



# Injustice or In Justice

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Children and the justice system

December 2020

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### Author

Meadbh Dempsey

Contact: [meadbh.dempsey@childrenscommissioner.gov.uk](mailto:meadbh.dempsey@childrenscommissioner.gov.uk)

## Foreword by the Children's Commissioner, Anne Longfield

The past decade has seen a welcome reduction in the numbers of children getting caught up in the criminal justice system. Since 2010, the numbers receiving a caution or sentence have fallen by 83%<sup>1</sup> and the number of children in custody has fallen by 73% to 571 in August 2020.<sup>2</sup> But there are still hundreds of children ending up in our courts and prisons. By comparison, in 2015, there were only 13 children aged 15-17 in prison in Sweden, Norway, Iceland, Finland and Denmark combined.<sup>3</sup>



We know how and why many of these children end up involved in violence and crime. The blueprint is there for all to see – children growing up in turmoil and experiencing trauma, but not receiving the support and protection they need. Or worse, targeted by those who wish to exploit their vulnerabilities for personal gain. Our under-resourced system of child protection was not designed to safeguard against risks outside the family home and is creaking under the pressure of trying to keep kids safe.

Many of these children have been let down by the systems that should be keeping them safe from harm before they ever set foot inside a police station. Over half (56%) of children sentenced are currently or have previously been a 'Child in Need' (assessed as needing additional support from the state) and 7 in 10 have identified mental health needs<sup>4</sup>. 85% of boys in young offender institutions have previously been excluded from school. When compared to their peers, children in residential care are at least 13 times more likely to be criminalised.<sup>5</sup>

At every stage of a child's journey through the criminal justice system, opportunities are being missed to get to the root causes of offending and put children's best interests at the heart of the response. When children's home staff call the police on a child for damaging property, rather than ground them or dock their pocket money as a parent might. Or when they meet a police officer unable to recognise vulnerability and trigger a safeguarding response. Or when the courts remand children to custody before they've even been tried – last year almost a third of children in custody were on remand, two thirds of whom never went on to receive a custodial sentence. Ultimately, the system fails to see the child first and the 'offender' second, which reduces the opportunity for real change. This appears to be particularly true for Black children, who are over four times more likely to be arrested than White children. Despite accounting for only 18% of the general population, children from BAME backgrounds now make up almost half (49%) of the entire population of youth custody.<sup>6</sup>

The number of children in custody in this country is half the size of a secondary school and yet custodial institutions are failing to even keep children safe, let alone rehabilitate them. Levels of violence are high, and over a third (35%) of children have felt unsafe in Young Offender Institutions

<sup>1</sup> [Ministry of Justice 2020. Youth justice statistics: 2018 to 2019](#). First time entrants and those receiving a caution or sentence are calculated between the years of 2010-2019

<sup>2</sup> The numbers in youth custody are calculated between August 2010 and August 2020.

<sup>3</sup> Kristoffersen, R. (2016), Correctional Statistics of Denmark, Finland, Iceland, Norway and Sweden 2011 – 2015, Kriminalomsorgen, Norway

<sup>4</sup> [Ministry of Justice / Youth Justice Board \(2020b\) Assessing the needs of sentenced children in the youth justice system 2018/19. Board](#)

<sup>5</sup> [Howard League for Penal Reform \(2016\) Briefing three: 'Hearts and heads' — Good practice in children's homes](#)

<sup>6</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/862078/youth-justice-statistics-bulletin-march-2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/862078/youth-justice-statistics-bulletin-march-2019.pdf)

and Secure Training Centres.<sup>7</sup> This violence leads to incidences of restraint and a situation where children are spending hours at a time shut in their cells, rather than accessing the education or support they need to turn their lives around. Too many children are set up to fail when they leave, because not enough is done to find them the right place to live, or get them the treatment or education they need on release. Is it any wonder that 7 in 10 children released from custody reoffend within a year?<sup>8</sup>

Significant progress has been made in keeping children out of custody in the last ten years. But this has led to a feeling of 'job done', with Ministers showing little interest in changing the status quo.

We have choices about how we treat these children. Of course, serious crimes call for appropriate, considered consequences. But what good does it do, for society or for children, to send them to punitive establishments which do little to rehabilitate them? Is this really how we want it to be?

We need a radical new approach to preventing children becoming involved in crime and turning children's lives around when they have spiralled out of control. This means: stopping gangs from exploiting vulnerable children; identifying children at risk of getting involved in crime and diverting them away from that path; reducing the numbers of children in custody to an absolute minimum and transforming secure care for children so that rehabilitation is at its heart.<sup>9</sup>

A handwritten signature in black ink, reading "Anne Longfield". The signature is written in a cursive, flowing style. Below the signature is a short horizontal line.

