Commission on Sex in Prison

Coercive sex in prison

Briefing paper 3

Key points

- There has been minimal research on sexual abuse in prison and the nature and extent of the problem is not known
- Sexual violence in prison is hidden and under-reported
- Research by Banbury (2004) found that 1 per cent of prisoners had been raped and 5.3 per cent were victims of coerced sex
- Annual data from the Bureau of Justice Statistics show that 2 per cent of prisoners in the US had been the victim of a non-consensual sex act and 4 per cent had been sexually victimised
- HMIP data show that 1 per cent of prisoners reported being sexually abused in prison. Extrapolating from prison population and reception figures, this means that between 850 to 1650 prisoners could be victims of sexual assault while inside
- Ministry of Justice data show that the number of recorded sexual assaults in prison rose in 2013 and is now at the highest recorded level since 2005
- Gay and transgender prisoners are at higher risk of sexual assault than heterosexual prisoners
- Good staff prisoner relationships are fundamental in preventing sexual abuse. Staff shortages and overcrowding can undermine professional relationships and put prisoners at risk
- Investigations into sexual assaults can be slow and the police are not routinely notified about allegations of abuse
- Prisons are closed institutions. It is complacent to assume that sexual exploitation and abuse by staff never happens in prison.

1. Introduction

The Howard League for Penal Reform has established an independent Commission on Sex in Prison. The Commission comprises eminent academics, former prison governors and health experts and is focusing on three broad themes:

- consensual sex in prisons
- coercive sex in prisons
- healthy sexual development among young people in prison.

This is the first ever review of sex inside prisons in England and Wales. There is currently little reliable evidence available on both consensual and coercive sexual activity in prisons. The Commission aims to understand the nature and the scale of the issues and problems surrounding sex in prison. It will make a series of recommendations with a view to making prisons safer. It will also examine how the situation in England and Wales differs from other countries, looking for best practice.

This is the third in a series of briefing papers for the Commission. It looks at coercive sex in prison.

The Commission has received written and oral evidence from voluntary and statutory agencies, prison governors, prisoners and former prisoners. It has held a series of seminars and heard evidence from Her Majesty's Inspector of Prisons (HMIP), the Prisons and Probation Ombudsman (PPO), prison governors, probation staff and academics. This briefing paper is based on the written and oral evidence submitted to the Commission. All names of prisoners have been changed to protect their identities. Research findings based on interviews with former prisoners will be published in 2015.

2. How widespread is coercive sex in prisons in England and Wales?

There has been minimal research on coercive sex in prison and no large scale studies. Edgar et al. (2003) uncovered pervasive 'routine' physical victimisation – less than 2 per cent of the 590 men they interviewed reported that they had been sexually assaulted while in prison, while 3 per cent had been threatened sexually and 2 per cent had witnessed an assault. Three quarters of their interviewees thought that, in the British penal system at least, sexual assaults either did not occur at all or were very rare.

Banbury (2004) found that of 208 former male and female prisoners, 1 per cent had been anally or vaginally raped and 5.3 per cent were victims of coerced sex. A former governor told the Commission that we cannot say that sexual abuse is not happening in prisons in England and Wales because we do not know.

In the USA, the issue of sexual assaults in prison has received more attention. Organisations such as Human Rights Watch and Just Detention International have worked hard to raise awareness of rape in prison in the USA and to ensure it is taken seriously. In 2003, US Congress passed the Prison Rape Elimination Act (PREA) which led to the establishment of the National Rape Elimination Commission and the introduction of a zero tolerance policy towards sexual violence in prisons. The US Bureau of Justice Statistics (BJS) is mandated to conduct statistical analysis of rape in prison, and annual survey data from a minimum of ten per cent of prisons showed that the number of recorded sexual assaults in US prisons was just a small percentage of the number of sexual assaults actually experienced by prisoners.

Data from the BJS (2013) national inmate survey found that 4 per cent of prisoners had experienced one or more incidents of sexual victimisation by another prisoner or by staff in the past year, and 2 per cent of prisoners had been a victim of a non-consensual sexual act with another prisoner or unwanted sexual contact with prison staff.

