



## Standing Committee for Youth Justice

### **Standing Committee for Youth Justice (SCYJ) response: Justice Committee inquiry on children and young people in custody**

The Standing Committee for Youth Justice (SCYJ) is an alliance of over 60 not-for-profit organisations campaigning for improvements to the youth justice system in England and Wales. Our [members](#) range from large national charities to grassroots service providers. Our response includes direct quotes from our members.

#### **Phase 1: The Youth Justice Population and entering the system**

We would like to begin by referring the Justice Committee to [SCYJ's policy overview](#),<sup>i</sup> which outlines the characteristics of children in the justice system, current provision, and our position and recommendations around priority areas for improvement. These include the need to significantly increase the minimum age of criminal responsibility; maximise diversion and minimise justice system contact; invest in community-based, child-centred responses; and significantly reduce the number of children deprived of their liberty, including the closure of all penal custodial establishments.

#### **Children entering the justice system: the age of criminal responsibility and diversion**

As outlined in our policy overview, the law around the age of criminal responsibility in England and Wales is out of sync with the rest of Europe; breaches international children's rights; and is inconsistent with evidence on child development. There is clear evidence that drawing children into the criminal justice system, particularly at such a young age, damages them psychologically, encourages the development of an offending identity, reduces their life chances and increases their risk of offending. **The age of criminal responsibility should be increased immediately in line with UN recommendations - a minimum of 14 years old.**<sup>ii</sup>

Research has consistently shown the dangers that contact with the youth justice system brings with it. It creates and reinforces criminal identities in children who would often naturally desist from offending, or who have unmet welfare needs. It can also lead to inappropriate labelling of children amongst professionals with whom they are in contact, creating a 'problem' narrative that does nothing to help the child. There is much existing positive practice in the diversion of children from the formal justice system, and the numbers of First Time Entrants has reduced by 80% across the last twelve years. But diversion provision is inconsistent.<sup>iii</sup> **Further investment is needed to ensure a full range of diversion services are available that are tailored to meet underlying needs of individual children as well as communities.** Care needs to be taken each time the child comes into contact with the criminal justice system to ensure that diversion plans can be implemented wherever possible. We welcome the better understanding in recent years that children in trouble with the law are often victims – of exploitation, trauma, and other adverse experiences. The Modern Slavery Act 2015, for example, is a welcome development, but is not being applied consistently and fully, and many children continue to be dragged into the justice system unnecessarily.

## Custody as a last resort and the custody threshold

SCYJ is a core member of the [End Child Imprisonment Campaign](#).<sup>iv</sup> The campaign has set out its [principles and minimum expectations](#) for children deprived of their liberty,<sup>v</sup> which SCYJ fully recommends.

In line with the UN and domestic legislation (Criminal Justice Act 2003), we firmly believe custody should be used only as a last resort. We believe it is not currently used as such, and increasing the custody threshold through legislation is the most effective way to achieve this. Evidence that the principle of last resort is not being adhered to includes:

- At least 30% of the sentenced population and a similar proportion of the remand population of children in custody are there for non-violent alleged or actual offences.
- The majority of children on remand go on to either be acquitted (29%) or receive a non-custodial sentence (36%). The proportion of children on remand has increased significantly despite provisions in LASPO 2012 which were designed to reduce the use of remand for children.
- A number of those imprisoned for offences often classified as "violent" have been involved in incidents which belie the label - many are imprisoned for possessing (not using) knives and others for their involvement in fights involving their peers.
- 80% of children sentenced to immediate custody in 2017/18 were sentenced to Detention and Training Orders. Two thirds of these custodial episodes last less than three months. Overall, the majority of all children leaving custody have been in there for three months or less.
- In the past decade, the average length of a child's custodial sentence has increased to 16 months from 11 months.
- The overall proportion of First Time Entrants (FTEs) receiving a custodial sentence is increasing, and between 2007 and 2018, the proportion of children sentenced to immediate custody who were FTEs more than doubled (from 5% to 12%). The proportion of those sentenced to custody with 1-2 previous cautions or convictions has also risen (from around 15 to 19%).
- There are as many children in custody for a breach of conditions of an order than for burglary (each making up around 8% of the custodial population). Children can be sentenced to custody for a breach where the original offence did not justify a custodial sentence, but meeting order requirements and restrictions - curfews, disassociation, attending appointments etc. – can be extremely difficult, particularly if appropriate support is not in place.
- There is variation in custodial sentencing rates between different areas, suggesting a postcode lottery in how likely a child will be sentenced to custody. Spreading best practice and ensuring equal treatment of children across the country would reduce custody numbers.

**We believe deprivation of liberty should only ever be considered for the most serious crimes when children pose a serious risk to the public, and only in circumstances where the court has decided that the child should not be referred to the Family Court for a consideration of their welfare needs. We recommend that legislation is introduced that would raise the threshold for**



**sentencing a child to custody.** Countries such as Canada that have done so have seen dramatically reduced custody numbers, without impacting on public safety.

