

Prison Reform Trust evidence to the Independent Human Rights Act Review – March 2021

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. The Prison Reform Trust provides the secretariat to the All Party Parliamentary Penal Affairs Group and has an advice and information service for people in prison.

The Prison Reform Trust's main objectives are:

- reducing unnecessary imprisonment and promoting community solutions to crime
- improving treatment and conditions for prisoners and their families
- promote equality and human rights in the criminal justice system.

www.prisonreformtrust.org.uk

The Prison Reform Trust welcomes the opportunity to submit evidence to the Independent Human Rights Act Review. The Human Rights Act (HRA); European Convention on Human Rights (ECHR); and the European Court of Human Rights (ECtHR) have all played a vital role in helping to ensure that people in prison are treated according to basic principles of dignity and respect.¹

As the least visible of our public services, it is important that prisons can be held accountable for the treatment of the people in their care. England and Wales, along with Scotland, have the highest rates of imprisonment in western Europe—holding 78,000 and 7,500 people respectively.²

Prison in the UK is the punishment of last resort and is the highest form of legally sanctioned coercive intrusion into an individual's liberty. A prisoner is dependent on the prison for virtually every aspect of their existence. Prison determines a person's confinement, movement, association, work, level of contact with the outside world,

¹ For instance, cumulative ECtHR judgments against the unjust indeterminate sentence of imprisonment for public protection (IPP) contributed to the eventual abolition of the sentence by the Legal Aid, Sentencing and Punishment of Offenders Act 2012. *Betteridge v UK* and *James, Wells and Lee v UK* have led to improvements in the process for review of the lawfulness of detention and access to rehabilitative courses of IPP prisoners. Cases taken under the Human Rights Act, which brings the European Convention into British law, have helped establish the right of most prisoners to an oral hearing by the Parole Board (*Osborn, Booth and Riley v The Parole Board*); to highlight the degrading practice of "slopping out" (*Napier v Scottish Ministers* [2004] SLT 555); the inadequate investigation of deaths in custody (*R (on the application of Amin) v Secretary of State for the Home Department* [2004] 1 AC 653); and the rights of prisoners' children and dependents (*R (on the application of P and Q v Secretary of State for the Home Department)*).

² Ministry of Justice (2021) Population and capacity briefing: 26 February 2021, London: Ministry of Justice; and Scottish Prison Service (2021) Prison population, Edinburgh: SPS

accommodation, education, recreation, healthcare and even the food they eat. As such, people in prison need to be able to ensure their rights are respected and protected through our domestic laws.

A robust and independent court which monitors a State's respect for human rights is crucial and requires that judgments remain binding on States. The ECtHR's case law makes the ECHR, and by virtue the HRA, a powerful 'living instrument' able to adapt to changes in society. This is a very important and positive aspect in the protection of human rights.

Whilst it is right to review both the operation and the framework of the HRA, we agree with the conclusion of the Howard League that the existing framework is sensible and does not require change. We further agree that the existing margin of appreciation for a State's executive, legislature and domestic courts is wide; and that ECtHR decisions are informed by judicial reasoning in the UK, as well as vice versa. We would oppose reforms which sought to undermine or diminish the role of the UK's domestic courts in ensuring the compatibility of domestic legislation with the articles of the ECHR.

We do recognise however that the application of the HRA could be improved. For example, declarations of incompatibility do not always lead to prompt corrective action.³ The 2013 Parliamentary Joint Committee on the Draft Voting Eligibility (Prisoners) Bill, which recommended that the UK government comply with the ECtHR judgment in the case of *Hirst v UK*⁴, said of the consequences in failing to comply with the judgment:

"A refusal to implement the Court's judgment, which is binding under international law, would not only undermine the standing of the UK; it would also give succour to those states in the Council of Europe who have a poor record of protecting human rights and who could regard the UK's action as setting a precedent for them to follow."

"We have also considered the implications of failure to comply with the European Court's ruling for the rule of law, which the UK has for so long upheld. The rule of law has been and should remain a fundamental tenet of UK policy. It is not possible to reconcile the principle of the rule of law with remaining within the Convention while declining to implement the judgment of the Court."⁵

Parliamentary Joint Committee on the Draft Voting Eligibility (Prisoners) Bill

Conditions in prison

Safety in prisons has deteriorated rapidly during the last eight years. Rates of self-harm are the highest they have ever been; whilst deaths and assaults both remain close to record highs.⁶

³ See particularly *Vinter v UK* and *Hirst v UK*

⁴ Joint Committee on the Draft Voting Eligibility (Prisoners) Bill (2013) First Report: Draft Voting Eligibility (Prisoners) Bill, London: HMSO

⁵ *Ibid.*

⁶ Table 1, Ministry of Justice (2020) Safety in custody statistics quarterly update to June 2020, London: Ministry of Justice

282 people died in prison in the year to September 2020, more than a quarter of these were self-inflicted.⁷ Self-inflicted deaths are over six times more likely in prison than in the general population.⁸

Nearly three in ten (29%) of our prisons are rated of “concern” or “serious concern” by HM Prisons and Probation Service. Over half of male local prisons (59%) were rated as of “concern” or “serious concern.”⁹

Nearly one in five (19%) of adult male prisoners told inspectors that they were out of their cells for less than two hours on weekdays, including 32% in men’s local prisons.

This decline in the quality of life for many prisoners in the last decade has been a direct consequence of the reduced resource available. The standard “core day” in closed prisons finishes at 6.30pm on weekdays, and earlier at weekends. In other words, the reduced quality of life is designed to be permanent rather than temporary, despite the obvious detriment to both the quality of staff/prisoner relationships within prisons and to the maintenance of family ties.

The Council of Europe’s Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) has repeatedly raised serious concerns about the levels of prison violence, poor prison regimes and chronic levels of overcrowding.¹⁰

From this already low benchmark, the Covid-19 pandemic has exacerbated these problems.¹¹

In March 2020, HM Prison and Probation Service introduced measures to protect prisoners and staff in light of Covid-19. Under a new quarantine regime, time out of cell has been severely restricted, leaving the vast majority of the prison population locked in their cells for up to 23 hours a day. The United Nations defines solitary confinement as being held in a cell for 22 hours or more per day. It states that prolonged solitary confinement is cruel, inhuman, or degrading. Prolonged is anything over 15 days.

Our recent research found that people in prison during the pandemic have experienced sensory deprivation due to 23-hour confinement in a cell, and many respondents reported feeling fatalistic. It also showed that this extreme regime undermined a person’s sense of identity; took away self-worth; and led to anxieties about the effects of separation on children.¹²

Against this alarming backdrop, the need for legislation and independent institutions to uphold and protect the rights of people subject to the control of the State is clear.

⁷ Ibid.

⁸ Ministry of Justice (2019) Safety in custody statistics quarterly update to September 2018, London: Ministry of Justice

⁹ Ministry of Justice (2020) Prison performance ratings 2019 to 2020, London: Ministry of Justice

¹⁰ Council of Europe (2017) Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 March to 12 April 2016, Strasbourg: CoE; and the report of their subsequent visit between 13 to 23 May 2019.

¹¹ HM Inspectorate of Prisons (2021) What happens to prisoners in a pandemic?, London: HMIP

¹² Prison Reform Trust (2021) CAPTIVE: The prison service’s response, precautions, routine health care, disabilities, well-being, mental health, self-harm, and what helped, London: PRT