**Anne Longfield OBE**  
**Children's Commissioner for England**

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<sup>7</sup> <https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2020/02/Children-in-Custody-2018-19-Web-1.pdf>

<sup>8</sup> [Ministry of Justice 2020. Youth justice statistics: 2018 to 2019](#)

<sup>9</sup> The issues included in this paper relate to the situation before the Covid-19 pandemic. [Find more information about the effect of Covid-19 on the youth justice system.](#)

## Pathways into the criminal justice system

For many children in the criminal justice system, intervention has sadly come too late. Many children we speak to can identify a time where things went wrong, or a time when they needed help and didn't receive it. They often describe a feeling of inevitability in the events that led to their offending, though it is clear to see how both universal and targeted services could have intervened effectively to help them.

It is well known that levels of need are higher among children in the criminal justice system than in the general population. 71% of children sentenced have identified mental health needs and 71% have speech, language, and communication needs. Special Educational Needs (SEN) are also common, with 71% of children sentenced to custody in 2014 recorded as having SEN.<sup>10</sup> Identifying and such needs and providing support early is key to keeping children from offending in the first place. An increased focus on identifying SEND in the early years, offering consistent support throughout their school careers and prioritising mental health support for at-risk children is a vital preventative measure.

Not least because children with these types of additional needs are more likely to be excluded from school,<sup>11</sup> an event which is acknowledged as a trigger point for things going wrong.

One child spoke about a lack of support to prevent their exclusion:

*"I got kicked out, innit, so not really. I'm not saying that's the cause of why I started doing things and blah, blah, blah. I'm not saying school's the reason, but I got kicked out of school, innit, so there wasn't really much support there anyway." - Boy, 17 Youth Offending Team*

The link between school exclusions and children ending up in the criminal justice system is clear. In 2017-18, 85% of boys in YOIs had been excluded from school before coming into custody.<sup>12</sup> 100,000 children are excluded or off rolled each year, cutting them adrift from supportive structures and increasing the risk of them falling through the gaps of services. 10% of schools are responsible for 88% of all school exclusions, which suggests that schools serving similar populations are taking very different approaches to exclusions.<sup>13</sup>

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<sup>10</sup> Understanding the Educational Background of Young Offenders, Department for Education and Ministry of Justice, December 2016. 71% is based on children sentenced to custody for any length of time, who were at the end of KS4 in 2012/13. (This figure combines children with and without a statement).

<sup>11</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/800028/Timpson\\_review\\_of\\_school\\_exclusion\\_literature\\_review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800028/Timpson_review_of_school_exclusion_literature_review.pdf)

<sup>12</sup> [https://www.justiceinspectorates.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2019/01/6.5164\\_HMI\\_Children-in-Custody-2017-18\\_A4\\_v10\\_web.pdf](https://www.justiceinspectorates.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2019/01/6.5164_HMI_Children-in-Custody-2017-18_A4_v10_web.pdf)

<sup>13</sup> <https://www.childrenscommissioner.gov.uk/2019/03/27/excluded-teens-are-often-the-most-vulnerable-and-theyre-falling-through-the-gap/>

## Football Beyond Borders (FBB) case study

The FBB school programme works with many children at risk of falling out of mainstream education. It is a long-term intervention (minimum of 2 years) that works in partnership with schools to help children, often with behavioural difficulties, who are struggling to engage with learning. Many of the children have difficulties with; social and emotional skills, being able to interact positively with others and may have underdeveloped social and self-awareness.

FBB practitioners work with groups on a weekly basis trying to build up children's soft skills, helping them to empathise with and understand others, supporting a shift in their attitudes to school. Alongside therapeutic interventions and half-termly reward visits, FBB use an hour-long session on the football pitch and an hour in the classroom. The programme is built around an activity that children enjoy – football – and FBB use this as a tool to help children better understand their own behaviour and develop the skills they need to succeed

For those children who are at high risk of exploitation into criminal behaviour – because of school exclusion or for other reasons - there is currently an insufficient strategic response from Local Safeguarding Partnerships. Our research found that many Local Safeguarding Children's Boards<sup>14</sup> were not able to provide information about the number of children at risk of gang exploitation in their area.<sup>15</sup> We estimate that over 20,000 children at risk of exploitation are not known to the services that should be protecting them - an estimated 27,000 children in England are members of gangs, but only 6,560 have been identified by services.<sup>16</sup>

The most dangerous time for children at risk is shortly after school, between 4pm and 6pm.<sup>17</sup> But over the past ten years there has been a decline in funding for services to keep these vulnerable children both occupied and safe. Youth services have been cut by 60% since 2010,<sup>18</sup> and children aged 13-15 are the most likely to be spending large amount of times sedentary or online. Children tell us this often because of a lack of available activities or safe-spaces to play in.<sup>19</sup>

### Care-experienced children

The proportion of children in the justice system who are known to children's social care is high. Over half (56%) of children in custody and receiving criminal sentences have a history of being in care – despite looked-after children making up only 1% of the total population<sup>20</sup> This suggests that not enough is being done by the state to keep the children in its care from being caught up in criminal activity.

