Standing Committee for Youth Justice

SCYJ response: Plans for secure college rules consultation

November 2014

The Standing Committee for Youth Justice (SCYJ) is an alliance of over thirty organisations working together to improve the youth justice system in England and Wales. We have serious concerns about the plans for secure colleges, which we have set out as the Criminal Justice and Courts Bill has made its way through Parliament. We do not believe these very large institutions will be appropriate or safe environments for children and are sceptical that they can deliver the outcomes the government is seeking. However, if they are to go ahead, we believe the indicative Rules require significant revision.

Purpose and Ethos & Education (Questions 1 and 3)

Between April 2012 and March 2013, 5 ChildLine (an anonymous counselling service for children) received 5,200 contacts from young people detained in young offender institutions (YOIs). The major themes from these conversations included suicidal feelings, experience of bullying and anger management issues, as illustrated by one young person's comment: "I feel really down because I punched someone today and I've been put in segregation. I know that there are consequences when I react to things physically but I can't help it."

The starting point for the effective engagement of young people in custody in education and training must be a holistic, therapeutic environment in which all of their needs are integrated and met. Those in the youth secure estate are some of our most disadvantaged and troubled young people: between 65 and 78 per cent have had a period of non-attendance at school[1]; nearly half have literacy and numeracy levels below those of the average 11 year-old, and over a quarter equivalent to those of the average seven year-old or younger[2]; and 80 per cent have experienced five or more factors of disadvantage.[3]

Looking at health issues, reviews of the evidence indicate that children in custodial assessments have higher levels of mental health, developmental difficulties and learning disabilities.[4] Just over 53 per cent of young people in custody meet the threshold for conduct disorder (CD)[5]. Many of these conditions we know significantly affect educational achievements.[6] We also know that more than half of those with CD meet the criteria for special educational needs, requiring a different and more resource intensive educational

[1] Gyateng T, Moretti A, May T and Turnbull P (2013) Needs and Interventions, London: Youth Justice Board, p39; just under four-fifths (78%, n=128) of young people in SCHs, 74% (n=128) in STCs and 65% (n=270) in YOIs were recorded as having had a period of non-attendance at school

[2] ECOTEC, An Audit of Education Provision within the Juvenile Secure Estate: A Report to the Youth Justice Board, London: Youth Justice Board, 2001, p9

[3] Jacobson J et al (2010) Punishing Disadvantage: a profile of children in custody, London: Prison Reform Trust

[4] Chitsabesan et al. (2006). Mental health needs of offenders in custody and in the community. The British Journal of Psychiatry, 188: 534-540. And Prison Reform Trust. (2010). Seen and Heard: supporting vulnerable children in the criminal justice system. London: Prison Reform Trust. And Williams, H., Cordan, G., Mewse, A. J., Tonks, J., & and Burgess, C. N. (2010). Self-reported traumatic brain injury in male young offenders: A risk factor for re-offending, poor mental health and violence? Neuropsychological Rehabilitation, 20 (6), 801–812.

[5] Fazel et al 2008, Journal of the American Academy of Child and Adolescent Psychiatry, 47(9), September 2008, pp.1010-1019

[6] Green, H. et al., (2005) The mental health of children and young people in Great Britain 2004, Basingstoke, Hampshire: Palgrave

approach.[7] 60 per cent also have speech and communication difficulties which significantly impact on the ability of these children to engage with mainstream educational approaches.[8] Many children in custody are simply not "education ready" and/or have serious difficulties with engaging in mainstream educational approaches.

This reality is not captured in the ethos and purpose of secure colleges, as set out in the consultation. The consultation says, "secure colleges will equip young offenders with the skills they need to stop offending and to become law-abiding members of society" and that the Government plans to do this through placing "high quality education at the core of regime which both educates and provides rehabilitative services".

