

Margaret Mitchell MSP
Convener of the Justice Committee
Scottish Parliament
Via email: justicecommittee@parliament.scot

25 May 2020

Dear Convener

We note the Scottish Human Rights Commission's letter of 18 May 2020 in which the Commission sets out its concerns around human rights and prison conditions during the Covid-19 pandemic. We agree with all of the points made in the letter, in particular that in some cases conditions experienced by prisoners may amount to inhuman and degrading treatment in terms of Article 3 of the European Convention on Human Rights (ECHR).

In addition, we would ask the Committee to give specific consideration to the rights of children and young people who are deprived of their liberty. These children are recognised in international law as being particularly vulnerable to human rights breaches in normal times, and are additionally so during the current pandemic. We refer the Committee to the UN Committee on the Rights of the Child's *General comment No.24 (2019) on children's rights in the child justice system*,¹ which specifically requires that children are deprived of their liberty only as a measure of last resort, by absolute necessity and for the shortest appropriate period of time in accordance with the law.

In Scotland, children may be deprived of their liberty and detained in various settings including Young Offenders Institutions (YOIs) Secure Care provision, mental health facilities, and an immigration detention centre. Each of these types of establishments are governed by different procedural legal frameworks but all children detained are entitled to the full protection of human rights in international law.

We note that on 20 March 2020, there were 24 children and 270 young people (aged 18-21) detained in YOIs. On 15 May 2020, there were 7 children held on remand and 8 serving a sentence; with a further 58 young people being held on remand, 9 convicted and detained pending sentence and 149 serving sentences. In total therefore there were 231 children and young people deprived of their liberty, some for significant and uncertain periods of time.²

We would refer the Committee to a number of recent and significant reports which set out the human rights situation at an international and domestic level. In particular, "The

¹ United Nations Committee on the Rights of the Child (2019). *General comment No.24 (2019) on children's rights in the child justice system*.

²SPS Prison Population <https://www.sps.gov.uk/Corporate/Information/SPSPopulation.aspx>

Report of the Independent Expert leading the [United Nations Global Study on Children Deprived of Liberty](#)^[1] and [“Rights Respecting? Scotland’s Approach to Children in Conflict with the Law”](#)^[2]. It is worthy of note that shortly before the Coronavirus crisis began the findings and recommendations of the Scottish Independent Care Review were published with ‘The Promise’ echoing the HMIPS concerns for children deprived of their liberty. The [“Report on an Expert Review of the Provision of Mental Health Services, For Young People Entering and in Custody at HMP YOI Polmont”](#)^[3] (HMIPS Mental Health Report) sets out serious concerns about mental health in Scotland’s YOIs³ and as we note below, the situation has only become worse as a result of the pandemic. The Report [“Children in Prison During the Coronavirus Pandemic”](#)^[4] sets out concerns about detention of children in England and Wales and includes commentary on many issues that are equally relevant to Scotland.

Solitary confinement

International human rights frameworks clearly prohibit the use of solitary confinement for children, recognising the damaging effects it can have on physical and mental health. Solitary confinement is defined by the United Nations in the Nelson Mandela Rules as confinement *“for 22 or more hours a day without meaningful human contact”*. It is important to note that the negative impacts of isolation can begin long before the 22 hour threshold is reached. We understand that some children and young people in YOIs are currently being confined in their cells for up to 23 hours a day and those who are showing symptoms of Coronavirus are isolated in their cells for 24 hours a day.

Access to education and other activity

We have been told that access to education, activity and exercise are very limited at present. This has a negative impact on children’s rights to education and health. We note that the HMIPS inspection of Polmont YOI found that children on remand in particular experienced limited access to meaningful activity and support prior to the pandemic, and that access to services was also restricted prior to sentencing.

Social work support

We have been told that social work visits have largely ceased. This will affect the level of support provided to children, the level of additional scrutiny over protection of their rights, and their ability to be assessed for and prepare for release.

Family contact

We have been told that family contact is not taking place despite it being recognised as playing a huge role in mitigating vulnerability and mental illness. We understand that no measures have been put in place to facilitate additional virtual contact and to support

³ The Review relates specifically to HM YOI Polmont, and it is noted that HMYOI Cornton Vale and HMYOI Grampian (Scotland’s two other HMYOI facilities which also detain children including those on remand).

rights to respect for family life (such as socially distanced visits, significantly increased telephone or video contact.)