Children in residential care in particular appear to be at heightened risk of criminalisation - they are 13 times more likely to be convicted than their peers.<sup>21</sup> While children living in residential homes may

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<sup>14</sup> This was the name given to local safeguarding arrangements when this research was carried out

<sup>15</sup> <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2019/02/CCO-Gangs.pdf>

<sup>16</sup> <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2019/02/CCO-Gangs.pdf>

<sup>17</sup> S Mayor, 'Under 16s are at highest risk of being stabbed going home from school, UK study finds', British Medical Journal 2018; 363 doi, November 2018 (behind paywall); [www.bmj.com/content/363/bmj.k4721](http://www.bmj.com/content/363/bmj.k4721).

<sup>18</sup> <https://www.childrenscommissioner.gov.uk/publication/public-spending-on-children/>

<sup>19</sup> <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2018/08/Play-final-report.pdf>

<sup>20</sup> (56%) of sentenced children were assessed to be either a current (18%) or previous (38%) Child in Need:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/887644/assessing-needs-of-sentenced-children-youth-justice-system.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/887644/assessing-needs-of-sentenced-children-youth-justice-system.pdf)

<sup>21</sup> Howard League for Penal Reform (2017a) Ending the criminalisation of children in residential care: Briefing one.

display challenging behaviour, there appears to be concerning variability in practice with some children's homes still calling police unnecessarily. For all these reasons, children in care are more likely than other children to end up with a criminal record which limits their future prospects making it more difficult to 'move on' in adult life.<sup>22</sup>

There has been increased focus in recent years on reducing the proportion of care-experienced children who are criminalised. In November 2018, the government published a national protocol on reducing unnecessary criminalisation of looked-after children and care leavers. Nevertheless, an alarming number of care-experienced children continue to fill the courts and prisons which suggests more needs to be done to stop children in care being unnecessarily criminalised.

### Children's relationships with the police

Research by the Children's Commissioner's Office on children's experiences of safety found that most children identified the police as people who could make them feel safe. However, many teenagers also felt that police officers saw them as a nuisance, or as likely to cause trouble.<sup>23</sup> For some children there are particular concerns based on their own experiences, children in care as already outlined but also other groups of children. Children from BAME backgrounds, for example, are four times as likely to be arrested as White children.<sup>24</sup>

The Children's Commissioner's Office is working with the National Police Chiefs Council to develop their national strategy for child-centred policing. The strategy aims to improve the experiences of children who come into contact with the police, and to advance existing initiatives to minimise the unnecessary criminalisation of children. We will focus specifically on those groups who are most overrepresented in the criminal justice system, namely children from BAME backgrounds and children with care-experience.

### Diversion from the Criminal Justice System

It is common for children who engage in low-level criminal behaviour to 'age out' of crime, as they mature, and there is a strong evidence base which shows that formal criminal justice processing (prosecution or 'out of court disposals' such as cautions or conditional cautions) can have a negative impact on children<sup>25</sup>.

This processing can push children further towards crime, for instance when they are labelled as 'criminals' and rub shoulders with peers who are more entrenched in the system.<sup>26</sup> Additionally, getting a criminal record and experiencing disruption to education because of entering custody can further undermine life chances.

In response to this, over the last decade, the police, YOTs, children's services and other community partners have used diversionary activities to some effect to reduce the numbers of children being convicted and entering custody.<sup>27</sup> However, the diversionary programmes available to children are

<sup>22</sup> <http://scvj.org.uk/wp-content/uploads/2016/04/ICRFINAL.pdf>

<sup>23</sup> <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2020/11/cco-mean-streets.pdf>

<sup>24</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/862078/youth-justice-statistics-bulletin-march-2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/862078/youth-justice-statistics-bulletin-march-2019.pdf)

<sup>25</sup> <https://justiceinnovation.org/sites/default/files/media/documents/2019-02/valuing-youth-diversion-a-toolkit-1.pdf>; McAra L, McVie S (2010). Youth Crime and Justice: Key Messages from the Edinburgh Study of Youth Transitions and Crime. *Criminology and Criminal Justice* 10 (2) 179-209.

<sup>26</sup> <https://journals.sagepub.com/doi/pdf/10.1177/147737080707186> and [https://howardleague.org/wp-content/uploads/2016/04/HLWP\\_19\\_2015.pdf](https://howardleague.org/wp-content/uploads/2016/04/HLWP_19_2015.pdf) and <https://justiceinnovation.org/sites/default/files/media/documents/2019-02/mapping-youth-diversion-in-england-and-wales-final.pdf>

<sup>27</sup> There is some debate about the exact reasons for the fall (and some anomalies in the overall downward trend of first-time entrants to the system) – including potential falls in crime committed by children, changes in policing practices and increased focus on diversion from youth justice practitioners. For detailed analysis of the arguments see: <https://thenayi.org.uk/cmsAdmin/uploads/state-of-youth-justice-2020-final-sep20.pdf>

variable.. A recent report summarises the situation as follows:

*'...there are considerable variations at a local level in the nature of diversionary mechanisms employed, the population of children to whom they are available, the philosophical assumptions which underpin them and their effectiveness - whether in terms of achieving higher levels of decriminalisation, reducing reoffending, or directing children to appropriate networks of support that enhance their wellbeing. There is moreover a corresponding lack of national data that would allow any systematic analysis of such variation.'*<sup>28</sup>