Given the statistics above, this is unlikely to succeed if the wider needs of young people are not first addressed; underlying health and welfare issues are frequently the underlying cause of offending and can prevent children from engaging in education. A therapeutic environment, in which these needs are addressed, is imperative. This must be reflected in any Rules on the purpose and ethos of the secure college.

In addition, any Rule setting out purpose and ethos must specify that the operation of secure colleges must be consistent with children's rights, including those set out in the European Convention on Human Rights (ECHR) and the UN Convention on the Rights of the Child (UNCRC). In particular, in relation to the UNCRC articles 3, 12, 37 and 29.[9]

The consultation proposes a Rule that would require a minimum of 30 hours a week of educational activities for children, which may include "academic study, such as the development of core skills like literacy and numeracy, vocational training, the development of life skills, and activities to tackle offending behaviour and equip young people with the skills to lead crime free lives". Though we welcome the principle of increasing and improving the education in custody, a significant number of children will not be ready for this level of education. As set out above, many will need significant support before they are "education ready". Requiring them to participate in 30 hours per week of "educational activities" (where this is not defined as including health and welfare interventions) will be unrealistic, and even counterproductive, for some, particularly initially.

We would like to see more detail on education included in the Rules, particularly requirements on curriculum – we cannot see why the curriculum requirements contained in the consultation cannot be contained in the Rules. To our understanding, even free schools (which the government intends the secure college model to replicate) have minimum statutory requirements on curriculum.

Cohorts of young offenders, including girls (Questions 2 & 45 – equalities)

We firmly believe that girls and children under-15 should not be detained in secure colleges – the evidence suggests that these are distinctly vulnerable groups who require qualitatively

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[7] Green, H. et al., (2005) The mental health of children and young people in Great Britain 2004, Basingstoke, Hampshire: Palgrave

[8] Royal College of Speech & Language Therapists (2009) Locked up and Locked out: Communication is the key [http://www.rcslt.org/about/campaigns/Criminal_justice_campaign_briefing (26.04.2013)] 8 Ministry of Justice (2013) Youth Custody Report at: average population table, 48 per cent reduction from 2002/03 to 2012/13 [https://www.gov.uk/government/publications/youth-custody-data (26.04.2013]

[9] Article 3 sets out that: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." Article 12 sets out that the child's views must be give due weight, particularly in judicial and administrative proceedings affecting them. Article 29 emphasises that education is broader than preventing reoffending and should be aimed at the wider development of the child. Article 37 sets out that: "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment"; and that "every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age".

different and distinct psychologically informed environments. Holding these distinct groups in a small minority in a mixed environment system designed for a predominantly older and male population will not help these young people thrive and may well be actively damaging. The House of Lords has voted to keep girls and younger children out of secure colleges and we are adamant that this should remain the case. The reasons and evidence underpinning this standpoint are detailed below. However, if girls and children under-15 were to be held in secure colleges, the provisions proposed in the consultation are inadequate.

Last year, girls made up 5% of the custody population and under-15s made up 4%.[10] Given the proposed size of secure colleges, at most there would be around 16 girls and 13 children under-15 housed in environments predominantly designed for 291 older boys. It is inevitable that the culture of the secure college will be shaped by the majority group and that the regime and services will focus on their needs. Large custodial institutions tend to perpetuate hyper-masculine cultures and resulting behaviour.[11] Children regularly report feeling unsafe in custody and these feelings are likely to be amplified amongst girls and younger children when in such small minorities.[12]

Females in custody are a particularly vulnerable group, they have, for example, high rates of sexual abuse and exploitation, trauma, victimisation and psychological disorders, and high therapeutic needs which need to be addressed.[13] 46% of women in prison report having suffered a history of domestic abuse[14] and 53% reported having experienced emotional, physical or sexual abuse as a child, compared to 27% of men.[15] The Office of the Children's Commissioner reported that one in three girls in custody had experiences sexual abuse.[16]

