Children in Prison: advocating for the human rights of young offenders

Frances Crook reviews the Howard League's legal challenges to Government policy on the treatment of young offenders.

The story starts back in 1995 when we got our hands on the draft rules being developed for the first commercially run prisons for children. The secure training centres looked as if they were set to be run as if they were prisons, ignoring the protections in place for children held in local authority secure accommodation.The Howard League for Penal Reform was faced with a choice. We could either use traditional methods of campaigning – publicity, working with members of Parliament, and meetings with key players – all of which is designed to influence, by persuasion, the decision makers, or we could take a completely different tack and use the courts.

This was, of course, years before the *Human Rights Act*. As far as we know, only one other charity had ever used judicial review procedures to challenge the way the Government is implementing a policy. We decided to challenge the Government for deliberately ignoring its own recently enacted legislation designed to protect children, *The 1989 Children Act*. It was a huge risk as we could have been landed with a costs order.

In court we agreed to halt the proceedings until publication of the final rules. As a result the rules were radically re-drafted to include significant additional protections for children and this re-working delayed the process for more than a year. Sadly, the then Home Secretary, Michael Howard, signed the contract for the first secure training centre just before the 1997 general election (he did try to sign the contract for the second but we phoned the Cabinet Office and complained that it was inappropriate during an election campaign), and the incoming Home Secretary, Jack Straw, refused to rescind it.

In April 2002, the Howard League for Penal Reform launched judicial review proceedings against the Home Secretary challenging the Prison Service Order that the *Children Act 1989* does not apply to under-18 year olds in prisons. Mr Justice Munby found in our favour. In his judgement he stated that "...the Howard League For Penal Reform has performed a most useful service in bringing to public attention matters which, on the face of it, ought to shock the conscience of every citizen."

The judge held that the *Children Act* did apply to children in prison "subject to the necessary requirements of imprisonment" and that the statement in PSO 4950 was wrong in law.

This strand of the judgement means that local authorities owe duties and responsibilities to children from the area under the *Children Act* even when the young person is in prison. Whilst the *Children Act* applies to children in prison, as a matter of law it does not apply to the prison service. There is no doubt that regimes for juveniles have improved in many prisons since the introduction of PSO 4950. It coincided with the establishment of the Youth Justice Board and the creation of the secure estate for juveniles and marked what many hoped would be a new era of improved conditions and treatment for children.

There are examples of improvements but there are too many instances of continued poor treatment, which in all likelihood breach the fundamental human rights of children. Our concerns about the use of segregation, control and restraint, poor regimes and lack of access to families continue. This is the background to the establishment by the Howard League for Penal Reform of the first law department inside a charity set up specifically to pursue its charitable objectives.

Since the beginning of 2003, the Howard League for Penal Reform has had a criminal law contract with the legal services commission. This contract has allowed us to recover the costs incurred for advocating for young people in prison and related issues.

However, where a matter is not sufficiently related to prison law or is a civil matter, for example a civil damages claim for compensation, the client will be referred to a civil lawyer to progress their matter. The Howard League for Penal Reform's legal work on behalf of individual clients has led to important changes in prison law and prison policy:

- In July 2003 the government rushed through legislation which gave young people sentenced before their 18th birthday under s.91 the same rights to early release asadults.
- A decision in the High Court made it unlawful to segregate young people without providing them with 10 hours of out-of-cell activity and access to education/training and physical activity
- A decision is expected in November on the lawfulness of mixing young girls with adult women prisoners.

We worked with 33 clients between April 2002 and

August 2003 from 16 different prisons including:

Paula

Paula, 21 years old, was sentenced to a 15-month DTO. We were told that Paula was about to have her baby and that the prison service and her local authority had decided to separate Paula from her baby. The local authority refused to provide appropriate accommodation on release. We asked the High Court for an injunction to prevent separation of the mother and baby. The injunction was granted on the Friday morning and Paula had her baby in the early hours of Monday. Despite the ongoing attempts of the prison service and the local authority to separate mother and baby, they remained together in hospital until her release into a social services mother and baby unit. We understand that mother and baby are doing well.

Bobby

Bobby, serving a 12-month DTO at a YOI, had a history of mental health problems, including an attempted overdose of his prescribed medication, and he tried to hang himself in his cell. Bobby had been on segregation for a total of 9 days; one period for possessing a deactivated mobile phone and the other for failing to attend role call. Bobby was removed to segregation, during which he spent 23 hours 50 minutes confined to his cell. He was allowed out for 10 minutes a day and was not allowed to have any personal belongings. He had no access to television or radio and was not given any educational, training or physical regime. The Howard League for Penal Reform sought to challenge the lawfulness of the use of segregation by the prison service. Mr Justice Moses found that the use of segregation of itself is not unlawful, however, the failure to provide Bobby with 10 hours of out-of-cell activity including 6 hours of purposeful activity was unlawful in that it was contrary to PSO4950. The establishment of this point of law gives rise to potential compensation claims for many young people who have been detained in segregation in similar woeful circumstances.

Dana

Dana was 16 when sentenced under s.91 to three and a half years. Children serving DTOs are entitled to early release subject to the length of the sentence. Adults serving sentences up to 4 years are entitled to apply for early release. Children serving two to four years and who do not reach 18 by their sentence mid-point had no provisions for early release. The Howard League for Penal Reform issued proceedings against the Home Office on the basis that it was discriminating (contrary to article 14 ECHR) against prisoners under 18 years of age. The Government immediately introduced a statutory instrument to Parliament, which completed its several parliamentary stages swiftly, and under 18 year olds were given the same right to early release as over 18 year olds. The legislation came into effect on 14 July 2003, and although it was unfortunately too late for Dana, several hundred other children held under similar circumstances have been able to apply for early release.

The Howard League for Penal Reform set up a legal telephone advice line in late 2002 to advise legal professionals, social workers and other juvenile justice practitioners on juvenile prison law generally and on individual cases.

Early in 2004 the Howard League for Penal Reform will have a direct legal telephone help-line for young people in custody. This will give young people direct and immediate access to independent legal advice and support, resolve issues and ensure that the young person is treated appropriately. We want a working relationship with the prison service to minimise conflict, avoid time and resource wasting, while at the same time promoting the best interests of the young person involved.

However, where it becomes obvious that all alternative dispute resolution methods have failed, are bound to fail or are inappropriate, the value of litigation as a last resort will be considered. Where legal remedies are seen as necessary and appropriate then they will be used to promote the individual child's interests and to achieve a change in policy across the prison service.

The Howard League For Penal Reform is mindful of the cost to the public purse of litigation. However, through the judicious and reasonable use of litigation we have been successful in changing unacceptable practices. Indeed we have brought about changes to primary legislation and as a consequence immediate improvements in the conditions young people experience in prison custody. ■

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