



Standing Committee for Youth Justice

SCYJ – Youth Detention: Solitary confinement and restraint - a submission to the Joint Committee on Human Rights

About the Standing Committee for Youth Justice (SCYJ)

The Standing Committee for Youth Justice (SCYJ) is an alliance of almost fifty non-profit organisations working to improve the youth justice system in England and Wales.

Summary

1. Solitary confinement and restraint always risk breaching a child's human rights.
2. The use of solitary confinement and restraint is on the rise.
3. This shows a failure to adopt a child-focused approach to custody. We press for a wholesale reform of the custody system for children.

The custodial estate for children in England and Wales today

One consequence of the reduction in numbers of children in custody, which is welcomed, has been the large-scale reductions in the number of spaces for children. However, governments have used this principally as an opportunity to save resources, rather than as an opportunity to make step-changes in the nature of the secure estate, for example by investing in smaller, more local, and more specialist facilities. **The numbers of children have reduced in the last ten years, but the experience of any individual child in custody today would be immediately recognisable to a child in custody ten years ago.** Children are mainly held in prison-like conditions (usually governed according to Prison Service rules), often hungry and lacking access to fresh air. Children are held further away from their homes areas. Those with specialist mental health needs are usually held in entirely unsuitable facilities. We cannot claim this is a child-centred approach to children in custody.

There has been a sharp rise in the proportion of children in custody who come from Black and Minority Ethnic (BAME) communities. Government has been slow to react. Almost half (44%) of children in custody now come from BAME communities suggesting gross injustice and the possible existence of institutional racism.

This racial disparity is also present in the use of solitary confinement and restraint. The Children's Commissioner concluded that black and mixed heritage children were three times as likely to be isolated, while Government statistics reveal that BAME children are significantly more likely to be restrained than white children (51 per 100, as against 37 per 100).

HM Chief Inspector of Prison's 2017 Annual Report.

The Committee cites the Chief Inspector's Annual Report of 2017 on the state of the custodial estate for children. The majority of inspection reports published since then have shown some improvements but a great many recommendations remain outstanding. There is much still to be done. **We believe the custodial estate remains unfit for purpose.**

Does a small cohort of children in custody mean that there will be a greater concentration of challenges in providing custody for children?

It is commonplace to describe the current cohort of children in custody as more troubled, needy and challenging, the 'concentrations of need' argument. Government has as yet been unable to demonstrate whether this is the case or not. **Until proper research and analysis has been completed we shall refrain from adding our voice to this orthodoxy and we would urge the Joint Committee to do likewise.**

What do official statistics reveal about the use made of isolation and restraint in custody?

The Government's Youth Justice Statistics for 2016/17 remain the most authoritative statistical source on safeguarding. They show that restraint of children has risen by 28% since 2012. The rate of single separation has risen by 80% in the same time. So restraint and separation are being used more regularly to control children.

There are no statistics for important issues like debriefing children post restraint, access to advocacy, or numbers of children who do not attend school because they are in solitary confinement.

Why is the use of segregation and restraint growing?

For reasons already given, we would advise caution over linking the 'concentrations of need' argument to explain these trends.

One factor is the instability among provider organisations. For the Prison Service, most YOIs have operated recently at staffing levels far below the Prison Services own benchmark (for numbers of Band Three custody staff). This appears caused both by problems with recruitment and failure to retain staff. The Government does not include information in the Youth Justice Statistics on these important statistics, and it should. New developments to recruit a more child-focused workforce are very recent.

Too few staff leads at times to a 'back to basics' regime, including holding children in their cells much longer than Government targets dictate, especially where the number of assaults by children are on the rise – the Government's statistics report that the rate of proven assaults per 100 children 'has shown year on year increases since the year ending March 2012.' Experiments have taken place with 'restricted' regimes as a response to fighting.

Cases of excessive use of separation highlighted by our member the Howard League for Penal Reform are sometimes linkable to staffing shortages, and it would be understandable if the same factors related to the rise in restraint – de-escalating conflict takes time and numbers of adults, both of which will be difficult for an establishment operating at well below benchmarked staffing levels.

Of the two smaller providers, the principal provider of STCs, G4S, has had extreme problems and appears uncertain whether it wishes to continue, which cannot have improved the stability in its establishments. MTCnovo, who replaced G4S at Rainsbrook STC in May 2016 had a problematic transition, exemplified in difficulties in recruiting a permanent director, and an inspection report in 2017 categorised the centre as requiring improvement at best, and at times inadequate.

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Lastly, the Committee has asked three specific questions:

[1] Does the use of restraint and segregation in child detention lead to children's rights being commonly breached?

Solitary confinement and restraint always risks breaching a child's human rights. Ultimate determination of such a breach can only be made in a court. But evidence of their greater use casts doubt as to whether they are only being used as 'a last resort', the only justification afforded by the UN Committee on the Rights of the Child.

Our members advise us that children are often held in segregation for periods that appear unjustifiably long. While intervention from external advocates almost always leads to amelioration, this occurs **after** a breach of human rights has occurred. To rehabilitate children requires amongst other things the active consent of the child, born of a feeling of being treated fairly by those in authority while in custody.

The European Committee on the Prevention of Torture's most recent report concluded that in 2016 HMP YOI Cookham Wood had used solitary confinement as a disciplinary sanction.

So far as the use of restraint is concerned, our members Article 39 and Barnardo's, who hold the national contract for advocacy in YOIs and STCs, are best placed to provide independent advice on breaches of children's rights.

[2] Is the guidance on the use of restraint and segregation compliant with human rights standards?

So far as restraint is concerned, the aspect of MMPR that is of greatest concern our members is the availability within it of the use of pain inducing techniques. The Government reports that either wrist flexion or the mandibular angular techniques are used in 4% of incidents (equivalent to approximately 184 occasions). The mandibular angle technique delivers a sharp and very unpleasant pain, recallable at several years distance. These techniques were authorised in 2012 only with the clear commitment that their use would be subject to early review. It should be a priority for Government to launch such a review, as your Committee recommended it do in 2015. There should be independent representation as a part of it.

We accept that forceful behaviour may be required, particularly when a child is attempting to assault and seriously harm another child, themselves, a member of staff or a visitor (which cover 1 in 6 instances of restraint). Whether inducing pain is officially sanctioned or not, children will experience restraint as painful, so it is important to avoid a proposition that 'pain free' restraint is possible. Nevertheless the deliberate infliction of pain by an adult, acting on behalf of the state, on a child is a matter of very serious concern, one that a great many of our members cannot sanction.

We have one further point to make. There should be much greater openness about the current restraint system. Article 39 has long pressed for publication of the training manual. This should happen so that the operations and standards of the current system can be better assessed. Robust investigations are needed when there are concerns a child has suffered abuse and/or human rights violations during restraint.

[3] Is the Government doing enough to ensure rights compliant standards are applied across the estate, including in privately run institutions?

The publication of the revised '*Working Together 2018*' later this summer provides an opportunity to re-engineer the external scrutiny of safeguarding within the custodial estate for children. This could enhance the application of rights compliant standards to all providers.

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