

**IN THE UK COVID-19 PUBLIC INQUIRY
BEFORE BARONESS HEATHER HALLETT**

MODULE 10: IMPACT ON SOCIETY

**WRITTEN SUBMISSIONS ON BEHALF OF THE PRISON & IMMIGRATION
DETENTION ADVOCACY GROUP**

THE HOWARD LEAGUE FOR PENAL REFORM

BAIL FOR IMMIGRATION DETAINEES

THE PRISON REFORM TRUST

MEDICAL JUSTICE

INTRODUCTION

1. These submissions are provided on behalf of the Prison & Immigration Detention Advocacy Group ('PIDAG') in advance of the Module 10 preliminary hearing on 18 February 2025. PIDAG is represented jointly by Public Interest Law Centre and leading and junior counsel.
2. PIDAG is most grateful for the Agenda for the hearing on 18 February, and Counsel to the Inquiry's Note for the first Preliminary Hearing in Module 10 ('CTI's Note'). These submissions address the following topics as identified on the Agenda:
 - a. Provisional outline of scope of Module 10;
 - b. Roundtable events;
 - c. Systematic evidence review;
 - d. Expert material, the instruction of expert witnesses, and Rule 9 Requests for Information; and
 - e. Future hearing dates and other matters for Module 10.
3. By way of context for what follows, the following is a brief introduction to the organisations that constitute PIDAG.

The Howard League

4. The Howard League for Penal Reform is the world's oldest prison charity. It engages in a broad range of activities which encompass direct contact with persons who are detained in prison (including those who are especially vulnerable in that category, such as children) and policy and campaigning work. During the pandemic, the Howard League provided support to prisoners, in particular children and young people, as the charity runs the only dedicated legal advice line for children and young people in custody aged 21 and under in England and Wales. The Howard League regularly advises and supports children and young people about issues in custody such as treatment, conditions, education and resettlement.
5. During the pandemic, together with the Prison Reform Trust, the Howard League engaged with the government on public health fears around prison overcrowding and secured an early conditional compassionate release scheme. Whilst the institutional context of imprisonment is distinct from that of the justice system more generally, the Howard League offers expertise on the latter as well as the former. Its expertise has repeatedly been recognised in the higher courts.

Bail for Immigration Detainees

6. Bail for Immigration Detainees ('BID') is a charity devoted to securing access to justice for people in immigration detention. BID supports thousands of detainees annually by providing representation in bail applications all across the UK, as well as free legal advice both in-person and by telephone. BID is one of only a handful of organisations that works across the entirety of the detention estate. BID also conducts field research and uses case-sample analyses of its casework as the basis for extensive publications, and gives evidence to government and international human rights bodies.
7. During the pandemic BID represented large numbers of detainees in bail applications with a 94% success rate. The nature of BID's work means that it has access to extensive information relating to the safety of individuals held in detention during the pandemic; mental health concerns relating to lockdowns; and the prolonged use of confinement (among other things), that is not held by anyone else. BID's expertise has been repeatedly recognised by the Supreme Court and the ECtHR.

Prison Reform Trust

8. The Prison Reform Trust ('PRT') is a charity that conducts extensive research into the workings of the prison system, in order to inform prisoners, prison staff and the wider public, and to encourage public debate on prison conditions and the treatment of prisoners. It also provides advice and assistance to prisoners and their families, in the form of written guides and a telephone advice line. This gives PRT deep first-hand knowledge of the experiences of individual prisoners. PRT publishes extensively, including both detailed research reports on the penal system and short focussed briefings on individual topics.
9. PRT engaged in substantial evidence-gathering and lobbying activities throughout the pandemic. In particular, PRT initiated the urgent Covid-19 Action Prisons Project: Tracking Innovation, Valuing Experience ('CAPPTIVE') through its Prisoner Policy Network, which described and recorded life in prison during the pandemic in prisoners' own voices following hundreds of responses. This work gives PRT a broad perspective on the experiences of both prisoners and their family members during this period, as well as which policy approaches were successful and which were not. PRT, like the Howard League, is also well-placed to provide evidence and detail in respect of the continuing consequences of the Covid-19 pandemic on the prison estate. PRT's expertise is widely acknowledged, and its reports are frequently cited as authoritative in the higher courts.

