Written evidence from the Howard League for Penal Reform

The Howard League for Penal reform welcomes the opportunity to provide written evidence to the inquiry by the Education and Health select committees to scrutinise the government’s green paper on transforming children and young people’s mental health provision.

1. About us
1.i Founded in 1866, the Howard League is the oldest penal reform charity in the world. We have some 12,000 members, including lawyers, politicians, business leaders, practitioners, prisoners and their families and top 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.

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

1.iii Since 2002 the Howard League has provided the only legal service dedicated to representing children and young people in custody. Our legal work began with a landmark case in 2002, brought by the charity in its own name, to successfully challenge the assumption that the protections of the Children Act 1989 did not apply to children in prison. Our case work includes advising children and young people on mental health issues and, where necessary, challenging services who fail to provide appropriate support. The Howard League is a founding member of the Transition to Adulthood Alliance, an alliance of charities concerned with the need to ensure the particular needs of 18 to 25 years olds are recognised.

1.iv The Howard League for Penal Reform and Centre for Mental Health conducted a programme of work on preventing prison suicides. It looked at the impact of prisons on mental wellbeing and made recommendations for change. Frances Crook, CEO of the Howard League is a member of the ministerial board on deaths in custody.

1.v Our submission draws together our policy work on preventing prison suicides and our legal work with children and young people.

1.vi Summary of key points:

1. Children and young people in the criminal justice system must be recognised as young people first and foremost, with greater need for mental health support
2. Children in custody should be recognised as children in need
3. Research on how to “engage” families is unnecessary; earlier, better support from mental health services is required
4. Young people do need additional support as they transition to adult services
5. Young people who are not in school or college must not fall through gaps in services if provision is focussed on schools.

2. Children and young people in the criminal justice system must be recognised as young people first and foremost, with greater need for mental health support

2.i The focus of the green paper is mental health provision for children and young people generally. While we welcome the fact that the green paper gives particular thought to children and young people in conflict with the law, we are concerned that young people in the criminal justice system are labelled as ‘young offenders’ and referred to as ‘these children’. See, for example “Better support for Young Offenders” at para 53, p16.

2.ii Children in the youth justice system are all too often regarded as an appendage in legislation concerning children, referred to as having different needs or needing special and different treatment. As required by the UN Convention on the Rights of the Child, the best interests of the child should always be a primary consideration and in matters concerning their mental health, the fact of their offending is only relevant in so far as it may indicate a greater need.

2.iii In 2002 the Howard League brought a judicial review that emphasised the significant mental health needs of children in prison. Mr Justice Munby (as he then was) stated in his judgment in 2002 (ibid)

‘[Children in custody] are, on any view, vulnerable and needy children. Disproportionately they come from chaotic backgrounds. Many have suffered abuse or neglect…they need help, protection and support if future offending is to be prevented.

Over half of the children in YOIs have been in care. Significant percentages report having suffered or experienced abuse of a violent, sexual or emotional nature. A very large percentage have run away from home at some time or another. Very significant percentages were not living with either parent prior to coming into custody and were either homeless or living in insecure accommodation. Over half were not attending school, either because they had been permanently excluded or because of long-term non-attendance. Over three-quarters had no educational qualifications. Two-thirds of those who could be employed were in fact unemployed. Many reported problems relating to drug or alcohol use. Many had a history of treatment for mental health problems. Disturbingly high percentages had considered or even attempted suicide.’

2.iv Children who come into contact with the criminal justice system are a symptom of the state’s failure to provide adequate support and services, including mental health services, at the earliest possible opportunity. In many cases, early intervention could not only have supported mental well-being but also prevented children entering the criminal justice system at all.

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1 R (on the application of the Howard League) v Secretary of State for the Home Department and the Department of Health 2002
2.v In England and Wales, children can enter the criminal justice system from the age of 10, when they become labelled as ‘offenders’. Contact with the criminal justice system leads to poorer outcomes for children and is often unnecessary and inappropriate.

2.vi Children who end up in prison have complex and multiple needs. Howard League lawyers have represented children in detention, whose basic needs have not been met, or in some cases even recognised. There is a lack of continuity of care and their mental health has deteriorated in prison. Mental health provision for children in custody should be age appropriate and based on their individual needs, not on the type of establishment they are held in.