The UN Committee on the Rights of the Child in 2016 concluded that the UK should “Establish the statutory principle that detention should be used as a measure of last resort and for the shortest possible period of time and ensure that detention is not used discriminatorily against certain groups of children.”<sup>vi</sup> We also note the recommendation made by the Committee that “State parties should fix an age limit below which children may not legally be deprived of their liberty, such as 16 years of age”.<sup>vii</sup>

The Committee in its General Comment on child justice states that no child should be sentenced to life imprisonment, and in 2016 concluded that the UK should abolish life sentences. Life imprisonment for children has been abolished in 22 of the 28 countries in the European Union. Between 2006 and 2016 the UK handed down 197 child life sentences. There are just four children serving life imprisonment outside of the United Kingdom in the EU.<sup>viii</sup>

The government must reform child custodial sentencing to bring the UK in line with internationally acceptable standards defined by the UN. The very few children who warrant a custodial sentence should be held in non-penal institutions such as Secure Children’s Homes (SCHs).

**We believe the government should set out in writing a national vision for the children’s secure estate**, as recommended by the Youth Justice Improvement Board.<sup>ix</sup> There must be clear indication of the purpose of custody, what the government believe it is trying to achieve, and how it intends to fulfil those aims. Is the government making policy decisions around custody with the intention that it punishes and deters – which SCYJ opposes - or to rehabilitate? There needs to be a clear theory of change underpinning the use of custody in order for it to be properly held to account.

The current arrangement - with Secure Schools creating a fourth type of provision - has no rational justification in terms of care, outcomes and equity for children in the widely differing environments. The failure to tackle this long-standing problem has in the past been excused on the grounds of high demand for custodial places, but the current lower custodial population brings clear opportunity for a new approach.

The government can look to international examples of better models of custody. For example, a drastic reform of the model of youth imprisonment in New York City has resulted in the population of incarcerated children being reduced from 3800 to about 100, with only about a dozen of those in locked facilities. This dramatic reduction has not resulted in any increase in the risk to public safety.<sup>x</sup>

### **The characteristics of children in custody**

We know that children in custody are extremely vulnerable and often traumatised by their life experiences, and not enough information about the needs of children and the context of their offending behaviour is collected or disclosed. The Youth Custody Improvement Board in 2017 recommended the government carry out a clear needs analysis of children in custody, with a particular focus on mental health, mental and neurodevelopmental disorders. “This will allow full details of the cohort and what services they need to aid effective and appropriate commissioning.”<sup>xi</sup> To date, this analysis has not been carried out, and we suggest the Committee recommend it be done immediately.



*“One of the boys displayed noticeable discomfort with various elements of group work. When asked, the boy said he had never been assessed for any kind of learning support need, had never been spoken to about ADHD or ADD and had never had access to any supplementary educational or neuro-diversity assessment.”*

What we do know about the characteristics of children in custody includes:

- Approximately half of the children in custody are from BAME backgrounds.
- Up to half of children in custody are estimated to have been in care. In 2017/18, of the boys surveyed, 44% in Secure Training Centres (STCs) and 39% in Young Offender Institutions (YOIs) reported experience of local authority care.
- The majority of children entering custody were not engaging in education. It is estimated that around a quarter have been permanently excluded from school, while 90% have a history of persistent absence and exclusions.
- Around a quarter of children in custody have a learning disability, and around a third of children entering custody are assessed as having Special Educational Needs.
- Girls in custody are more likely to have experienced abuse, with around 60% of girls admitted to custody assessed as having sexual abuse concerns. Girls are twice as likely to be assessed as at risk of suicide or self-harm as boys (63% compared to 30%)
- About a third of children in custody report a known mental health disorder. In 2017/18 the rate of self-harm was 12.5 incidents per 100 children.
- Around 45% of children entering custody have substance misuse concerns.
- About 60% of children in the wider youth justice system have speech, language and communication difficulties that adversely affect their ability to participate in certain elements of the custodial regime.

### **Black, Asian and Minority Ethnic children in custody**

Regarding the experience of Black, Asian and Minority Ethnic (BAME) children in trouble with the law, we refer to our member Clinks’ response to this inquiry, which has a specific focus on this.

The critical unaddressed issue in child custody is BAME disproportionality, highlighted by the Lammy Review. Throughout the different stages of a child’s contact with the youth justice system, into custody, BAME children have disproportionately negative outcomes. The large decline in custody numbers over the last ten years has not benefited BAME children as it has white children. Since the Lammy Review, the proportion of children in custody who are BAME has increased, such that for the first time ever there are now more BAME children in custody than white children, standing at 52% of children in custody in the latest available data.<sup>xii</sup>

The Lammy Review recommended criminal justice agencies must adopt the principle of ‘explain or reform’ for addressing disparities between treatment and outcomes of ethnic groups. But there is little evidence the principle has been adopted, particularly in relation to custodial sentencing and placements. There has been no explanation for the increasingly disproportionate child custody population, and the situation continues to worsen. We support Clinks’ recommendation that **structures should be put in place to operationalise the ‘explain or reform’ principle.**



We also support Clinks' recommendation that "specific strategies for targeted preventative and diversionary action in relation to BAME children are implemented, with the aim of reducing their criminalisation and exposure to the youth justice system, reducing disproportionality in the secure estate and to ensure that staff are not consciously or unconsciously engaging in racial stereotyping."