The evidence also suggests that the context and environment in which programmes are implemented is particularly important for girls, and that there are some broader benefits to girl-only environments if outcomes beyond recidivism are focused on (e.g. increasing self-esteem or self-efficacy which will be important to prevent repeating cycles of victimisation)[17]. A recent study found "*The literature suggests that effective work with teenage girls has a number of essential elements: a safe, nurturing, girl-only environment; an emphasis on positive relationships and relational safety; addresses risks alongside strengths in the context of girls' lived experience; promotes a positive version of girl/womanhood; and incorporates work with families".*[18] A further summary of the research focusing specifically on young women disclosing gang associations stressed the need to support exit and recovery through gender-specific interventions and environments; young women need to be

[10] Ministry of Justice, Youth custody report: August 2014. https://www.gov.uk/government/statistics/youth-custody-data
[11] Phillips, Coretta (2012) The multicultural prison: ethnicity, masculinity, and social relations among prisoners Clarendon studies in criminology. Oxford University Press, Oxford, UK.
[12] See for example HM Inspector of Prisons YOI surveys annual summary. The 2012/13 document is available here: http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/summaries-of-juvenile-survey-responses/hmip-children-young-people-in-custody-12-13.pdf See also , the Howard League for Penal Reform's evidence in Life Inside.
[13] Zahn M et al (2009) Determining What Works for Girls in the Juvenile Justice System A Summary of Evaluation Evidence Crime & Delinquency Volume 55 Number 2 (attached where higher levels of sexual abuse in girls are noted).
[14] Baroness Corston (2007) A Review of Women with Particular Vulnerabilities in the Criminal Justice System, London: Home Office
[15] Ministry of Justice (2012) Prisoners' childhood and family backgrounds, London: Ministry of Justice
[16] Office of the Children's Commissioner, 2011, 'I think I must have been born bad': Emotional wellbeing and mental health of children and young people in the youth justice system. http://www.childrenscommissioner.gov.uk/content/publications/content_503
[17] Chesney-Lind & Pasko, 2004, The female offender: Girls, women and crime (2nd ed.) Thousand Oaks, Calif.: Sage Publications.
[18] McNeish and Scott, 2014, Women and girls at risk Evidence across the life course, DMSS Research

surrounded with positive institutions/cultures and to be in settings where they feel safe and where bullying, sexualised images and stereotyped images are actively challenged.[19] Furthermore, recovery from sexual exploitation and abuse is reliant on them "feeling believed, supported, made safe and helped to make sense of their experience and therapeutically and gender-informed approaches are much more likely to help them avoid long term mental health problems."[20]

We argue that a secure college, with a dominant masculine culture and regime, and in which girls are likely to feel unsafe, will not provide the necessary psychologically informed environment for girls to thrive, raise their own expectations, recover from past trauma and benefit from interventions.[21]

If girls are to be held in secure colleges, despite the likely negative impact on their outcomes, it will be almost impossible to keep them safe on the site if the only statutory protection they are entitled to is that they are kept in "separate accommodation".
We are very surprised that the consultation does not include any Rules on or consideration of keeping younger children safe.

We are concerned that there is no consideration of the particular needs of girls and younger children – other than the (in our view inadequate) accommodation provision for girls. Gender-specific provision and a workforce specialist in gender and age specific interventions is important. For instance, a recent review of the research found: *"Gender-responsiveness requires services to create adequate programme space for girls on a par with what is currently available for boys. Generic services should be strengthened by providing treatment and care that is sensitive to girls' experiences, styles of communication, need for empowering relationships, and common presenting problems …the research suggests that this alternative may produce the best results, especially for girls with histories of physical or sexual abuse. Gender- specific programmes aimed at reducing reoffending in girls have shown positive effects on other outcomes such as education, employment, relationships with family and friends, self-esteem, self-efficacy and other social-psychological outcomes".*[22]

However, there is no indication, in the consultation or elsewhere, that the particular needs of different groups have been acknowledged or considered. For example, gender bespoke interventions are not mentioned, nor are the different educational needs of, say, a 12 year old and a 17 year old.

