

**Mr Justice William Davis**  
Judicial Lead on Youth Justice

**District Judge Michael Fanning**  
C/o Chief Magistrates' Office

**Sïan Jones**  
Secretary, Justices' Clerks' Society

**Linda Logan**  
Chair, Youth Court Committee

**26 March 2020**

Dear Mr Justice William Davis, District Judge Michael Fanning, Sïan Jones and Linda Logan,

**Judicial decision making concerning children in the criminal courts in light of the Coronavirus pandemic**

No doubt you will have been working intensively on the many challenges posed by the Coronavirus pandemic for criminal justice for children in recent weeks.

We write in respect of the particular risks posed to children remanded or sentenced to custody at this time to provide you with information based on our work with children that will assist you to encourage colleagues to tailor their approach to sentencing, in line with existing law and guidance.

The Howard League has managed to maintain our specialist legal advice service for children in prison despite the pandemic. Children have spoken to Howard League lawyers about how grave the situation already is for those in prison.

We are extremely worried about what will happen over the coming weeks.

Children in Young Offender Institutions, who have called our advice line, have told the Howard League:

- Lots of staff are self-isolating;
- The regime is greatly reduced – children are not getting education or offending behaviour work interventions;
- There are no visits – that means children will not be able to see their mothers, siblings and loved ones and children will not be able to see their social workers, YOT workers or lawyers;
- Professionals such as psychologists and lawyers have been told that video-links and calls are unlikely to be possible in many cases, which means that cases cannot be effectively progressed once children are in prison;

- Many children are spending extended time locked alone in their cells and this is likely to increase over the coming weeks, such that it is likely that children in prisons will be effectively in solitary confinement (22 hours or more alone each day);
- Children's rights advocacy staff are now working from home and so cannot provide face to face support for children.

As you know, the majority of children who end up in custody are extremely vulnerable. Many have underlying health needs, some of which may not have been identified, which puts them at risk of a severe response to the Coronavirus. Many have mental health and/or learning difficulties, which will affect their ability to understand and cope with the impact of the pandemic. Many are very worried about relatives. The majority, if not all, will be at serious risk of mental health issues and/or self harm in the custodial environments desperately struggling to deal with the impact of the virus.

This all means that during the current crisis custody will have a much deeper impact on children than just deprivation of liberty. They are likely to be exposed to a wide range of harms associated with prolonged solitary confinement, potential violence, huge anxiety and much more, without even the guarantee that their basic needs will be met.

Therefore, where those involved are confident that hearings can proceed in a way that is fair to the child and which allows the child to participate effectively, it is vital that decisions affecting children who are at risk of custody take these concerns into account.

### **Remand decisions**

Judges and magistrates should be encouraged to ensure that any decision to remand to custody should be subject to *anxious scrutiny* in light of the virus. Children should not be remanded unless there are wholly exceptional circumstances.

The majority of children who are remanded do not subsequently get a custodial sentence. Yet child remand numbers are worryingly high: in January 2020 the number of children remanded to custody went up from 232 to 264 on the previous month. This is the highest number of remands in any month since April 2015.

Only this week, we have been made aware that a vulnerable child, with underlying respiratory and mental health problems, has been remanded to a Young Offender Institution after two days in police custody. It is simply not appropriate or safe to expect Young Offender Institutions to be able to care for such children at this time. If children absolutely must be remanded, they should be sent only to secure children's homes.

### **Sentencing decisions**

Judges and magistrates should be encouraged to avoid imposing custodial sentences on children at all costs at this time. The Sentencing Council's Guidance on children and young people is very clear that the impact of custody on a child is highly relevant to the sentencing exercise:

"The welfare of the child or young person must be considered when imposing any sentence but is especially important when a custodial sentence is being considered. A custodial sentence could have a significant effect on the prospects and opportunities of the child or young person and a child or young person is likely to be more susceptible than an adult to the contaminating influences that can be expected within a custodial setting. There is a high reconviction rate for children and young

people that have had custodial sentences and there have been many studies profiling the effect on vulnerable children and young people, particularly the risk of self harm and suicide and so it is of utmost importance that custody is a last resort.” (para 6.49)

The impact of the pandemic squarely falls within this guidance and this should be highlighted to all those involved in sentencing children.

Such an approach would be entirely in accordance with the ‘welfare principle’ (s.44(1) Children and Young Persons Act 1933) and the best interests principle required by Article 3 of the UN Convention on the Rights of the Child.

We are sure you are thinking about much of this already but hope that it is helpful to have this snapshot and our thoughts to aid decision-making during this time.

We would be very happy to discuss any of the matters raised if that would be helpful.

Yours,

Frances Crook, Chief Executive, Howard League for Penal Reform  
Laura Janes, Legal Director, Howard League for Penal Reform  
Kate Aubrey-Johnson, Barrister, Chair, Ministry of Justice’s Youth Justice Quality of Advocacy Working Group  
Tim Bateman, Chair, National Association of Youth Justice  
Judy Khan QC, Stephanie Harrison QC & Liz Davies, Joint Heads, Garden Court Chambers  
Laura Cooper and Katya Moran, Co-Heads of the Youth Justice Legal Centre  
Claire Dissington, Youth Practitioners’ Association  
Pippa Goodfellow, Director, Standing Committee for Youth Justice  
Caroline Goodwin QC, Chair, Criminal Bar Association  
Pam Hibbert OBE, Ending Child Imprisonment  
Louise King, Director, Children’s Rights Alliance for England  
Andy Peadar, Chair, Association of YOT Managers  
Enver Solomon, Chief Executive, Just for Kids Law  
Carolyne Willow, Director, Article 39