Examination of MoJ monthly youth custody data shows that across different age groups, BAME children are more likely to be placed in less welfare-based, more penal institutions than their white counterparts. There is consistently a lower proportion of BAME 10-14 year olds in custody placed in SCHs than the proportion of white 10-to-14-year-olds. A higher proportion of older BAME children are placed in YOIs, rather than STCs or SCHs. Figures for June 2019, the latest figures available at the time of writing, show that less than a third of children in SCHs are BAME, yet over half the children in custody are BAME (view data analysis in endnotes)<sup>xiii</sup>.

**Placements should be decided on the needs of the child**, not on the offence. Even so, if decisions were being made based on the latter, analysis of available offence data does not appear to explain the significant disparity in placement decisions between BAME and white children of the same age. As outlined below, SCHs, are likely to be the most suitable option currently available for holding children. It is therefore highly concerning that BAME children are less likely to be placed there, and justification for these placement decisions is needed, particularly given the low occupancy rates in SCHs.

Recent analysis of custody data for girls found that BAME girls are also overrepresented in custody and that ethnic disproportionality for girls on remand is significantly higher than in the sentenced population. A higher proportion of BAME girls (67%) were placed in an STC compared to white girls (58%), potentially indicating that they are being assessed as less vulnerable.

BAME children in custody face additional racist bullying, unfair treatment and structural discrimination throughout their time in custody. Black children in particular are often labelled and stereotyped as being gang-affiliated or more violent than white children in custody. Conscious and unconscious stereotyping of BAME children affects how they are perceived and responded to, impacting interventions, risk assessments, progression, and punishments.

As highlighted in Clinks' response, BAME children are less likely to report being treated with respect and fairly by staff and rewards and sanctions schemes than their white peers.<sup>xiv</sup> They are significantly less likely to report that staff offer them help<sup>xv</sup>, and to feel that complaints are sorted out fairly (26% compared with 41%). The use of force is disproportionately excessive for BAME children: in 2018 the rate of use of force was 57.2 per 100 BAME children, compared to 48.5 for white children.<sup>xvi</sup> BAME children are also particularly affected by the use of separation<sup>xvii</sup>.

BAME children spoken to by SCYJ members as part of Nuffield research<sup>xviii</sup> reported having to fight to protect themselves, having to rely on only themselves. They perceived their treatment as being the 'bottom of the pile of prisoners'. They felt they were subjected to unnecessary restraints and undue use of force – but that there was no point complaining as nobody would be on their side. There was widespread discussion of institutional racism, and they felt they were treated differently by officers, for example being made to wait for basic requests, during adjudication hearings, and being segregated and placed on Basic (part of the Incentives and Earned Privileges Scheme, which means that children are locked up alone for 23 hours per day) at a disproportionate rate.



When BAME children leave custody, some cohorts face disproportionately high reoffending rates, impacted by a range of factors including a lack of access to specialist BAME services and an insufficiently diverse workforce supervising children in the community. BAME children face discrimination for having a conviction, as well as racial discrimination, creating additional barriers that impact access to education, employment, housing, and healthcare. BAME people also continue to face racialised targeting and disproportionate policing. All of which impact rehabilitation.

### Girls, remand, serious violence and reviews

Regarding girls in the secure estate, we refer to the evidence submission by Pippa Goodfellow; and regarding children on remand, we refer to the submission by our member Transform Justice.

Goodfellow found that the absence of a specific focus on girls in previous reviews, along with findings in her report,<sup>xix</sup> strongly point to the need for a discrete and strategic focus on the use of penal custody for girls at a national policy level. The SCYJ endorses the following recommendations:

- A strategic review of the use of custody for girls should be undertaken without delay.
- **The Youth Custody Service (YCS) should end the placement of girls into STCs.**
- A review of custodial provision for girls should consider designation of alternative places as approved places of detention for girls that meet their individual needs.
- HMCTS and the MoJ should record and review data regarding gender, ethnicity and age, and the decisions to sentence and remand girls to custody.
- The YCS and the Youth Justice Board (YJB) should jointly undertake work with a specific focus on minimising the impact of distance from home and maintaining links with important connections in the community as a priority for girls, including the extended and assumed use of temporary release.
- The YJB should put in place arrangements to facilitate training, good practice guidance and sharing of expertise between individuals and agencies around the country who are responsible for the resettlement of girls.
- The MoJ should publish official data on children in custody in a format that allows for disaggregation by gender combined with other variables.
- The Joint Inspectorates should regularly carry out inspections with a discrete focus on girls in the youth justice system and those in custody, and the extent to which their gender specific needs are being met.