To defend the inclusion of girls and younger children in secure colleges, the government has said that other custodial institutions and secondary schools hold a mix of genders and ages. SCYJ does not believe this comparison holds and it does not justify having such limited protections for girls and younger children as that proposed. The ratios in all other mixed custodial institutions are far closer than they would be in secure colleges, and secondary school student populations are not made up of the most vulnerable children in society, who display some of the most challenging behaviour and have so frequently experienced bullying, sexual abuse and exploitation.

We are also concerned that if the secure college is to hold such a large population of children, all are to be treated the same. This goes against the learning from specialist units developed in various YOIs over the past 10 years, which demonstrate the merits of responding to the needs of the most vulnerable. This may appear to conflict with our

[19] McNeish and Scott, 2014, Women and girls at risk Evidence across the life course, DMSS Research
[20] Allnock, D and Hynes, P (2011) Therapeutic Services for Sexually abused children and young people Scoping the Evidence Base. NSPCC.
[21] Petersen, D. (2009) Girls in Gangs and Implications for Gender-specific Programs. Youth Violence Prevention Conference, University of Missouri-St. Louis accessed on 25/11/2014
[22] McNeish and Scott, 2014, Women and girls at risk Evidence across the life course, DMSS Research

response to the original Transforming Youth Custody consultation, in which we wrote: *"all children in custody are vulnerable and thus all need to have an environment and activities designed for vulnerable children. Singling out a group of children within an establishment as more vulnerable is not helpful…. It is SCYJ' firm view that what is required are 'enhanced facilities' not 'enhanced units'".*

However, this statement was premised on the idea that secure colleges were small units with high staff to child ratios, and a therapeutic environment. If hundreds of children are to be held together, an enhanced unit may be necessary, particularly as it is not clear what the environment, facilities or staffing levels in a secure college would look like.

If girls and younger children are not offered greater protection, secure colleges are likely to have significant equality impacts in terms of age and gender. We are not aware that any impact assessment has been carried out, particularly on how these plans will impact on younger children and girls. This oversight has been commented on by the Joint Committee on Human Rights[23] and must be rectified.

Staffing, learning assessment, and healthcare assessment (Questions 4, 6 & 9)

We agree that all children arriving in custody should have an individual learning assessment and a health assessment and that an individual learning plan should be drawn up. However, it is imperative that these assessments are evidence-based and carried out by qualified professionals. The proposed Rules currently contain no such requirements. Though the document says the healthcare assessment would be carried out by a "healthcare professional", the level of qualification they must hold is not specified and is therefore absent from the indicative Rule. This should be rectified.

The indicative Rule on individual learning assessment should include a requirement that assessments are evidence-based and carried out by appropriately qualified professionals. We understand the Government has said it does not want to dictate what staff are employed in a secure college but there is little point having an assessment if it is not delivered by an appropriately trained and/or qualified professional.[24]

Given the strong link between poor mental health and learning outcomes[25] it is essential that there is cross referencing between health and educational assessments. Children's mental health needs require urgent attention to support educational outcomes.

The only proposal on staff training in the consultation document is that "a Rule requires all custodial staff working in secure colleges to have undergone training approved by the Secretary of State." It is not clear from this how the training, and therefore staff, will differ from staff in, say, YOIs. The consultation document describes staff commitment and quality as a "critical success factor", and secure colleges will not be able to meet their objectives without well qualified and trained staff.

Staff training should be underpinned and rooted in the principles that:

- children in custody are children first and foremost
- staff have a duty of care and responsibility to balance the best interests of the individual child with the safety and the wellbeing of others in the establishment.

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[23] House of Lords House of Commons, Joint Committee on Human Rights Legislative Scrutiny: (1) Criminal Justice and Courts Bill and (2) Deregulation Bill Fourteenth Report of Session 2013-14. http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/189/189.pdf

[24] Given what we know about the mental health needs of children in custody (Chitsabesan (Chitsabesan et al, 2006) – see ref at end), we need to ensure good representation from SENCO staff in these settings.