Furthermore, there is some question as to how equitable the use of diversionary schemes is. Many organisations raise concerns about BAME children being overlooked for diversionary routes, though again, an absence of centrally collected data obscures the issue.<sup>29</sup>

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<sup>28</sup> <https://thenavi.org.uk/cmsAdmin/uploads/state-of-youth-justice-2020-final-sep20.pdf>

<sup>29</sup> <https://publications.parliament.uk/pa/cm5801/cmselect/cmjust/306/30609.htm>



## Children in the courts

Children who are not diverted from the justice system end up in the courts. They can be tried in either the youth courts, adult magistrates' courts or the crown court. Which court they attend depends on both the availability of court sittings and the gravity of the offence – magistrates courts (either designated youth courts, or those designed for adults) have more limited sentencing options, therefore more serious crimes are tried in the crown court. A recent report raised youth justice practitioners' concerns about children moving through the adult system, pointing to a lack of specialist knowledge of youth law and practitioners lacking the skills to communicate with children. The same report noted that in the year ending March 2017, 41% of custodial remands were handed down to children in the adult courts.<sup>30</sup>

While the youth court system aims to provide a more child-friendly environment than other courts, this is not successful. The Taylor review in 2016 highlighted that the youth courts failed to deliver the best possible outcomes for children (suggesting a move to 'Children's Panels' instead),<sup>31</sup> and recent reports have further questioned how well youth courts are able to support children to participate in proceedings and to ensure their needs are fully understood. This is exacerbated by limited services to respond to needs which *have* been identified, for example speech, language and communication or mental health problems. The use of intermediaries (communication specialists who help explain the trial process), for example, is rare, even though it could be helpful for many children with communication needs to aid their understanding in court.<sup>32</sup> This is supported by the findings of a 2020 report from the Centre for Justice Innovation on young people's voices in the youth court. The young people reported:<sup>33</sup>

- > Not always understanding what was happening
- > Not always being given a voice in proceedings
- > Not feeling respectfully treated
- > Feeling the process set them up to fail

The Children's Commissioner's Office has visited youth courts and seen some of the problems in the system, particularly around gaps in support for vulnerable children, procedural weakness and cases which seemingly could have avoided coming to court in the first place. We saw long delays, pre-sentence reports (a report prepared by the YOT or probation, giving detail on a child's circumstances, to aid with sentencing decisions) not being provided in time and witnessed cases where it was clear that not enough was being done to prevent children being arrested and sent to court in the first place. Examples included:

- > A child in care who did not arrive in court as she was on her 3<sup>rd</sup> placement since the previous week and her new foster carers were not made aware that she was due in court.
- > A looked after child living in a hostel rather than foster care or a children's home, who was arrested after an argument with her boyfriend. The decision to arrest her made her extremely

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<sup>30</sup> [https://www.transformjustice.org.uk/wp-content/uploads/2018/12/TJ-December-2018-PRINT\\_V2-December.pdf](https://www.transformjustice.org.uk/wp-content/uploads/2018/12/TJ-December-2018-PRINT_V2-December.pdf)

<sup>31</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/577103/youth-justice-review-final-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/577103/youth-justice-review-final-report.pdf)

<sup>32</sup> [https://justiceinnovation.org/sites/default/files/media/documents/2020-06/time\\_to\\_get\\_it\\_right\\_final.pdf](https://justiceinnovation.org/sites/default/files/media/documents/2020-06/time_to_get_it_right_final.pdf)

<sup>33</sup> [https://justiceinnovation.org/sites/default/files/media/documents/2020-05/20200512\\_young\\_peoples\\_voices\\_on\\_youth\\_court\\_final.pdf](https://justiceinnovation.org/sites/default/files/media/documents/2020-05/20200512_young_peoples_voices_on_youth_court_final.pdf)

upset and she lashed out at a police officer and was charged with assault, even though no charges were brought for the original arrest.

In addition, 162 magistrates' courts have closed since 2010, as part of a programme of reforms to the court estate.<sup>34</sup> It is unclear how many of these are youth courts, though the evidence seems to suggest closures have impacted children, with long and increasing delays in cases coming to court. In 2019, youth cases took an average of 154 days from offence to completion, compared with 101 days in 2011.<sup>35</sup> Long delays can be particularly difficult for children; some have changed considerably by the time their date in court comes around. Children who have worked hard to turn their lives around can then be demoralised by the process and this can derail their rehabilitation.

One boy speaking about charges for which he was still awaiting sentencing said:

*“None of them was in the last year, most of them was like 2 year ago, a year ago, 2 ½ year ago, some of them were 3 years ago when I was 13, some of them was when I was young, they just piled them up”. - Boy, 16*

Children also have to travel further to attend court because of the lower number of courts operating which can mean missing more school or not being accompanied by relatives.

The forthcoming Royal Commission into the justice system is an opportunity to overhaul children's justice, and to improve the effectiveness of sentences which are doled out. An approach – like that suggested by the Taylor Review- which aims to address children's health, welfare and education needs would put the focus on wider determinants of offending rather than the symptoms. This approach puts the child-first and ensures the response to offending solves the root causes to stamp out future crime. The Royal Commission should explore international approaches (such as those used in Scotland and Spain) to assess which alternatives deliver the best outcomes for children.