There is good evidence that pre-trial detention of children is over-used - two thirds of children detained for this reason do not receive a custodial sentence. Total numbers of remand episodes have increased considerably in recent years from 1244 in 2017 to 2370 in 2018.<sup>xx</sup> We support recommendations made by Transform Justice that **primary legislation should be reformed to prohibit the use of custodial remand for those under 15 and to further restrict criteria for its use.** We also recommend better training for all those involved in remand decisions.

SCYJ is concerned that recent increases in serious violence and the punitive rather than problem-solving response risk reversing progress we have made in reducing the number of children locked up. We know custody does not work. The current situation makes it all the more important to set a clear agenda for reducing the number of children in custody, and improving the treatment of children deprived of their liberty.



There have also been a series of government commissioned reviews focused on the criminal and youth justice systems and youth custody, but the status of recommendations made within these reviews is unclear under the current government. **We encourage the Committee to press the government on the status of recommendations in these reviews, particularly the Youth Custody Improvement Board; the Charlie Taylor review; and the Lammy Review.**

## Phase 2: Suitability of the Secure Estate

### What a good quality custodial place for a child looks like

We do not believe the secure estate is fit for purpose and a proper place to hold children, as concluded by the Youth Custody Improvement Board.<sup>xxi</sup> **The End Child Imprisonment campaign sets out [principles and minimum expectations](#) for children deprived of their liberty<sup>xxii</sup> that we urge the government to adopt.**

The campaign advocates for the closure of child prisons; proposes a child welfare-based and human rights compliant secure model for the small number of children who cannot be safely looked after and supported in the community; pushes for responsibility for detained children to be moved out of the government department that deals with adult imprisonment; seeks changes to law and practice so that deprivation of liberty is an absolute measure of last resort; and seeks to remove punishment and deterrence as reasons for locking up children.

In line with these principles, SCHs are the most suitable institution currently available to hold children. As concluded by the National Association for Youth Justice (NAYJ), at their best, SCHs demonstrate “a model of secure accommodation based on a child care ethos” that “can provide a safe environment that has the potential to minimise the damage caused by custody while preparing children for a positive future on release.”<sup>xxiii</sup> Best practice in SCHs should be identified and developed to become the standard for secure provision.

The SCYJ will evaluate the plans and performance of the first Secure School against the above principles, and will not endorse the Secure School model until it has demonstrated that it is based on a welfare-based model, the schools are kept small, and other essential lessons from past failures have been learnt. Without such elements Secure Schools could become yet another ineffective, unsafe form of custody for children. Information available on Secure Schools that is currently published raises immediate concerns around the size of the schools. We have outlined more information on the minimum expectations of Secure Schools in our response to the ‘How to Apply Guide’ consultation.<sup>xxiv</sup>

### The harm of our current secure estate

*“The children I have worked with in custody feel unsafe; it is the worst environment for a child to consider the issues that have led to their imprisonment.”*

The damage caused by imprisoning children is clear:

- In the spring of 2017, HM Inspectorate of Prisons could not classify any STC or YOI as safe enough to hold children. There have since been some improvements noted in inspection reports, but the model remains fundamentally flawed and a number of conditions, outlined below, are deteriorating.



- The use of restraint against children in custody increased by 20% between 2017-18 to 6,600 incidents. There were an average of 52.4 incidents per 100 children per month. These led to 210 medical warnings signs and 80 injuries requiring treatment.
- Around 38% of children report feeling unsafe at some point while in custody.
- Levels of violence are very high and increasing. The government was recently forced to suspend placing children at Feltham YOI, and send police in, because of conditions. There were 24.7 assaults per 100 children in custody in 2017/18.
- The number of children held in solitary confinement has been increasing since 2016. In SCHs and STCs, the rate of segregation is 94.9 incidents per 100 children. Children have been found confined to their cell for up to 23 hours a day.
- Less than half of children in custody receive weekly visits from family, carers or friends.
- Children do not have access to the education and activities they are entitled to.
- 38 children have died in English and Welsh YOIs, STCs and SCHs since 1990, five in the last decade.
- The recent IICSA estimated that there were 1,070 alleged incidents of child sexual abuse in custodial establishments between January 2009 and December 2017, including 205 in 2017. The majority of allegations were against members of staff.
- Ten days before release from custody, almost 14% of children do not know where they will be living. Suitable services are not available at an appropriate time before release: 44% of the time for accommodation; 76% for Employment Training and Education; 52% for substance use; and 54% for mental health.
- Children released from custody and still below the school leaving age experience great difficulties in re-accessing mainstream education

*“A 15 year old British Asian boy told the Howard League that he was locked up all day except for less than one hour. The child had ADHD and his mental health severely deteriorated while under a curtailed regime. He was compliant with staff requests and managed to gain the enhanced level of the incentives scheme but was still not allowed out of his cell. He found it very difficult to understand how he could be locked up all day when he was meant to be on the top level of the privileges scheme. He called the Howard League regularly in distress, including when he self-harmed and was not getting the medication he required.”*

Children in custody interviewed as part of Nuffield research<sup>xxv</sup> commonly report having to focus on surviving custody, by fighting for who you are, or by keeping your head down. They report frustration and anger at being locked up for long periods, having no one to speak to, impacting on their mental health and leading to self-harming or suicidal thoughts. They discussed having difficult relationships with some staff, compounding frustrations, and struggling to see or communicate with their family either due to their physical location or the cost of phone calls.