[25] See Green, H. et al., (2005) The mental health of children and young people in Great Britain 2004, Basingstoke, Hampshire: Palgrave

Training should include the following elements:

- recognising and understanding that their own behaviour and responses will affect how children and young people behave;
- safeguarding
- a basic understanding of child development and how it is effected by life experiences;
- understanding the limitations of children's cognitive abilities, including their ability to hear, interpret and act upon information given;
- attachment theory
- mental health and conduct problems, learning disability, and speech and language disability awareness and how these difficulties interact with learning goals;
- how to develop positive relationships and the importance of this;
- the use of language, tone of voice and body language, and its impact on children;
- understanding the main causes of behavioural problems in children;
- how to de-escalate difficult situations using influence and persuasion;
- how to resolve conflict using restorative justice techniques.[26]

We believe further requirements of the training given should be included in the Rules, based on the above principles. Failing that, a separate consultation on staff training requirements should be conducted.

Frequency of training will be key to ensuring staff's knowledge is refreshed and up to date. Requirements on frequency of training and the requirement that staff are given sufficient time off to attend training, must be included in the Rules.

Secure colleges should be required to employ some staff with qualified teacher status and some staff with SENCO skills (this is particularly important, given what we know about the mental health needs of children in custody)[27]. We do not think it is appropriate for secure college to operate purely on a free school model because the institutions are fundamentally different. Secure college providers will be permitted to make a profit and the new institutions will hold a very different population to free schools. We would like to see the Rules specify that some qualified teachers must be employed. In addition, why can the requirement that the SENCO hold Qualified Teacher Status not be included in the Rules?

Accommodation (Question 14)

We are not opposed to there being an option of room sharing where it is in the child's best interests. However, extreme caution must be exercised. Holding children together in the same room can be dangerous. This is most starkly illustrated by the murder of Zahid Mubarek by his cellmate in Feltham YOI in 2000. That said, it may be beneficial in certain circumstances for some children to share a room. However, children's relationships can be volatile and any decision to permit sharing would need to be regularly reviewed.

As it stands, the proposed Rule on this matter is inadequate and does not reflect the UNCRC requirement that the best interests of a child are a primary consideration in all matters affecting them. The child's best interests must be the primary consideration, in the test for whether children can share a room. This should be set out in the Rules and there should be a requirement that the decision on room sharing is regularly reviewed.

[26] This training criteria builds on that set out in the following report: Centre for Social Justice (2012), Rules of engagement: changing the rules of engagement, London: Centre for Social Justice,

[27] See Chitsabesan et al. (2006). Mental health needs of offenders in custody and in the community. The British Journal of Psychiatry, 188: 534-540.

Resettlement release (Question 20)

We support children being temporarily released, particularly to support resettlement. However, further clarity is needed on who decides whether a child may be released for these purposes and, if not, how the decision can be challenged.

Advocacy (Question 23, 31 and advocacy provisions in Questions 34 & 35)

We believe it is imperative that children in custody have access to advocates and believe that the duties set out in the consultation must be stronger. The consultation proposes a Rule "to allow the Secretary of State to appoint advocates to Secure Colleges". We believe this permissive power should be replaced by a duty on the Secretary of State to appoint advocates. Given the significant cuts to legal aid, and the fact that children may not understand, or have faith in, internal complaints procedures in custody,[28] advocates will be essential.

Similarly, we are concerned by the approach to advocates in the use of force and restraint sections and that on charging children with an offence under the Rules. The proposed "principles" on the use of restraint only provide that a child "should" be give the "option" of an independent advocate when discussing an incident of restraint. We believe this should be a far stronger duty. In the "principles" informing the use of force there is no requirement for incidents of force to be discussed afterwards, with or without an advocate. This must be addressed. In addition, children must have the option to be represented by an advocate if they are "charged with an offence under the Rules".