Her Majesty's Inspectorate of Prisons (HMIP) conducts a survey with prisoners as part of the inspection process. In each prison inspected, a sample of prisoners is asked whether, since they have been at the prison, they have been sexually abused by another prisoner or by prison staff. Across most security categories of prisons, 1 per cent of prisoners responded that they had been sexually abused in prison. HMIP told the Commission that given the size of the database set and the consistency of data collected over time, this figure of 1 per cent appeared to be statistically reliable. Given that the daily prison population figures show that on average 85,000 people are in prison, this percentage can be used to extrapolate that 850 people in prison could be victims of sexual assault. As more than 165,000 people are received into prison each year it is possible that 1,650 people could have been sexually abused. The number of sexual assaults

could be many times higher as evidence indicates that some victims are assaulted several or many times. The small percentage masks the true extent of the problem – the large number of people sent to prison each year means that the actual figures could be shockingly high.

The PPO has described sexual assault in prison as a 'hidden issue in a hidden world'. The Ombudsman told the Commission that during the period 2007–2012 the PPO received 108 complaints of a sexual nature, 47 of which were eligible for investigation by the PPO. The PPO report on sexual abuse in prisons (2013) stated:

The Ombudsman has found that some abusive sexual behaviours are not always taken sufficiently seriously and the quality of internal investigations is variable. These allegations may also raise serious criminal matters and the prison's PIO [police intelligence officer] should be informed in a timely manner and a police investigation facilitated and, if necessary, encouraged.

Ministry of Justice (MoJ) (2014) data on the number of recorded sexual assaults in prisons in England and Wales reveal that there was an increase in recorded sexual assaults from 113 in 2012 to 169 in 2013 (see table 1). The increase was entirely in the male estate, which accounted for 165 of the 169 assaults, and predominantly involved prisoner on prisoner sexual assaults. According to NOMS, recorded sexual assaults accounted for less than 2 per cent of all assault incidents recorded in prisons. The data does not include the number of recorded sexual assaults by staff on prisoners.

It is not known how many sexual assaults in prisons are unreported and therefore unrecorded. The Commission submitted a research proposal to NOMS to conduct primary research in prisons but was not granted permission to interview prisoners.

The BJS anonymous survey data from US prisons revealed that the number of recorded assaults was the tip of the iceberg. This may be the case for sexual assaults recorded by NOMS. There is an urgent need for research to determine the nature and scale of sexual abuse in prisons in England and Wales.

Table 1: Sexual assault incidents by assailant/victim type and calendar year, England and Wales.

	2012	**2013**
Male and female	113	169
Prisoner on prisoner	88	136
Prisoner on officer	13	12
Prisoner on other	8	11
Other	4	10
Male establishments	107	165
Female establishments	6	4

A small proportion of the assaults recorded will refer to incidents that occurred outside of prison custody and some will be unproven allegations. Source: MoJ, 2014.

3. Sexual assaults by prisoners

The Commission heard that sexual assault in prison was not tolerated by staff and they did not turn a blind eye to it. Prison Service Instruction (PSI) 64/2011 *Management of prisoners at risk of harm to self, to others and from others (Safer Custody)* states:

NOMS is fully committed to zero tolerance to violence in our prisons. Violence is not acceptable in any form. Everyone has the right to live, work and develop in a safe environment which is free from fear of abuse, harm or oppression.

Every verbal or physical act of violence must be challenged. Appropriate sanctions for perpetrators must be applied robustly, in a fair and consistent manner. Victims must be supported and protected.

Sexual violence is likely to be hidden and sexual assault or rape in prison is likely to be under-reported just as it is outside of prison. Turchik and Edwards (2012) found that the invisibility and marginalisation of male sexual assault was largely due to the perpetuation of male rape myths, which included that 'real' men can defend themselves against rape and only gay men are victims and/or perpetrators of rape. The Stern review (Government Equalities Office and the Home Office, 2010) on rape complaints found male rape was under-reported.

Men find it very difficult to talk about what has happened to them because of the common view that a man should be able to fight off an attacker. Male victims 'find it less easy to identify as victims and ask for help'.

There is much myth around the sexual assault of men, which leads to many misunderstandings about the crime and the victims it affects.