### **Scotland case study – children's hearings\***

The Scottish justice system treats most children who offend in a different way. A child in Scotland aged under 16 who has admitted or been found guilty in the Sheriff's court is referred to the Children's Hearings System. Other children pass through this system for welfare concerns, without having committed an offence. As the hearing system focuses on a child's 'needs' rather than 'deeds', children are treated in the same way whether they are there for welfare or justice reasons.

Hearings aim to find the root cause of offending (or other behaviours for those in the welfare system) whether it be trauma, adversity or abuse and find a suitable remedy. Hearings are made up of a panel of three lay people trained to investigate the causes of the child's offending and any other difficulties. This is done in conjunction with other services such as social care, and with the child's parents or carers. At the end of the hearing, decisions are made on the measures that should be taken, such as compulsory supervision or time in custody.

\*The Scottish model is not without criticism – the Child Hearings are not used for all offences committed by children. More serious crimes are tried in the adult system which creates a two tier system for children, one centred around welfare and the other more punitive

<sup>34</sup> House of Commons Library (2020) Constituency data: Magistrates' court closures. Published 13 May 2020

<sup>35</sup> Youth Justice Statistics: 2018 to 2019 additional annexes: Annex E

## Remand in custody

One particularly concerning issue is the courts' use of custodial remand for children whose case has not even come to trial – close to two in five (37%) children in custody are there on remand.<sup>36</sup> Children on remand can spend as long as 9 months in custody without a sentence. This is a significant breach of children's rights, considering that last year **two thirds (66%) of children who were remanded to custody were not subsequently given a prison sentence**. Over half of these children received a non-custodial sentence (52%) and the remaining children were acquitted (48%).<sup>37</sup> Remand is also used disproportionately against BAME children. **Over half of children (57%) on custodial remand are BAME.**<sup>38</sup>

The overuse of custodial remands needs to be urgently addressed. In the Sentencing White Paper, the Government has made clear their intention to strengthen the legal tests for custodial remands, raising the threshold and requiring courts to record their rationale when children are remanded to custody.<sup>39</sup> This is an important first step, which strengthens the presumption that children on remand should stay in local authority care, rather than custody. Since the introduction of the LASPO Act 2012, remand budgets have been delegated to Local Authorities (LA), meaning that LAs effectively have to 'buy beds' for remanded children – often in the secure estate. It was hoped that this budget change would encourage the development of specialist accommodation for children who are remanded, though this appears not to have happened in practice.<sup>40</sup> The numbers of specialist foster care placements and remand foster carers are reported to have fallen dramatically since the 1990s as local authority budgets have come under increasing pressure.<sup>41</sup>

**The plans in the Sentencing White Paper, therefore, must be accompanied by investment in specialist placements for children remanded to local authority care when they are refused bail to their previous home, support and intervention with children and their families for those awaiting trial, giving courts confidence that children can be safely managed in the community.**

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<sup>36</sup> <https://www.gov.uk/government/statistics/youth-custody-data>

<sup>37</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/862078/youth-justice-statistics-bulletin-march-2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/862078/youth-justice-statistics-bulletin-march-2019.pdf)

<sup>38</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/862078/youth-justice-statistics-bulletin-march-2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/862078/youth-justice-statistics-bulletin-march-2019.pdf)

<sup>39</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/918187/a-smarter-approach-to-sentencing.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/918187/a-smarter-approach-to-sentencing.pdf)

<sup>40</sup> [https://www.transformjustice.org.uk/wp-content/uploads/2018/12/TJ-December-2018-PRINT\\_V2-December.pdf](https://www.transformjustice.org.uk/wp-content/uploads/2018/12/TJ-December-2018-PRINT_V2-December.pdf)

<sup>41</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/629384/Evidence\\_review\\_-\\_Executive\\_summary.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/629384/Evidence_review_-_Executive_summary.pdf)

## Children in custody

There are three types of youth custodial establishment in England: Secure Children's Homes, Secure Training Centres and Young Offender Institutions.

There are 13 Secure Children's Homes in England and one in Wales. These are the smallest and most therapeutic youth justice settings. They house an average of 14 children and have higher staff to child ratios than other forms of custody (around one member of staff for every two children).

There are two remaining Secure Training Centres in England after the closure of Medway this year – Oakhill (capacity 80) and Rainsbrook (capacity 76) – which can house children aged between 12 and 17. The staff to child ratios are slightly lower than in Secure Children's Homes – at around 3:8.

Young Offender Institutions house boys aged 15 to 18, and most closely resemble the adult custodial system. As the table below shows, YOIs are the largest type of youth custody setting, and they also have the lowest staff to child ratios at 1:10.

Our report 'Who are They? Where are They?' gives more detailed information on the different institutions and the history of their establishment. A copy of that report can be found [here](#). This report also sets out that although children in youth custody have either committed, or are suspected of committing crimes, they are also a highly vulnerable group of children with high levels of social care, mental health and educational needs.