Single separation (Question 32)

Secure Children's Homes may only use single separation when necessary to prevent injury to any person or serious damage to property. We recommend that the same restrictions are in place in secure colleges. There should be no need for secure colleges to have greater powers of separation than secure children's homes, given that there will be overlap in the children they hold.

As with secure children's homes, secure colleges should have to check on a child every 15 minutes, and keep a record of every instance of single separation. (Some Secure Children's Homes check children on single separation more regularly. For instance, Clayfields Secure Children's Home checks them every five minutes). The child should have the right to read the record and add their own comments. We support a maximum time period for single separation; reports have emerged from YOIs of children spending a significant amount of their sentence in singe separation. At the very least there should be a requirement for a review by health, safeguarding and senior managers at regular, specified intervals – in Clayfields Secure Children's Home, any decision on single separation is reviewed by senior managers every hour.

Use of force (Questions 33-37)

SCYJ's view is that use of force in secure settings must comply with the ECHR; we believe force should only ever be used to prevent harm to persons, serious damage to property, or escape. We do not believe pain-inducing techniques should ever be used. As such, we are very concerned by provisions on use of force in the consultation. The consultation begins by stating that the use of force should be "a last resort, respecting the young person's dignity and physical integrity, and must never be used as punishment". However, the proposed provisions that follow severely undermine this aim. We are concerned by: a) How confusing the proposed systems are; b) The creation of two categories of force; c) The restraint techniques permitted; and d) When restraint can be used. As a result of these four problems,

[28] See for example, Office of the Children's Commissioner, Why Are They Going to Listen to Me? Young People's Perspectives on Complaints Systems in the Youth Justice System and the Secure Estate (London, 2012)

the proposed system on use of force is dangerous, at times unlawful, and will lead to the illegal use of restraint. What is needed is a single, independently assessed system of restraint, that can be used in all the necessary circumstances. Such a system should not include pain-inducing techniques, and should not be permitted to maintain a "safe and stable environment".

a) Confusion:

Rules on the use of force must be clear and comprehensible if force is to be used legally and proportionately. For example, the 2008 Court of Appeal judgment on the use of force in secure training centres (STCs) found that confusion over when force could be used had led to the widespread illegal use of restraint.[29] Simplicity and clarity are key if custody officers, faced with explosive situations, are to know which techniques can safely and legally be applied. Unfortunately, the indicative Rules are extremely confusing on which techniques may be applied when, and what considerations must apply when using them. We are very concerned that this will lead to the widespread use of dangerous and illegal force. A much clearer system is required.

The proposed Rules seem to set out that: to protect a person or property any restraint technique may be used, though if practicable MMPR techniques should be used; if force is to be used to maintain GOAD (defined as maintaining a safe and secure environment) MMPR must be used, no other restraint techniques would be permissible; if force is to be used for GOAD, pain inducing MMPR techniques may not be used, though they may be used in all other circumstances; different principles and considerations must be applied to the use of an MMPR restraint technique as compared to any other sort of restraint technique.

This is extremely confusing. Given that most restraint occurs in "urgent" situations, there are far too many factors for custody officers to consider to ensure the force they use is safe and legal. One clear and independently assessed system of restraint, applicable to all situations, is required.

b) Two categories of force

We are extremely concerned by the distinction between use of force and restraint. The consultation proposes that MMPR techniques must be used "so far as is reasonably practicable", other than where force is used for GOAD where MMPR must be used. This is very troubling and will lead to dangerous and unregulated force being used against children. We strongly believe that the "use of force" system should be removed from the Rules.

The use of force is defined very loosely as "physical contact which is more than minimal and is necessary to control or a restrain a young person in some way". The examples given of when "force", rather than an MMPR technique, might be used are when the need to prevent escape or damage to property or persons is *"urgent and does not allow for the situation to be managed through an approve restraint technique… force may be required to hold someone back from suddenly assaulting another young person or member of staff. Staff may also need to use force for personal protection".* There are several serious concerns about this distinction between force and restraint and when either can be used.