This has consequences in the way that men see themselves as victims of sexual crimes, and stops them from talking about what has happened to them and getting help.

The Commission heard evidence that there were additional barriers to reporting rapes or sexual assaults in prison, as well as those barriers which exist outside prison. The prevailing culture inside men's prisons, particularly on main wings, was often described as hyper-masculine and homophobic. One prisoner, John, told the Commission

> *People who are sexually assaulted or raped in prison are very unlikely to say anything because they are too scared, have been traumatised and will be bullied and victimised if they do so. Especially in YOIs where there are many jails that don't have VP wings in order to keep vulnerable prisoners safe.*

Prisoners told the Commission that some prisoners were trading sex in order to obtain tobacco or contraband items such as alcohol or drugs. Others used sex to settle transactions or debts with prisoners when they had no other means of paying. Prisoners do not have direct access to any cash held in their account and the purchase of items or 'canteen' from the prison shop is restricted. James wrote:

> *In the past three months I have witnessed a prisoner grooming and coercing at least two prisoners into sex and buying them things on the canteen or knowing there [sic] low on tobacco, bulk buying and then saying to the person who's low on the item if you do me sexual favours I'll give you some tobacco.*

Another prisoner, William said:

> *Coercion does exist. Offers of tobacco in exchange for quick sexual gratification does occur and is sometimes taken up by those in need. Sometimes sexual abuse also occurs.*

A former prisoner told the Commission he had witnessed vulnerable prisoners being groomed for sex.

Further investigation is needed to determine the extent to which sexual assaults and rape in prison are under-reported and whether the prevalence of male rape myths is preventing victims from speaking out. Measures must be in place to ensure prisoners are able to seek specialist support or disclose abuse confidentially. Prison staff need to be aware of the signs of sexual abuse or grooming such as the targeting and isolating of vulnerable individuals (Survivors Manchester, 2014).

4. Who is at risk of sexual assault in prison?

Evidence from the BJS (2013) in the USA has shown that certain groups of prisoners are more at risk of sexual assault than others. Results from BJS surveys 2011–12 found that non heterosexual prisoners who reported their sexual orientation as gay, lesbian, bisexual or other were among those with the highest rates of sexual victimisation. Prisoners who had experienced sexual abuse before coming to prison, prisoners who were being held for violent sexual offences and prisoners with a history of mental health problems also had higher rates of sexual victimisation. Rates of abuse were higher in prisons holding children; 9.5 per cent of juvenile prisoners had experienced sexual abuse in prisons in 2012 and 70–80 per cent of those abused said it had been perpetrated by staff.

The Special Rapporteur on Torture to the Human Rights Council (United Nations, 2001) found:

In particular, transsexual and transgendered persons, especially male-to-female transsexual inmates, are said to be at great risk of physical and sexual abuse by prison guards and fellow prisoners if placed within the general prison population in men's prisons.

The Commission received evidence from one transgender prisoner in the male prison estate:

> *Whilst I was waiting to see the doctor I had a prisoner who pulled my female jeans down in front of the other prisoners and staff nurses to see what sort of female underwear I was wearing. A nurse then took me into a treatment room so I could get decent and calm down from the ordeal.*

The prisoner alleged she had been subject to sexual assaults, harassment, intimidation and bullying from male prison staff. She told the Commission that a prison governor had refused to investigate the abuse and her request for the prison to inform the police was refused.

The impact of the fear of sexual abuse should not be ignored. Vulnerable prisoners who are at greater risk of sexual abuse in prison may feel scared but may not tell anyone about their feelings of vulnerability. Boys who are 'starred up' and placed in prisons holding adults are particularly vulnerable to sexual abuse and may be fearful. Prisons should consider how they identify, support and respond to the needs of vulnerable prisoners including those at greater risk of sexual abuse in custody.

5. Preventing sexual abuse in prison

Prison staff have a duty to prevent violence, including sexual violence against prisoners. Each prison must have a violence reduction co-ordinator (VRC) who monitors trends in violence in the prison, and responses to violent incidents, victims and perpetrators. PSI 64-2011 *Management of prisoners at risk of harm to self, to others and from others* states:

The VRC liaises with residential managers and security staff to ensure that those prisoners at risk of harm to others and from others are being properly identified and their risk managed.