Children in care who are in custody have reported<sup>xxvi</sup> having ‘another life’ in custody, focussed solely on surviving, which does not allow them to concentrate on themselves and making a longer-term identity shift. They spoke predominantly of fighting, avoiding bullying, and protecting themselves. As a result, more children in care were on Basic, losing access to things like television and trainers, and being



locked up for 23 hours a day. Children reported an expectation and resignation to being treated this way. They said they would not trust people or rely on anyone other than themselves.

*“In the YOI where my clients are held, violence is the first resort of the young people. And this isn’t that surprising when you look at their vulnerabilities – serious difficulties with communication and reasoning skills. This results very quickly in the keep apart protocols being implemented. Even up to a couple of years ago each young person was allocated a key worker who was very much on the ball and would facilitate legal phone calls. Sadly this is no longer the norm. I think this deterioration in “pastoral care” is due to the staff being overwhelmed with the change in population.”*

Concern around serious youth violence in recent years has led to the creation of ‘keep apart’ policies, which involve absolute separation and segregation of children deemed to pose a threat to each other. It not only makes the logistics within institutions incredibly complicated, consuming staff resources and impacting on children’s time out of cell and access to education and activities, but has been criticised for resembling postcode boundaries that sustain gangs in the community, thus risking reinforcing or creating gang identity in custody.<sup>xxvii</sup> The policy also means children are made to feel that their safety is only guaranteed if the rule is kept to. But children know that rules and policies are not always reliable, so they cannot feel safe at all.

We are also concerned about the independent adjudication procedure in YOIs where, if adjudicated against, further days can be added to a child’s sentence. When children are being held in inappropriate conditions, punishing them further for reacting negatively to it does nothing to aid the situation. There is insufficient incentive for good behaviour.

The YCS recently published an internal review of safeguarding in the secure estate.<sup>xxviii</sup> It is promising that the YCS is undertaking work to address this crucial issue, and we welcome a number of recommendations, including the need for more staff training, particularly on the use of isolation and risk of harm to children; a full review and revision of the “keep apart” protocol; a review of full searching and appropriate aftercare for full search and restraint; a specific Equalities strategy with respect to safeguarding including each site having an Equalities Lead; and consideration of protective characteristics by YCS placements team. However, the report identifies a concerning number of areas in need of immediate improvement in order to keep children safe. We urge the government to urgently consider the report and its recommendations.

## Staffing

*“You need staff working with young people who want to come into work, and feel safe...and confident. It’s important not to underestimate how difficult these establishments are to work in for staff, and too often the default is practice that is unacceptable. I think that is common place.”*

Following concerns around staff shortages impacting behaviour management and time out of cell, the government has pursued a successful recruitment drive. However, the significant staff turnover means high proportions of those working with children are new and inexperienced. High staff turnover can also be a clear indicator that an institution is struggling.



Training for staff working with children in the secure estate has been inadequate, particularly to bridge the experience deficit. However, significant change is being attempted with the introduction of the new role of specialist youth justice worker. To move into this role, all existing officers are being offered a funded youth justice foundation degree, with progression routes, and there is an accelerated graduate route for new entrants. Over five hundred officers are on or have completed the foundation degree, which has become integral to the professionalisation of youth justice.

This development is relatively new and will take time to evaluate. However, issues remain. Staff are not required to have any previous experience of working with children, nor of education, mental health or youth work. New staff are not required to undertake specialist training, and while there is regulation by OFSTED and HMIP, there is no regulation or quality assurance of professional standards and practice for youth work within youth custody.

Neither do staff have access to regular clinical supervision, a staple for all face to face workers involved in complex support work. Without adequate supervision, it is also difficult for staff to ensure they are able to effectively process the impact of the work upon them. If staff are not conducting reflective practice, learning and development is difficult and the extreme levels of projection, transference and counter transference the environment elicits can become entrenched. Staff can find it difficult to act with integrity, maturity and clarity due to the psychological impact of the work.

The new accredited management course to support the implementation of training for the specialist youth justice worker role and to embed reflective practice may go some way to help. Organisations including SCYJ member Safe Ground also have a strong track record in the design and delivery of high-quality professional training and supervision for staff in secure settings. But low staff numbers and availability often makes attendance at staff training events difficult. Perhaps even more worryingly, staff often feel unable to trust the establishment or internal systems and are unwilling to engage in statutory supervision provision.

*“Many staff are dissatisfied with the amount of study leave available. On-site training facilities are often not up to a modern standard and most staff cannot get access to Wi-Fi. The new secure school will not be participating in the youth justice workforce development programme at all despite the fact that teaching staff (who should participate in this training anyway) will comprise a minority of the staff at the site.”*

Staff must be able to understand and respond to the experiences and needs of BAME children and all those with protected characteristics. However, Clinks has highlighted that diversity training attracts criticism for inadequately reflecting these needs and poorly addressing unequal outcomes of certain groups in the youth justice system. Specialist voluntary sector organisations – led by and for the communities they represent – should be involved in reviewing and delivering diversity training.