In our view, "so far as is reasonably practicable" is a very loose legal term that does little to define where an MMPR technique must be used. Moreover, we believe it is unnecessary and dangerous to create a legal distinction between MMPR and other restraint techniques and to permit both in secure colleges.

MMPR is the only system that has any medical risk assessment to minimise risk, and has in place a reporting mechanism for warning signs of distress – this allows warning signs to be

[29] R (on the application of C) (a minor) v Secretary of State for Justice [2008] EWCA Civ 882

collated across secure settings. Allowing another, seemingly entirely unspecified and unregulated, system of restraint is dangerous and unnecessary. It should be removed from the Rules. If it is not, far more detail would be needed on what would be permitted, whether these techniques have been medically risk assessed, under what circumstances they would be used and what justification would be required to use them.

There seems little point in having a comprehensive and independently assessed system of restraint if an entirely unregulated system is permitted to operate concurrently, with only weak legal direction on why one should be used rather than the other. We question why a separate category of "use of force" is necessary at all. The examples given do not explain it. Most situations in which MMPR is used could be described as "urgent" – ie it is not planned – and there is an acceptance that, if an incident erupts, it may take a moment to apply an MMPR hold. The common law on assault and self-defence applies in secure settings. As such, a member of staff could legally use necessary and proportionate force to protect themselves and others without creating a separate legal category of "use of force" to complement the MMPR system.

It is not clear why principle and considerations should apply to the use of MMPR but not to uses of "force". For instance, why should a custody officer have to consider the "physiological characteristics of the young person" when using an MPPR technique, but not when using any other technique? Why should an incident of "force" not have to be discussed afterwards with a child?

The proposed "use of force" system is unregulated, unnecessary and dangerous. It should be removed from the Rules. A single system of restraint should be in place, which can be used in all necessary circumstances.

c) Techniques permitted

As set out above, we do not believe a separate system of "use of force" should be permitted at all, only an independently assessed system of restraint should be used and should apply to all necessary circumstances. However, we also believe greater safeguards are needed on the methods permitted in the "restraint system" and that pain-inducing techniques should be prohibited.

MMPR is an independently assessed system. The proposed Rules outline that the permitted restraint methods will be ones "approved by the Secretary of State". Though the document explains this means MMPR, this is not specified in the proposed Rules. The proposed Rules would thus allow for different restraint methods to replace MMPR without consultation or assessment. We believe any restraint methods introduced to replace MMPR in secure colleges would have to be independently assessed. The Rules should specify this by requiring the system of restraint "approved by the Secretary of State" to be independently assessed.

We oppose pain inducing techniques being used on children in custody and do not believe they should be allowed in a secure college setting. This would help to clarify the use of force provisions, which are currently dangerously confusing (see section A).

d) When restraint can be used

The proposals allow force to be used to prevent damage to property. Minor damage to property would not justify the use of force. We therefore recommend the Rules are amended so force may only be used to prevent "serious" damage to property.

We strongly disagree with the use of force to maintain good order and discipline (GOAD) and do not believe it is lawful. Qualifying GOAD with "safe and stable" does not to alleviate

concerns. It will increase the use of restraint, lead its illegal use, and is not ECHR compliant. The Rules must not permit use of force to maintain a safe and stable environment.

Our concern with the term GOAD is that it is broad and subjective, and therefore permits force to be used in far too wide a range of circumstances, and that it is unlawful under the ECHR. Following the 2008 Court of Appeal judgment on force for GOAD in Secure Training Centres (STCs)[30], we understand that unnecessary use of force is unlawful, and that use of force to maintain GOAD is unnecessary and thus unlawful: the court found that because secure children's homes (SCHs) do not use force to maintain GOAD and SCHs hold the same children as STCs, it could not be necessary for STC to use force to maintain GOAD. The court found that if the use of force is not necessary, it breaches Articles 3 of the ECHR.