Good staff/prisoner relationships are fundamental to the management of safe and decent prisons. They are integral to the reduction and management of self-harm and violence.

NOMS recognises that placing more than one prisoner in a cell carries a risk. Prisons must comply with the Cell Sharing Risk Assessment procedures to assess the risk a prisoner poses to another prisoner in a locked cell or other unsupervised enclosed space. Adult prisoners who have been convicted of rape or serious sexual assault of an adult of the same sex are considered a high risk.

Some prisons select and train prisoners to support new prisoners during the induction process. Commissioners heard concerns that the potential for the disclosure of sensitive information, such as a person's offence or sexuality, might make some new prisoners more vulnerable to sexual abuse by others.

Figures obtained by the Howard League for Penal Reform (2013) reveal that in the financial year 2012–2013, on average 19,194 prisoners were sharing cells designed for one person. A further 777 prisoners were sharing three to a cell. As overcrowding in male prisons has increased, the number of recorded sexual assaults by male prisoners has risen. Placing prisoners together in a cell certainly increases the opportunity for sexual abuse to take place, out of sight of prison staff and CCTV cameras.

The Commission heard evidence from the Prison Officers Association that cuts in staffing levels and overcrowding within prisons were impacting on staff prisoner relationships. Reductions in the amount of contact time between officers and prisoners could make it more difficult for staff to identify prisoners at risk of sexual assault or to prevent or detect sexual assaults in prison.

6. Investigating sexual assaults in prison

Prison service order 1300: Investigations states that prison staff have a duty to conduct a formal investigation into any incidents which have major consequences or cause serious harm to a person.

Guidance from the Crown Prosecution Service states:

Prison governors have been informed that the following offences should be referred to the police:

- *rape and attempted rape;*
- *personal sexual violation other than rape but where the victim is especially vulnerable or there has been violence or a threat of violence*

A lawyer who gave evidence to the Commission said it was rare for prisoners to ask solicitors to support them with a sexual assault case. Prisoners had criminal records and were not generally given compensation from the criminal injuries compensation scheme for being a victim of an assault. *R(Stenning)* v *Secretary of State for the Home Office* [2002] EWCA civ 793 set a high threshold for liability in civil cases concerning assaults by prisoners.

The Commission heard evidence that prisoners sometimes wanted to report a crime but the police did not investigate it. A lawyer reported that police involvement in sexual assault cases in prisons was disappointing although specialist sexual offences units such as the Metropolitan Police Sapphire units, whose primary role was to investigate rape and other serious sexual violence and provide care and support to victims, had been shown to respond quickly and be willing to investigate cases of sexual assault in prison.

The Howard League (2013) obtained information on the number of sexual assaults the police were called to investigate in prisons in 2012. Thirty-six out of forty-two police service areas responded to the FOI request. The police had been called to investigate 91 sexual assaults in prisons in England and Wales. In the same year NOMS recorded 113 sexual assaults in prison.

Case study 1: *R(NM)* v *Secretary of State for Justice* [2011] EWHC 1816

Howard League lawyers represented a young man who reported that he had been raped and sexually assaulted several times in different prisons. An application for a judicial review into the decision by the Secretary of State for Justice not to investigate an assault in one prison was refused.

NM was a 24-year-old man with learning difficulties. He told lawyers at the Howard League that he had been raped and sexually assaulted by his cell mate in 2007. No court or adjudication action was taken against his assailant. NM was moved to a different prison in 2007 and then moved again in 2010. His prison notes reveal that two prisoners had informed staff that NM was being groomed by another prisoner in 2010.

In 2010 NM told his father over the telephone that a friend in prison had 'grabbed him down below'. The father telephoned the prison and told the staff. NM reported the incident to staff and said that he would like the police to be involved. NM and the perpetrator of the assault, who initially claimed that the sexual touching was consensual, were interviewed by prison staff. NM gave a written statement which stated 'the reason I took too long to say anything I was scared. I felt like the staff won't believe me. He said not to tell anyone.' There were no independent witnesses to the assault and it took place in NM's cell where there was no CCTV coverage.