## Restraint

SCYJ has held longstanding opposition, as a point of principle, to the deliberate infliction of pain in children as part of any system of restraint. We believe the deliberate use of pain during restraint is damaging to children and causes unnecessary harm. The use of these techniques is also a fundamentally flawed model of how to resolve conflict and develop trusted relationships between staff and children. Inspectors have recently found that poor practice places children at



significant risk.<sup>xxix</sup> They have found pain-inducing techniques continue to be used to deal with incidents where there is no immediate threat of serious harm, in the context of a lack of effective oversight and scrutiny.

The UN Committee on the Rights of the Child General Comment on child justice states that “restraint or force can be used only when the child poses an imminent threat of injury to themselves or others, and only when all other means of control have been exhausted. Restraint should not be used to secure compliance and should never involve deliberate infliction of pain. It is never to be used as a means of punishment.” The use of restraint or force should be under close control, staff must receive training, and members of staff who use restraint or force in violation of the rules and standards should be punished appropriately.<sup>xxx</sup> The Committee concluded in 2016 that the UK should abolish restraint for disciplinary purposes; ban pain-inducing techniques; and ensure restraint is used against children exclusively to prevent harm and only as a last resort.<sup>xxxi</sup>

Children in custody consistently report difficulties with restraint. A common pattern to emerge<sup>xxxii</sup> is that minor issues that could easily have been dealt with by an appropriately trained staff member were instead dealt with aggressively and in a confrontational manner by staff, escalating the situation, and leading to restraint. Children report excessive force, being forced to the floor, undue pressure being applied, injuries, and body cameras being turned off.

*“A young person was unlocked to ring his mum, he had not spoken to her for several days... so was particularly eager to speak to her. Another young person took his book of telephone numbers and ran off. He chased them, got the numbers back and made his way to the phone. An officer told him to return to his cell as he had been running. He tried to explain...he wanted to ring his mum. The officer replied ‘are you refusing an order?’. The young person replied yes and was restrained. He suffered a severe carpet burn to his hand that removed a chunk of flesh. I saw it several days later. He did not report it, as he did not see the point. I did, and got a standard ‘unsubstantiated’ response.”*

SCYJ has issued a full statement on restraint, **urging the government to ensure that all children, wherever they are accommodated, are protected from these harmful techniques** and have their rights upheld.<sup>xxxiii</sup> To ensure this is the case, much clearer incident reporting is needed, with stronger independent scrutiny across the board.

## Placements

We are concerned about the lack of available placements, for example in the South East of the country in SCHs, and the long distances from home that many children are held, which impacts their likelihood of regular visits – to the degree that members have reported children not getting any visits or nowhere near enough from their support network - and creates difficulties in reintegration.

Moreover, despite the average number of children in custody slightly increasing between 2017/18 and 2018/19, the number of children held in SCHs fell, and continues to fall in 2019/20. Occupancy rates in SCHs are low, according to MoJ data at 71.6%<sup>xxxiv</sup>, while the DfE reports overall rates even lower, with a third of placements paid for but empty.<sup>xxxv</sup> **There is a general lack of scrutiny over placement decisions, and given the stark difference in the experiences of children between different types of establishment, placement decisions following a child being sentenced or remanded to custody are critical.**



*“There is a strong argument for local/regional placements - good desistance planning needs to connect with personal and professional resources – which is not helped by distance. We would see rehabilitation as something that can only take place in children’s communities - where their homes and communities are.”*

### **Phase 3: Resettlement and rehabilitation of children**

#### **Purposeful activity, education and healthcare**

Reports consistently show children in custody are unable to access purposeful activity, education and support while in custody due to a lack of provision or available staff.<sup>xxxvi</sup>

Our members report that education that is provided is very basic and insufficient for needs. It is the first thing to suffer when there are keep apart protocols and staff shortages. A member delivering programmes in the secure estate said that while children had access to English and Maths, much other educational activity had been reduced or removed due to difficulty in attendance (around keep apart rules or motivation) and availability of teaching staff.

There are also few alternative purposeful activities that children have access to. Some children have access to a library or gym, but this is restricted, particularly if a child is convicted or alleged of a violent offence, or if they have a violence “marker” against them.

We have also been informed that children with Education Health and Care Plans (EHCPs) are not having this followed up and their plans not adhered to.

Regarding mental health support:

*“We found that at the point of need, children are not able to access mental health support. Unless a child has a diagnosed condition for which they received their medication, no other support was available. We interviewed many children with diagnosed/ undiagnosed ADHD who are locked up for 23 hours a day. The obvious deterioration in their mental health that followed, did not lead to additional support.”*

*One young person described putting in an application for support. He said that someone visited him several days later, they asked him if he was alright. He replied, I am now, but I wasn’t a few days ago when I wanted to kill myself. And so they went, as he was OK at the time of the visit*

*We overwhelmingly got the impression that children are locked up for very long periods, alone, and are desperate for someone to talk to, some form of human interaction. The prison staff cannot give this, and when they do it is to give orders.”*

#### **Resettlement and planning**

**SCYJ urges the adoption of the Beyond Youth Custody framework for effective resettlement of children in custody.**<sup>xxxvii</sup> It outlines a clear theory for change facilitating a shift in the child’s identity, and details the role of services in this journey.