Permitting force to maintain a "safe and stable" environment is no more precise than permitting force to maintain GOAD; it is a broad and subjective term which permits force to be used in almost any circumstance, and certainly does not restrict the use of force to circumstances in which it is strictly necessary. SCHs operate well without being permitted to use force to maintain a "safe and stable environment". If use of force is not necessary to maintain a safe and secure environment in SCHs, it cannot be necessary in secure colleges, particularly as the Transforming Youth Custody consultation is clear that some of the same children will be held in SCHs and secure colleges. If force is not necessary, it is not ECHR compliant, and therefore is unlawful.

The examples given on when force should be used to maintain a "safe and stable" environment are not persuasive and do not justify force for these purposes. SCHs would be able to manage these situations without resorting to force and there is no reason why secure colleges should not do the same. There are serious problems with the plans to use force in the scenarios given (for example, why, in a purpose built secure college would there be "nowhere else … for their visit to take place", as set out in Scenario one?). We are very willing to expand on the problems with the scenarios given if required.

The 2008 case examined section 9 of the Criminal Justice and Public Order Act 1994 which allowed a custody officer performing custodial duties to use reasonable force where necessary to ensure good order and discipline, which is almost identical to the 2014 Bill. Referring to the case of *Selmouni*, Lord Justice Buxton stressed that Article 3 of the ECHR might be engaged even in circumstances that did not constitute the extreme violence, deprivation and humiliation evident in *Selmouni* (that is, acts which were such as to arouse in the applicant 'feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance'[31]). All that is required to invoke Article 3 is that in respect of a person deprived of his liberty, resort to physical force has not been made strictly necessary by his own conduct.

The provisions on force for GOAD, in the Criminal Justice and Courts Bill and the Rules, diminish the human rights of young people in custody by endangering their physical and emotional security. Ultimately they prevent secure colleges from developing in a way which is dedicated to inclusion, human rights, and young people's healthy development. The law needs to be more responsive to the range of complex realities facing those children sentenced to custody, and develop a framework for acknowledging their vulnerabilities and sensitivity and ensuring the protection of their rights and welfare.

General Comments

a) Outcomes and future secure colleges

The outcomes for children detained in secure colleges must be subject to robust evaluation.

[30] R (on the application of C) (a minor) v Secretary of State for Justice [2008] EWCA Civ 882
[31] EHRR 403, 7 BHRC 1, paras 99-100

This must look not just at educational outcomes but also mental health and wellbeing outcomes. The pathfinder must be evaluated in these terms, and show success, before any more secure colleges can be established. The Government should consider putting this requirement in the Rules.

b) Resettlement

Children's relationships with parents and other significant people in their family and personal lives have a huge impact on the way they think, feel and behave both in and beyond custody. Children's histories and the circumstances around their offending often mean many of these relationships are difficult – ranging from fundamentally positive relationships that are under strain to deeply damaging relationships.

Family mediation and support should be heavily prioritised within secure colleges, supported by practical measures for communication such as access to video conferencing where distances make frequent visits difficult. This will maximise the chances of children being able to return to safe and positive family environments on release and therefore have a direct impact on immediate resettlement outcomes – and, equally importantly, whether or not a young person can live with family on release. A strong focus on family mediation and support can help make sure young people have key positive and pro-social relationships within which they can find support to build a life away from offending.

Given the large distances between secure colleges and many young people's home areas, practical measures such as video-conferencing facilities, available through local authorities, will be essential to reduce barriers to timely community-based assessment and planning for release, so that young people can know in advance where they will be staying after custody and have an understanding of who will be supporting them and what the services will be like. This includes statutory assessment and planning work by the local authority, but also by the hundreds of supported accommodation agencies and services, such as those run by Depaul UK, that routinely accommodate and support young people post custody, working in partnership with Local Authority and wider services to support the on their journey to independent living.

The contents of this document do not necessarily reflect the views of all member organisations of the SCYJ.

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