The police were notified of the incident over two weeks after NM said that he would like police to be involved. Following discussions with the police liaison officer, NM said that he did not want the police involved but wanted the prison to deal with the incident. The prisoner who had touched NM's penis admitted the assault and received a punishment of three days cellular confinement.

Case study 2*

A teenager who had mistakenly been placed in an adult prison was raped by another prisoner in the showers. Following the assault, he was moved to a YOI where he made several suicide attempts. Despite compelling evidence regarding the assault, including the impact it had had on his mental health, there was no police investigation and a civil claim was found by lawyers to be not viable.

Case study 3*

A prisoner in a privately run prison was raped during a riot and contracted HIV as a result of the assault. There was expert medical evidence regarding the date of the assault. The police investigation into the assault was very slow and the perpetrator of the assault was deported before the trial could begin. A civil case was settled before trial.

* Evidence submitted to the Commission by lawyers

The case studies highlight the key issues prisoners face in reporting a sexual assault, securing a police investigation or a prosecution in the courts:

- Prisoners may be reluctant to report a sexual assault. They may fear reprisals by prisoners or feel staff will not believe them
- Sexual assaults in prison are more likely to take place where there are no independent witnesses or CCTV coverage
- It can be difficult to determine whether sexual acts between prisoners are consensual or coercive
- The police are not always notified of a sexual assault in prison and there can be delays in police investigations or the collection of forensic evidence
- The prison population is often transient and victims or perpetrators can be moved before an investigation is conducted or completed.

7. Support for victims of sexual assault

PSI 64/2011 recognises that victims of violence in prison will need support. It states:

It is vital that systems are in place to support victims. The support available should be appropriate to the hurt or injury they suffer. Where practicable, it is recommended that victims are advised of the outcomes of any action taken following the incident.

PSI 64/2011 states that 'victims of assault can become perpetrators themselves so effective support can be seen as a preventive as well as a supportive measure'. The PSI gives guidance on recognising victims of assault in prison, but does not refer specifically to victims of sexual

violence or include guidance on how to support prisoners who have been sexually assaulted. Some of the positive measures suggested in the PSI such as encouraging 'victims to reflect on their own behaviour which may have resulted in acts of violence', could be positively unhelpful in supporting victims of sexual violence.

Following a sexual assault it is vital that specialist medical and forensic services are accessed immediately in order to preserve any forensic evidence. However, the Commission heard from lawyers and victims that there could be delays in contacting the police or in collecting or preserving forensic evidence.

Penal Reform International and the Association for the Prevention of Torture (2013) stated:

Given the fear of reprisals if they denounce such acts of [sexual] violence to the authorities, detainees should also be given the option of confidentiality when reporting sexual abuse in prisons through both an internal and external complaints procedure. Inmates who are victims of sexual abuse should receive timely medical treatment and counselling.

Prison staff should receive specific guidance on supporting victims of sexual assault. All victims must be offered confidential, timely, specialist and appropriate support and staff must be aware of the need to engage specialist services promptly to preserve forensic evidence in case legal remedies are sought in the future. Victims of sexual assault should be offered independent legal advice. It is good practice to refer all allegations of sexual assault to the police if the victim requests it, and not just if a victim is vulnerable.

8. Sexual abuse by staff

Prison staff are not allowed to have any sexual involvement with prisoners. PSO 1215: *Professional standards; preventing and handling staff wrongdoing* states:

Staff must exercise particular care to ensure that their dealings with prisoners, former prisoners and their friends and relations are not open to abuse, misrepresentation or exploitation on either side.

In the US sexual relationships between staff and prisoners are always regarded as coercive. The National Prison Rape Elimination Commission (2009:13) unequivocally stated that 'the power imbalance between staff and prisoners vitiates the possibility of meaningful consent'.

The Commission heard there were no full-time corruption officers within the prison service and investigations into coercive relationships between staff and prisoners often fell below the police threshold for criminal investigations.