*“I have no positive experiences of release planning, especially where the young people are in the care of the local authority. My experience is that it is rushed and the focus is on finding “anywhere” rather than the right placement for that young person. Access to training and education is something that evolves a while after release rather than a plan.”*



A recent thematic report by HMI Prisons and HMI Probation on resettlement work in custody found that YOIs are largely failing to prepare most children for release. None of the children spoken to by the inspectorates felt the work done in the YOI had helped them. The report found that services to help children settle are too often not in place, and the risks children pose in early days in the community are not always sufficiently managed. In too many cases, there is no suitable accommodation lined up in time for support services to be put in place. Most children have no training, education or employment arranged and mental health support is often lacking.

This is not helped by the long distances many children are held from their home, leaving them more socially excluded and hampering attempts to use Release on Temporary License (ROTL). We would like to see ROTL expanded, with an assumption for use of ROTL. Not only is ROTL useful for facilitating education, employment, or visiting accommodation, it can be an important tool to maintain contact with family and to alleviate the stress that is caused by the process of final release from custody.<sup>xxxviii</sup>

Children in YOIs, particularly children in care, report being focused on surviving custody. They discuss having to become ‘another person’ to endure the experience. This makes it very difficult for them to plan for their resettlement. Not only do they not know things like where they are going to live, but they are locked in survival mode to get through the harmful and inappropriate environment of a YOI, which means that they cannot prepare themselves internally for resettlement.<sup>xxxix</sup>

Regarding collaboration between the secure estate, Youth Offending Teams, Local Authorities, Social Services etc., professionals have reported that it has improved. However, one member conducting research in the secure estate found that information gained by YOTs is based on conversations with the caseworker or at resettlement meetings, and this information did not appear to be shared with the child, who has limited accessibility and direct communication with their YOT worker.

Our member the Association of YOT Managers (AYM) reports that collaboration across the country is inconsistent. The contact YOTs have with local authorities and children’s services is often dependent on where the YOT is located in relation to those services. Finding accommodation for children leaving custody and not returning home is a significant issue, but YOTs work with housing providers to advocate for appropriate housing.

*“I am aware of an example of excellent partnership working between NHS staff and wider social services, whereby the social worker of a girl in care worked across teams and departments to bring the girl’s baby, also in care, to the STC where the father was held, for a three-way visit. The model is reportedly not unusual at the site and shows what is possible when professionals from all agencies are committed to supporting young people and families in their care”*

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



<sup>i</sup> <http://scyj.org.uk/wp-content/uploads/2019/07/SCYJ-Response-Criminal-Justice-Policy-Review-FINAL.pdf>

<sup>ii</sup> See UN Committee on the Rights of the Child General comment No. 24 (2019) on children's rights in the child justice system, where the Committee notes the most common minimum age of criminal responsibility (MACR) internationally is 14, and recommends States increase their MACR to at least 14 years of age, while commending those that have a higher minimum age, for instance 15 or 16 years of age.

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en)

See also UN Committee on the Rights of the Child Concluding Observations on the fifth periodic report on the UK, where the Committee states that in order to bring the UK youth justice system fully into line with the Convention and other relevant standards, the UK should "raise the minimum age of criminal responsibility in accordance with acceptable international standards".

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en)

<sup>iii</sup> <https://justiceinnovation.org/sites/default/files/media/documents/2019-02/mapping-youth-diversion-in-england-and-wales-final.pdf>

<sup>iv</sup> <https://article39.org.uk/endchildimprisonment/>

<sup>v</sup> <https://article39.org.uk/wp-content/uploads/2019/04/ECI-Principles-and-Minimum-Expectations-FINAL-pub-18-April-2019.pdf>

<sup>vi</sup> [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en)

<sup>vii</sup> <https://ohchr.org/Documents/HRBodies/CRC/GC24/GeneralComment24.pdf>

<sup>viii</sup> <https://www.open.edu/openlearn/society-politics-law/criminology/why-we-should-abolish-imprisonment-children-and-young-people>

<sup>ix</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/594448/findings-and-recommendations-of-the-ycib.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/594448/findings-and-recommendations-of-the-ycib.pdf)

<sup>x</sup> <https://academiccommons.columbia.edu/doi/10.7916/d8-950a-hz15>

<sup>xi</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/594448/findings-and-recommendations-of-the-ycib.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/594448/findings-and-recommendations-of-the-ycib.pdf)