Medical Justice

10. Medical Justice ('MJ') is a charity that works to uphold the health and associated legal rights of people in immigration detention. Working with clinicians and interpreters, MJ facilitates the provision of independent medical advice and assessment to those detained under immigration powers, as well as conducting research into issues affecting people in immigration detention and producing detailed reports. MJ handles between 500 and 1,000 cases a year.
11. Throughout the pandemic MJ continued its casework, providing medico-legal assessments via videoconferencing and telephone. MJ can consequently provide first-hand accounts both of the experiences of its clients and the experiences of its volunteers. As an organisation that consists of independent medically trained clinicians providing assessments in detention centres nationwide MJ is singularly well-placed to describe the impact of the decisions made during the pandemic on the health of detained people, and assist the Inquiry with ensuring the health considerations of this exceptionally vulnerable

category are adequately addressed. MJ has frequently been granted permission to intervene before the UK courts in respect of cases dealing with the effects of detention, and gave significant input into the Brook House Inquiry, which was relied on in particular in Volume II in respect of the impact on and safeguards for vulnerable detained individuals.

12. PIDAG wishes to make short oral submissions of up to fifteen minutes' duration at the preliminary hearing on 18 February 2025.

1 PROVISIONAL OUTLINE OF SCOPE OF MODULE 10

13. The Provisional Outline of Scope for Module 10 is a comprehensive and extremely helpful document. PIDAG wishes to offer some preliminary observations about the topics provisionally identified to date.
14. PIDAG welcomes the indication that Module 10 will examine the impact of the pandemic upon the "*most vulnerable*", and that this includes "*those within prisons and other places of detention*". PIDAG wishes to draw the Chair's attention to a number of issues which it anticipates will emerge as potentially important for the Chair to consider:
 - a. Prisoners' contact with their families;
 - b. Release: the number of releases, early release issues, imprisonment beyond the expiry of licence periods;
 - c. Frustration of Parole Board release decisions due to lack of approved premises;
 - d. Frustration of release from immigration detention due to lack of Probation Service approved accommodation and/or other accommodation;
 - e. The Home Office's approach taken to immigration bail during the pandemic;
 - f. The impact of the pandemic upon prisoners' and immigration detainees' daily 'regime', and the resultant impact upon prisoners;
 - g. Relatedly, the effect of the pandemic (and the changes in prison regime) upon staff expectations, institutional culture, prison officer recruitment, and access to healthcare in prisons;
 - h. Public health issues specific to detention/imprisonment, e.g. the extent to which the risk to prisoners/detainees and to wider society posed by airborne infection is

affected by their incarceration, where a disease may more easily spread and/or mutate;

- i. The mental health-related impacts of the pandemic in the context of both imprisonment and, separately, immigration detention;
- j. Access to ‘progression’ (offender management/education programs): the extent to which the pandemic diminished access to such programmes; the consequent effect upon prisoners’ welfare and Parole Board decision-making, and relatedly, upon the length of time in preventative detention;
- k. Effects on the implementation of risk management measures in detention, including the ‘ACCT’ and ‘ACDT’ processes;
- l. Cross-cutting themes: It is suggested that the following factors should be considered as relevant to all of the topics that the Inquiry investigates in relation to incarceration, including those listed above:
 - i. Gender: whether there are any gender specific considerations/impacts in the context of prisoners, cisgender female, trans, cisgender male, or otherwise;
 - ii. Age: whether any specific considerations apply to children/young people in detention;
 - iii. The ongoing/present-day effect of the pandemic in the areas noted above and others (the ‘long shadow’ of Covid): When considering “*the impact of the pandemic and the measures put in place*”, PIDAG wishes to emphasise the ‘long shadow’ of Covid, which continues to exert a profound impact in the prison estate and in immigration detention. The impact in prisons has been particularly enduring. PIDAG is well-placed to offer assistance to the Inquiry in this regard.

2 ROUNDTABLE EVENTS

15. In the spirit of ensuring that the Inquiry’s examination of the impact of the pandemic is based upon the reality of lived experience, PIDAG very much welcomes the concept of the roundtable events as described in CTI’s Note.