Prisons are closed institutions holding people who are vulnerable to sexual exploitation, including those who have previously been sexually abused, people with learning difficulties or disabilities and children and young adults who have been in care or are marginalised. Male and female prison staff may abuse their position of power and sexually exploit those in their care. One prisoner, Mark, told the Commission

> *When I was 16 years old I was sent to [a] YOI for 8 months. While I was there I was having sex on a daily basis with a 32-year-old prison officer. At the time I found it fun but now looking back I wonder how this can happen, you would think you could trust these people.*

It is not known whether abuse by prison staff is rare, widespread or systemic. In 2003, former prison officer Neville Husband was convicted of sexually abusing five boys at Medomsley detention centre in Durham between 1974 and 1984. In 2005, Husband's sentence was increased to 10 years after new victims came forward and he admitted to attacks on four more boys. The MoJ told the Guardian 'In the late 1970s, several detainees held at Medomsley detention centre were physically and sexually abused by Neville Husband'. However, on 28 March 2014 the Guardian reported:

Police investigating sexual abuse at a Durham detention centre say they believe they have uncovered an organised paedophile ring operating in the 1970s and 80s with more than 500 potential victims.

It is now known that Neville Husband started his abuse when he was working in Portland prison that then and now houses teenage boys. In response to the abuse perpetrated by Neville Husband, Her Majesty's Chief Inspector of Prisons stated in the Guardian (2012):

It would be dangerously complacent to imagine these things could only happen in the past. There is always a danger that in closed institutions – be they prisons, children's homes or hospitals – abusive behaviour by some staff becomes the accepted

norm. We need to recognise the vulnerability inherent in the situation of every detainee.

Research by the BJS (2013) has revealed that sexual abuse by both male and female prison staff in US prisons was far more widespread than previously acknowledged, particularly in prisons for children.

NOMS must recognise the inherent vulnerability of prisoners. It should not be assumed that just because prisoners do not report abuse by prison staff, abuse is not happening.

9. Conclusions

There is an urgent need to determine the nature and scale of sexual abuse in prisons in England and Wales. The passing of the PREA in 2003 in the US, and the statistical analysis of annual data on prison sexual abuse by the BJS, has revealed the scale of abuse in US prisons. It has shown that recorded sexual assaults were a small percentage of the sexual assaults experienced by prisoners.

The limited research on sexual assaults in English and Welsh prisons suggests there may be parallels between the experiences of prisoners in the US and prisoners in England and Wales. The UK government should conduct research on sexual assaults in prison, particularly given the efforts made in the US to recognise the problem and prevent abuse following the passing of PREA.

The number of recorded sexual assaults in prisons in England and Wales has risen from 113 in 2012 to 169 in 2013 and is the highest number of annual recorded assaults since 2005. The number of recorded prisoner on prisoner sexual assaults has increased by 54 per cent in one year. However, the number of recorded sexual assaults in prison may not reveal the true scale of sexual abuse. Prison culture, particularly in male prisons, may be a significant factor in victims' reluctance to disclose they have been sexually assaulted. Prison staff must acknowledge that assaults can happen in prison and should take allegations of rape or assault seriously. Prisoners who are sexually assaulted should have the same access to justice as people in the community.

Gay and transgender prisoners are more likely than heterosexual prisoners to face sexual victimisation. Fear of sexual assault may be more prevalent among certain groups of prisoners and its impact should not be ignored. Confidentiality must also be maintained for victims of sexual assault. Prisons must identify, support and respond to the needs of vulnerable prisoners at greater risk of sexual abuse in custody.

The MoJ should put in place new systems to encourage victims of sexual assault to report abuse. Prisons must provide specialist support services for sexual assault victims, and staff training on the prevention and detection of sexual assaults. Prisoners should have prompt access to medical treatment, forensic services and specialist counselling following an allegation of sexual assault. The police should be contacted if the victim requests it.

Placing two prisoners in a single cell puts people at risk of sexual abuse and is contrary to international standards including the UN standard minimum rules and European prison rules. No prisoner should be forced to share a cell.

Many prisoners are inherently vulnerable to sexual abuse and exploitation. Closed institutions, including prisons, are often not open to wider scrutiny and prisoners may be more susceptible to abuse by staff. Prisoners may feel that staff or the police will not believe them if they report abuse. All prison staff must receive training on recognising the signs of abuse and grooming and prisons must encourage a culture where staff and prisoners are encouraged to come forward if they suspect abuse.

A full list of references is available on the Howard League website at http://www.howardleague.org/publications-prisons/.

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