<sup>xii</sup> <https://www.gov.uk/government/statistics/youth-custody-data>

<sup>xiii</sup> <https://www.gov.uk/government/statistics/youth-custody-data>

Sum of Number_Children	Column				Grand Total	Proportions				
	1) 10-14	2) 15	3) 16	4) 17		1) 10-14	2) 15	3) 16	4) 17	Grand Total
2019_06_Jul	24	104	248	418	794					
▼ BAME	10	52	137	223	422					
SCH	6	6	4	1	17	60.00%	11.54%	2.92%	0.45%	4.03%
STC	4	28	44	18	94	40.00%	53.85%	32.12%	8.07%	22.27%
YOI		18	89	204	311	0.00%	34.62%	64.96%	91.48%	73.70%
▼ White	14	52	111	195	372					
SCH	12	21	10	5	48	85.71%	40.38%	9.01%	2.56%	12.90%
STC	2	19	31	17	69	14.29%	36.54%	27.93%	8.72%	18.55%
YOI		12	70	173	255	0.00%	23.08%	63.06%	88.72%	68.55%
<b>Grand Total</b>	<b>24</b>	<b>104</b>	<b>248</b>	<b>418</b>	<b>794</b>					

<sup>xiv</sup> <https://www.justiceinspectors.gov.uk/hmiprisons/wp-content/uploads/sites/4/2018/03/Incentivising-and-promoting-good-behaviour-Web-2018.pdf>

<sup>xv</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/814689/hmip-annual-report-2018-19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814689/hmip-annual-report-2018-19.pdf)

<sup>xvi</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/774866/youth\\_justice\\_statistics\\_bulletin\\_2017\\_2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/774866/youth_justice_statistics_bulletin_2017_2018.pdf)

<sup>xvii</sup> <https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/994/994.pdf>

<sup>xviii</sup> Findings from an upcoming publication, "Pathways of Incarcerated Children in Care", authored by Anne-Marie Day, Tim Bateman and John Pitts

<sup>xix</sup> <https://www.thegriffinssociety.org/outnumbered-locked-and-overlooked-use-penal-custody-girls-england-wales>

<sup>xx</sup> <https://www.gov.uk/government/statistics/youth-justice-statistics-2017-to-2018>

<sup>xxi</sup> [Findings and recommendations of the Youth Custody Improvement Board](#)



- 
- xxii <https://article39.org.uk/wp-content/uploads/2019/04/ECI-Principles-and-Minimum-Expectations-FINAL-pub-18-April-2019.pdf>
- xxiii <http://thenayj.org.uk/wp-content/uploads/2016/10/NAYJ-Briefing-State-of-Youth-Custody-2016.pdf>
- xxiv <http://scyj.org.uk/wp-content/uploads/2018/09/SCYJ-%E2%80%93-response-to-Secure-Schools-How-to-Apply-Guide.pdf>
- xxv Findings from an upcoming publication, “Pathways of Incarcerated Children in Care”, authored by Anne-Marie Day, Tim Bateman and John Pitts
- xxvi Findings from an upcoming publication, “Pathways of Incarcerated Children in Care”, authored by Anne-Marie Day, Tim Bateman and John Pitts
- xxvii <https://cdn.catch-22.org.uk/wp-content/uploads/2014/11/Dawes-Unit-Gangs-in-Prison-full-report.pdf>
- xxviii [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/836753/YCS\\_Safeguarding\\_Review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/836753/YCS_Safeguarding_Review.pdf)
- xxix See for example: <https://files.api.ofsted.gov.uk/v1/file/50081527>; <https://www.justiceinspectrates.gov.uk/hmiprisonswp-content/uploads/sites/4/2019/06/Feltham-A-CYP-Web-2019.pdf>
- xxx [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en)
- xxxi [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en)
- xxxii Findings from an upcoming publication, “Pathways of Incarcerated Children in Care”, authored by Anne-Marie Day, Tim Bateman and John Pitts
- xxxiii <http://scyj.org.uk/wp-content/uploads/2019/06/SCYJ-Review-of-pain-inducing-restraint-FINAL.pdf>
- xxxiv <https://www.gov.uk/government/statistics/youth-custody-data>
- xxxv <https://www.gov.uk/government/statistics/children-accommodated-in-secure-childrens-homes-31-march-2019>
- xxxvi [https://www.justiceinspectrates.gov.uk/hmiprisonswp-content/uploads/sites/4/2019/07/6.5563\\_HMI-Prisons-AR\\_2018-19\\_WEB\\_FINAL\\_040719.pdf](https://www.justiceinspectrates.gov.uk/hmiprisonswp-content/uploads/sites/4/2019/07/6.5563_HMI-Prisons-AR_2018-19_WEB_FINAL_040719.pdf)
- xxxvii <http://www.beyondyouthcustody.net/wp-content/uploads/Now-all-I-care-about-is-my-future-Supporting-the-shift-full-research-report.pdf>
- xxxviii <http://www.beyondyouthcustody.net/wp-content/uploads/BYC-Custody-to-community-How-young-people-cope-with-release.pdf>
- xxxix Findings from an upcoming publication, “Pathways of Incarcerated Children in Care”, authored by Anne-Marie Day, Tim Bateman and John Pitts