16. However, it is respectfully suggested that the category of “prisons and other places of detention and those affected by the operation of the justice system” is too broadly drawn. PIDAG is concerned that, in attempting to consider the impact upon both places of detention and “those affected by the justice system” in the same roundtable, the effect will be to undermine the examination of both of these topics.
17. First, those imprisoned by the state are in a position that is uniquely separate from the rest of society. Their experiences during the pandemic were in some respects vastly different from those who have their liberty. In circumstances where this is the Module to fully examine those experiences there is considerable value in having a roundtable dedicated to them.
18. Second, whilst those who were in detention during the pandemic will inevitably have experienced the justice system in one form or another, that is not to say that there will be substantial overlap between the evidence that is relevant to the Chair’s task in each area. The institutional context of detention is separate, and different from, the ‘justice system’. There will be many detainees and prisoners for whom the experience of the justice system itself was not critical to their experience of the pandemic (for example because it pre-dated March 2020).
19. Third, the justice system itself is a very broad topic that would merit its own roundtable, and will require consideration of issues outside the scope of the experience of most prisoners and detainees, such as the extensive delays in the family courts and in police investigations and beyond. There is a real risk that, if these issues are addressed in a roundtable together with the issues facing detainees and prisoners, neither set of issues is examined adequately.

3 SYSTEMATIC EVIDENCE REVIEW

20. It is noted that the Systematic Evidence Review will consider “*any changes to mild-to-moderate anxiety and depression*” and “*inequalities in mental health and wellbeing across different demographic groups*” (emphasis added) as well as “*changes in symptoms ... for individuals with severe mental health conditions*”. PIDAG is grateful for the indication that the procurement process is currently underway. It is respectfully submitted that the specific context of incarceration means that both: (i) prisoners; and (ii) people in immigration detention must be among the demographic groups that are identified for

consideration. With this in mind, it is suggested that the work of each of PIDAG's constituent organisations should be part of any systematic review of the available research.

21. Similarly, PIDAG considers that it will be particularly important to consider the position of those incarcerated when assessing the impact of the pandemic on physical activity and lack of access to support services.

4 EXPERT MATERIAL, THE INSTRUCTION OF EXPERT WITNESSES AND RULE 9 REQUESTS

22. It is noted that “[t]he identity of the expert witnesses and the questions and issues that they will be asked to address will be disclosed to Core Participants before the expert reports are finalised”, and that CPs will be afforded an “opportunity to provide observations through commenting on a developed draft of the written reports” (CTI's Note, para. 32).
23. Whilst PIDAG is grateful for this opportunity, it is suggested that the CPs should be granted an opportunity to offer suggestions which may assist the Chair at the point when choices are being made regarding the sources of expert evidence. An indication of the individuals and/or organisations from whom expert evidence is being obtained is respectfully sought.
24. As is set out above in respect of the Systematic Evidence Review, PIDAG considers it essential that the expert psychiatric evidence obtained take account of the specific context of both: (i) prisoners; and (ii) people in immigration detention, and that at least one of the experts have expertise in the field of psychiatry specifically in the context of both immigration and criminal incarceration. PIDAG can recommend experts with the relevant expertise should that assist.
25. PIDAG contends that His Majesty's Inspectorate of Prisons is among the most important sources of expertise for Module 10, and would be grateful for the opportunity to assist the Chair with further submissions as to appropriate experts (including experts in psychiatry) in due course.

5 FUTURE HEARING DATES AND OTHER MATTERS FOR MODULE 10

26. PIDAG notes the indication that “[t]he public hearing in Module 10 is expected to take place over three weeks” (CTI’s Note, para. 523). In light of the breadth of the scope of Module 10, it is respectfully submitted that the Chair should consider increasing its duration by a week. This submission is not made lightly, or without careful reflection. On the contrary, it is suggested that hearing adequate evidence on all of the topics currently identified in the ‘Provisional Outline of Scope’ would require at least an additional week, and that – bearing in mind that the scope is identified as provisional only – it is appropriate to allow for some flexibility in the timetable in particular given that this will be the final Module.

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