### Girls

The above-mentioned report also highlights disparities in the placement of groups of children to different settings. Girls in particular are more likely to end up in mental health hospitals over custody. This creates a challenge in providing appropriate placements for the small number of girls who do end up in custody, particularly given some safeguarding risks in relation to gender-specific needs of boys and girls.<sup>42</sup> A number of reports have recommended that the YCS produce a strategy for girls,<sup>43</sup> though this has not been forthcoming.

### Children's experiences in custody

When children commit serious crimes there should, of course, be appropriate, considered consequences. However, the expectation should also be that any time in custody serves to support children, to rehabilitate them and hopefully deter them from committing further crimes.

Unfortunately, the majority of children are housed in custodial establishments (YOIs and STCs) which are not set-up to deal with high levels of vulnerability and children with significant additional needs. This is particularly true for children from BAME backgrounds who disproportionately end up in more punitive establishments.<sup>44</sup> Moreover, despite the high number of children in custody who have experienced trauma or who have mental health or other underlying needs, the custodial environment is neither inherently therapeutic nor child friendly. The review of safeguarding commissioned by the Youth Custody Service highlights a 'gradual shift towards a rehabilitative culture', though as the report evinces, safeguarding practice across the estate as a whole left much to be desired.<sup>45</sup>

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<sup>42</sup>[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);

<sup>43</sup>[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);  
<https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2014/12/Girls-in-the-Criminal-Justice-System.pdf>

<sup>44</sup> <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2020/11/cco-who-are-they-where-are-they-2020.pdf>

<sup>45</sup>[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)

Children we speak to often paint a very bleak picture of the prison environment. When asked about the support available to him in a YOI, one boy told us:

*“No, no, because you’ve got to remember, in jail you’re on your own, innit? Like literally, you’re on your own.” - Boy, 17*

The same boy went on to talk about how prison is a difficult environment for everyone, but particularly for the most vulnerable:

*“You survive by yourself. That’s why it’s so sad for people in there who are vulnerable, who are weak and that, you get me? It’s just not a nice place for them, innit?” - Boy, 17*

This child also spoke fondly of staff members he had a good relationship with – as most children in custody do - however these good relationships cannot change the overall negative experiences which are a reality for many children in custody.

There have been very serious concerns raised in recent years, by a range of different bodies. The Independent Inquiry into Child Sexual Abuse (IICSA) concluded that children in YOIs and STCs were not safe from harm, either physical or sexual, and reported serious failures in safeguarding and reporting procedures.<sup>46</sup> Another prominent example is the Urgent Notification process triggered in July 2019, when the then Chief Inspector of Prisons Peter Clarke put then Justice Secretary David Gauke on notice to explain how conditions would be improved following an “extraordinary” plunge in safety at Feltham YOI. Further concerns about the use of separation in YOIs have been consistently raised, for example by the Children’s Commissioner’s office, the Joint Committee on Human Rights and HMIP.<sup>47</sup> As our recent report shows,<sup>48</sup> the current quality of care in all custodial settings except for Secure Children’s Homes is very concerning.

## Violence and Behaviour management in YOIs and STCs

Over the past 7 years the custodial estate has been beset by high levels of violence, with rises in levels of assault and self-harm<sup>49</sup> accompanied by increases in the use of restrictive practices and poor access to time out of cell, which in turn leads to increased levels of violence as children struggle with a restrictive regime. The rate of violence per head in Secure Training Centres (STCs) is the highest across all establishments HMIP inspects<sup>50</sup> It is unsurprising, therefore, that in 2018-19 35% of children in YOIs and STCs said that they had felt unsafe in their establishment at some point.<sup>51</sup>

As one boy in an interview at a Youth Offending Team told us:

*“There’s only 2 ways it goes: you either come out a shell of a person who’s is expecting for everybody to call them a little shithouse when they’re walking down the street, cos that’s how it was for the last however long you were in jail, because they didn’t do the fighting. If you don’t do the fighting you’re made to eat shit sandwiches and drink piss” - Boy, 17*

The reduced number of children serving custodial sentences over the past 10 years has resulted in a higher concentration of children who have committed more serious offences but who also have more complex problems. During this period, the average sentence length has indeed increased by more

<sup>46</sup> [Sexual Abuse of Children in Custodial Institutions: 2009 to 2017](#)

<sup>47</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/893203/separation-taskforce-findings.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/893203/separation-taskforce-findings.pdf)

<sup>48</sup> <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2020/11/cco-who-are-they-where-are-they-technical-report-2020.pdf>

<sup>49</sup> <https://thenayi.org.uk/cmsAdmin/uploads/state-of-youth-justice-2020-final-sep20.pdf>

<sup>50</sup> [https://www.justiceinspectorates.gov.uk/hmiprisonson/wp-content/uploads/sites/4/2019/07/6.5563\\_HMI-Prisons-AR\\_2018-19\\_WEB\\_FINAL\\_040719.pdf](https://www.justiceinspectorates.gov.uk/hmiprisonson/wp-content/uploads/sites/4/2019/07/6.5563_HMI-Prisons-AR_2018-19_WEB_FINAL_040719.pdf)

<sup>51</sup> <https://www.justiceinspectorates.gov.uk/hmiprisonson/wp-content/uploads/sites/4/2020/02/Children-in-Custody-2018-19-Web-1.pdf>

than 6 months (from 11.4 to 17.7 months).<sup>52</sup> There has been a sustained increase in the proportion serving sentences for violence against the person. Last year this accounted for over half (51%) of the youth custody population.

