembly for Wales, Communities and Culture Committee inquiry into Youth Justice in Wales: response from the Children’s Commissioner for Wales’).

- **What particular problems are there in implementation and the delivery of support services for children and young people in the secure estate, including mental health provision, support for education and resettlement services?**

Our legal department has represented a number of young people from Wales in the secure estate, as a result of which we have identified particular problems in resettlement services, educational support and mental health provision. J, a Welsh young person represented by the Howard League, was a survivor of sexual abuse and had complex needs. He came from an area of great deprivation, high criminal activity and drug abuse. He had been in care and known to Caerphilly social services department for at least three years prior to entering custody. While in prison, J was on suicide watch and became a victim of bullying.

Eventually J earned early release due to his progress and good behaviour in custody. He contacted the Howard League because he was worried that no accommodation had been located for him less than a month before his release date. The Howard League issued legal proceedings against J’s local authority. Three days before J’s release date, accommodation identified by the Howard League was opposed by the local authority. When J was finally released a month later, he was collected from prison two hours late by social services and taken to the homeless person’s unit, where he was offered bed and breakfast accommodation in Cardiff, far from his home and family. He was too scared to take up the accommodation and was left homeless for nearly two weeks. At a further court hearing, the local authority agreed to offer J bed and breakfast accommodation closer to his home and family. This remained unsuitable for J’s needs. The final judgment of the court found the local authority guilty of serious failings and non-compliance with legal duties. The judge found the local authority’s assessment and planning process hopelessly

inadequate. He was further concerned by the “mindset and culture” of the local authority, which he felt came close to breaching J’s rights under Article 8 of the European Convention on Human Rights.

In our experience, this is a common scenario. The oft-neglected duties of local authorities towards children in custody were explored in the Howard League publication *Chaos, neglect and abuse: the duties of local authorities to provide children with suitable accommodation and support services* (Howard League 2006). We strongly recommend that adequate resources, training and guidance be provided to local authorities in Wales in order to strengthen the provision of resettlement services in keeping with the commitment to using child custody as a last resort, in line with the UNCRC.

MP, a young person from Bridgend represented by the Howard League, was adopted at a young age following abuse and neglect by his heroin dependent parents. Social services’ input ended with the adoption and when MP began to manifest serious mental health problems at a later age, he and his adoptive family were left unprepared and unsupported. MP’s offending behaviour escalated and he spent most of his adolescent years in custody from the age of 15, including in HMYOs Parc, Ashfield, Portland, Aylesbury and Feltham. In custody MP self-harmed in an extreme and repetitive way, placing his life and long-term health in danger. He did not receive adequate mental health treatment and attempts to get him transferred to a psychiatric hospital were blocked by South Wales Forensic Psychiatric Service. He was left to deteriorate in prison until his self-harming escalated to such an extent that his life was at risk and the prison could no longer cope. It was only at this point that a transfer under the Mental Health Act was initiated. The transfer was further delayed due to wrangling over which trust was responsible, until finally the court took matters into its own hands and made a hospital order. MP stabilised rapidly in hospital and has made significant progress.

This case highlights the lack of effective mental health provision for Welsh children who go through the care and/or criminal justice system, including difficulties in diverting them from the criminal justice system. The Howard League for Penal Reform would welcome better resourced provision for child and adolescent mental health services in Wales, with particular focus on early intervention for looked after children and those in the criminal justice system, accompanied by a commitment to divert all children with mental health problems away from the criminal justice system and into therapeutic services and settings.

What further action is needed to reduce use of custody and to promote alternative measures to detention for children in conflict with the law?

Discussion of criminal justice issues in Wales often centres around the lack of custodial facilities in Wales and the large numbers of individuals who are placed in custody in England rather than Wales as a result of this. As stated at the beginning of this letter, this is the wrong way to frame the discussion. The Howard League for Penal Reform would strongly oppose any expansion of the youth justice estate in Wales simply because of the problems

experienced by young people who end up being placed in custody in English prisons.

In England and Wales, there are three forms of custody for children under the age of 18: young offender institutions (YOIs), privately run secure training centres (England only) and local authority secure children's homes. Of these, the only form of custody we would say is acceptable for children (and only then when used as a last resort) is the secure children's home. These homes are small, local and have a high staff to child ratio. Staff will usually have a social work background and the environment is more therapeutic than that found in either young offender institutions or secure training centres. Wales currently has one secure children's home, Hillside in Neath.

If funding was made available to introduce a local authority secure children's home in north Wales as an alternative to Hillside for those very few children who would require custody, then this would be welcome **as long as** steps were taken to close the YOI element of Parc prison. Indeed, removing children from Parc would free up Youth Justice Board funding which could be diverted into the setting up of a north Wales secure children's home as well as release funding to better support solutions based in the community.

Andrew Neilson
Assistant Director, Public Affairs and Policy