In-cell telephony and technology

One of the recommendations of the HMIPS Mental Health Report which the Scottish Government agreed to (in June 2019) was to install in-cell telephony in HMP YOI Polmont. On 17 April 2020, the Cabinet Secretary for Justice announced the Scottish Government's intention to provide mobile phones to those in custody. To date this has not been done.

Hygiene

Amendments to the prison rules have relaxed duties to meet basic needs including those related to hygiene. We are not aware of any Children's Rights Impact Assessment having been conducted on these amendments. Notwithstanding the impact on human dignity of having access to showers restricted, when the strong messaging from public health professionals is about the critical and life-saving important of washing hands to prevent the spread of the virus, we question how hygiene and infection control in prisons is being managed.

Mental health

The consequence of all the above will be to seriously exacerbate existing mental health vulnerabilities and to place all children detained at heightened risk of developing mental health problems. There were pre-existing concerns in YOIs about the level and quality of mental health support for children and young people. The HMIPS Report highlighted significant concerns for the mental health of those on remand, awaiting sentence, or in the early stages of their sentence. These groups are identified as being the most vulnerable to episodes of self-harm or suicide. A key reason outlined in the Report for why the remand population was considered to be particularly vulnerable related to their experience of 'social isolation'. As noted above similar concerns were raised by the Centre for Youth and Criminal Justice (CYCJ) and the Independent Care Review. The situation is only likely to have worsened as a result of the pandemic.

Early Release

In March, 2020, the United Nations High Commissioner for Human Rights, Michelle Bachelet, appealed for urgent action to prevent Covid-19 from "rampaging" through places of detention and on 8th April 2020, the United Nations Committee on the Rights of the Child (the CRC) called on all States to:

"Release children in all forms of detention, whenever possible, and provide children who cannot be released with the means to maintain regular contact with their families."

“Prevent the arrest or detention of children for violating State guidance and directives relating to COVID-19, and ensure that any child who was arrested or detained is immediately returned to his or her family.”⁴

We welcome therefore the fact that some children and young people are covered by the early release regulations, but note that the 16 and 17 year olds detained in Young Offenders' Institutions (YOIs) are subject to the same eligibility criteria as adults. As the Howard League noted in its submission to the Committee, the criteria are not human rights based, and make no provision for assessment of children's rights, needs and wellbeing to inform a decision on release. There is no evidence that the Government gave any consideration to the specific needs and rights of children when drafting the regulations.

In line with the overwhelming weight of international expert opinion, including the United Nations Committee on the Rights of the Child (UN CRC), the Office of the UN High Commissioner for Human Rights (OHCHR), the World Health Organisation (WHO), the UN Office on Drugs and Crime (UNODC), the UN Joint Programme on HIV/AIDS (UNAIDS), and the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, we are calling on the Scottish Government to ensure that all children detained in YOIs are individually assessed for release using a human rights based approach. This approach would be consistent with the Government's obligations in international law to grant children additional legal protection and consideration.

We are especially concerned that failure to include children and young people on remand in the early release regulations disproportionately impacts on this group, who are likely now to be facing detention and deprivation of their liberty for significant and uncertain periods of time, without having been convicted of any offence.

We welcome the Committee seeking data on the Scottish Government's early release programme. We would also encourage the Committee to seek specific disaggregated data on children detained in YOIs and in particular the length of detention, the reason for detention, the scheduled release date, parole/appeal or trial dates, whether they are care experienced or have a disability or additional support needs. This would greatly assist the Committee in assessing the impact of the programme on those whose rights are most at risk.

In addition, we consider that children in secure care centres should also have their situation reviewed, allowing a rights-based assessment of whether detention continues to be in their best interests. This does not require legislation but it is not clear that the Government has set an expectation that this will happen.

We intend to raise the issues around early release with the Covid-19 Committee as many of them require legal change in order to resolve, however we consider that the

⁴ https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/1_Global/INT_CRC_STA_9095_E.pdf

Justice Committee will wish to be aware of these matters to provide context in relation to the concerns we set out above.

We hope members find this information useful, and we encourage and support the Committee in its scrutiny of the Scottish Government and Scottish Prison Service approach to ensuring the human rights of children deprived of their liberty are respected, protected and fulfilled.



Bruce Adamson
Children and Young People's Commissioner Scotland