The behaviour of children in the secure estate can often be very challenging, and the system struggles to manage this behaviour. The higher concentration of need, however, cannot be used to justify an over-reliance on restrictive practices in managing behaviour.

There are some key pillars that have been identified as ways of preventing violence including: a system of rules that feel fair and justifiable to those in the institution; good relationships between staff and those detained; engagement in purposeful activity and better physical conditions.<sup>53</sup> There is already good practice in some of these areas. Wetherby YOI, for example, is recognised in successive inspection reports as an establishment which prioritises positive relationships between children and staff, following good practice as set out in the YCS's own behaviour framework- 'Building Bridges: A Positive Behaviour Framework for the Children and Young People Secure Estate'.<sup>54</sup> This is undoubtedly influenced by the experienced and stable body of staff who have a good understanding of the establishment and the children within it.<sup>55</sup> Relationships between children and staff are also particularly good at Parc YOI, where 82% of children said that most staff treated them with respect.<sup>56</sup> Institutions are working to improve the provision on the ground in each of these areas, however for the reasons outlined below, best practice in terms of behaviour is not successfully implemented across YOIs and STCs.

### *Staffing challenges*

Implementation of positive behaviour management schemes is undermined by challenges in the recruitment and retention of staff. Though staffing levels have been improving over the past few years, there is high turnover across the estate and this has a serious impact on the availability of trained and experienced staff and also makes it harder for children to develop positive relationships with staff. New staff often tell us they feel they do not have adequate training to deal with some of the very challenging situations they are faced with, which in turn puts pressure on more experienced staff, who have to shoulder the burden of trying to get new recruits up to speed, in addition to their own responsibilities.

### *Concentration of need*

One practical factor which has contributed to the challenges in managing the behaviour of children serving custodial sentences is that the physical estate is smaller now than it was 10 years ago. Decisions to sentence fewer children to custody have been followed, with the closure of custodial institutions. An unexpected outcome of these closures has been the resultant difficulty in separating children who might come into conflict, for example due to gang rivalries. There are now fewer options available to physically separate children into different facilities, which has caused staff working in custodial institutions to use other strategies. Staff have often relied heavily on 'keep apart protocols', keeping lists of children who cannot associate with others in the prison and going to great lengths to ensure these children (or groups of children) do not even pass one another in the corridor.

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<sup>52</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/862078/youth-justice-statistics-bulletin-march-2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/862078/youth-justice-statistics-bulletin-march-2019.pdf)

<sup>53</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/737956/understanding-prison-violence.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/737956/understanding-prison-violence.pdf)

<sup>54</sup> A recent example is the HM Inspectorate of Prisons March 2018 report '[Incentivising and Promoting Good Behaviour](#)'

<sup>55</sup><https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2015/11/Feltham-A-Web-2015.pdf>; <https://files.ofsted.gov.uk/v1/file/50081527> <https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2019/07/Wetherby-and-Keppel-Web-2019.pdf>; <https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2018/07/Wetherby-and-Keppel-Web-2018.pdf>

<sup>56</sup> [https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2019/07/6.5563\\_HMI-Prisons-AR\\_2018-19\\_WEB\\_FINAL\\_040719.pdf](https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2019/07/6.5563_HMI-Prisons-AR_2018-19_WEB_FINAL_040719.pdf)

Keep apart lists grew so long and unwieldy in some YOIs and STCs that they can be very disruptive to the daily routine, an issue which has been highlighted in successive inspection reports.<sup>57</sup> On visits we have heard reports of these lists limiting the number of children able to access education and sports clubs at any one time, increasing the amount of time children spend in their cells.

The reasons for violent outbreaks in prison are varied, but according to reports from establishments themselves,<sup>58</sup> keeping children apart can increase the risk of violence, as it promotes ongoing rivalries. YCS has implemented a Conflict Resolution model in 5 sites to try to deal with some of these issues, however the YCS safeguarding review found that these interventions were undermined by an overreliance upon them to resolve 'mixing issues'. It would be beneficial to invest in supplementary activities to help children improve emotional regulation, build self-esteem and communication skills to support this work more broadly and help them build necessary skills for their return to the community. There are some good examples of how these types of activities can work well in the community – see case study on page four for more information.

### **Access to daily activities**

Partly as a result of measures to reduce violence, children in custody are spending too long alone in their cells – HMIP have reported that 3 out of the 5 YOIs did not provide children with the expected 10 hours out of their cells per day in 2018-19, averaging between seven and eight hours during the week. This was even worse at weekends, where in Feltham and the Keppel Unit, children spent as little as four hours out of their cells each day.<sup>59</sup> Young people across the estate tell us of their frustration with long periods of 'lock down' when boys will wind each other up by shouting at each other through the walls for hours on end. They themselves feel that these periods of lock down increase tensions and lead to further violence once they are all out of their cells, further pushing staff toward keep-apart protocols and even more lock-downs.