2.vii Raphael’s case illustrates some of problems young people with mental issues face:

*Raphael was a 15 year old boy who telephoned our legal advice line in 2017 after he was taken into custody in a YOI. Our lawyers took on his case. He displayed symptoms of ADHD but was not identified as having any other specific mental health problems. Even after it was identified that he ought to be medicated for ADHD, he did not consistently receive medication in prison. He was isolated and he self-harmed, even attempting suicide. His mental health deteriorated. The Howard League raised concerns on multiple occasions about his self-harm and severe needs, but it was only when he made a suicide attempt that any action was taken to allow him access to his medication, and to move him from the YOI to a more suitable placement.*

This young person is not an isolated example.

2.viii Almost a fifth of the boys in prison had a disability according to the most recent survey by HMIP and YJB. When identifying and meeting the needs of children with disabilities or SEN (para 47, p15), local authorities should consider whether such children are over-represented in the youth justice system and whether they have been given appropriate support.

2.ix There are around 900 children in secure custody, over 600 of whom are being held in prisons (YJB, 2017). In his most recent annual report, Her Majesty’s Chief Inspector of Prisons stated that none of the prisons holding children were safe. This is a dire state of affairs. Children held in prisons are experiencing violence, high levels of self-harm, isolation and physical restraint. Prisons are extremely damaging environments and the impact on the mental health of children is long lasting or even permanent. Children should not be held in prisons.

2.x For some children, contact with the criminal justice system is an indicator of distress or mental ill-health, often as a consequence of adverse childhood experiences including neglect, abuse, bereavement or violence. Support, not punishment, should be the primary response.

3. **Children in custody should be recognised as children in need**

3.i The Howard League welcomes the focus on providing mental health support for children in need (para 42 p14). As Mr Justice Munby (as he then was) identified, children in custody are children in need. Our lawyers have supported support children in custody who have experienced neglect or abuse, exploitation or domestic violence. In

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2 Not his real name
many cases we have had to legally challenge local authorities to ensure children in custody are recognised as children in need.

3.ii We welcome the focus on identifying opportunities to improve the mental well-being of children in care. HMIP found that 42 per cent of the boys in prison had experienced local authority care.

3.iii The interplay between the care system and the criminal justice system must not be ignored. The Howard League is conducting an inquiry into the criminalisation of children in residential care and has found that children aged 16 and 17 living in children's homes are 15 times more likely to be criminalised than other children of the same age. 71 per cent of children who were criminalised in 2015-16 while living in residential care, for whom data is available, were found to have emotional and behavioural health that was of borderline or actual concern.

3.iv The Howard League looked at good practice in the policing of children’s homes and found that it can significantly reduce the unnecessary criminalisation of vulnerable children and demand on police resources. Police forces should not be spending scarce resources on dealing with vulnerable children in care, when it is often inappropriate and damaging. Resources should be focussed on supporting children’s wellbeing and improving outcomes for the most vulnerable children, not limiting their life chances.

4. Research on how to “engage” vulnerable families is unnecessary; earlier, better support from mental health services is required
4.i In our experience that families have often asked for mental health support for their child prior to the child entering custody. Families should be able to receive support at the earliest opportunity. Too often it is not until a young person ends up in trouble with the law that their mental health needs are acknowledged and assessed. Youth justice services should not be seen as a gateway to children’s mental health services. Similarly children who are victims of crime ought to be provided with appropriate mental health support as soon as possible.

5. Young people do need additional support as they transition to adult services
5.i We welcome the recognition that young people need ongoing mental health support as they transition to adult services (para 127, p33). Our legal advice service supports children and young adults up to the age of 25. The Howard League is also a member of the Transition to Adulthood Alliance (T2A). Young people in the criminal justice system face considerable challenges transitioning to adulthood and need additional support. Many have experienced multiple placements and a lack of continuity of care or stability. Children with mental health needs serving longer custodial sentences are not only moving from child health and care services to adult services but also from the juvenile estate into adult prisons. We are aware of good practice when children in mental health units transfer to adult units but this is not replicated when children with mental health needs transfer to other young adult services. Practice such as this should be the norm.

6. Young people who are not in school or college must not fall through gaps in services if provision is focussed on schools
6.i Children should not fall through gaps in services if they are not attending mainstream school or college. (See para 59, p17 on supporting children and young people in schools and colleges).

6.ii Children in prison are unlikely to have been attending school or college prior to imprisonment. An HMIP found that 85 per cent of boys in prison had been excluded
from school before they came into detention, 73% said they had truanted from school at some time, and 41% were 14 or younger when they last attended school. Children are more likely to come into contact with the criminal justice system if they are not attending school.

6.iii The importance of primary schools in identifying young children with mental health problems and signposting families to appropriate support will be crucial in order to prevent children entering the criminal justice system before they reach secondary school.

7. We would be happy to discuss any of these points with you in further detail.

16 January 2018