*"Just think yeah you send a 17-year-old to jail you're saying, "You're in your cell for 22 hours a day." Let's say there's an argument with someone on the yard the day before that, you're gonna be sat in your cell thinking, "I'm gonna batter than man when I get out of here, he's chatting shit about me," he's making me feel low and that, you're thinking for 22 hours you're going to get at him and you're gonna batter him. What you doing, you're coming out, that fight is going to be the most exciting thing for you in your whole week, that's the only rush you're going to get. Let's say you have a fight when you're drunk you get a rush innit, adrenaline, so when you're fighting that's the only good thing that you're getting out of it." - Boy, 17*

The Children's Commissioner's Office carried out unannounced weekend visits across the secure estate during January and February 2020 and found that in both YOIs and Secure Training Centres the range of meaningful activities on offer for children was inadequate. Children in YOIs also reported they were often in their cells for in excess of 22hrs per day in YOIs at weekends, which appears to be supported by the HMIP survey result finding that only 27% of children in YOIs reported spending longer than 2 hours out of their cells at weekends in 2018/19.<sup>60</sup>

<sup>57</sup> [https://www.justiceinspectorates.gov.uk/hmiprisonswp-content/uploads/sites/4/2019/04/Cookham-Wood-Web-2018\\_v2.pdf](https://www.justiceinspectorates.gov.uk/hmiprisonswp-content/uploads/sites/4/2019/04/Cookham-Wood-Web-2018_v2.pdf);  
<https://www.justiceinspectorates.gov.uk/hmiprisonswp-content/uploads/sites/4/2019/10/Feltham-A-Web-2019.pdf>;

<sup>58</sup> <https://www.justiceinspectorates.gov.uk/hmiprisonswp-content/uploads/sites/4/2019/06/HMYOI-Werrington-Web-2019.pdf>  
[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)

<sup>59</sup> [https://www.justiceinspectorates.gov.uk/hmiprisonswp-content/uploads/sites/4/2019/07/6.5563\\_HMI-Prisons-AR\\_2018-19\\_WEB\\_FINAL\\_040719.pdf](https://www.justiceinspectorates.gov.uk/hmiprisonswp-content/uploads/sites/4/2019/07/6.5563_HMI-Prisons-AR_2018-19_WEB_FINAL_040719.pdf)

<sup>60</sup> <https://www.justiceinspectorates.gov.uk/hmiprisonswp-content/uploads/sites/4/2020/02/Children-in-Custody-2018-19-Web-1.pdf>

The regimented way in which staff are deployed in many settings also contributes to the large amount of time children spend locked up. For example, on some visits there have been 70 staff on site with only 1 member of staff in charge of leisure activities, which seriously limits children's access to these opportunities. Many settings make good use of youth workers – like Kinetic Youth – to provide additional activities and outreach to children who are not engaging with the normal regime.

## Restrictive practices

When the keep apart lists and other methods fail, there can be an overreliance on restrictive practices such as segregation and restraint as tools to manage violent or disruptive behaviour.

### Separation

*“You go on bang up, which means they take your TV, take your food, take your gym... so you're pretty much in your cell, innit, for however long your losses was, with no TV, just books. That's if you've got any books as well... If not, you'll just be sat in your pad, watching four walls all day, innit. You could be doing it if you had a fight, you'd been caught with drugs, been rude, anything. But yeah, and if you've done something bad, you go block, innit, which is like – you go block, it's like a pad, yeah? It's got nothing in it, just a toilet and a bed and a sink. The most I'd been in there was two weeks. But yeah, you go there if you did something bad.” - Boy, 17*

The Children's Commissioner's 2018 research found the number of episodes of separation in YOIs in England and Wales had increased in the past 4 years, even as the overall number of children detained had fallen.<sup>61</sup> A recent HMIP report on separation supports our finding that some children segregated in YOIs are subject to conditions amounting to solitary confinement. It found that across the estate, around one in 10 children were separated, and periods of separation ranged from one to 89 days.<sup>62</sup>

In response to these concerns, the HMPPS-commissioned Separation Taskforce made important recommendations on tackling inadequate practice in the secure estate. The Government, however, has not made a public commitment to publish data on separation to allow for full public scrutiny. Moreover, it is not clear whether the proposed changes to separation policy and practice can be realised within the confines of the current system. As this report makes clear, more radical reform is needed.

### Restraint

Last year, **restraint was used to overpower children<sup>63</sup> around 6,300 times** – this is a 16% increase from the previous year and **the highest level in the last five years.**<sup>64</sup> In 2018-19, half of all children in Young Offender Institutions (YOIs) and STCs reported that they had been restrained during their time in detention. This is the highest figure since HMIP started recording episodes of restraint in 2002.<sup>65</sup>

There is broad consensus that small units, where children can build strong relationships with staff and other young people offer the best experience to children. This is supported by the experiences of the YCS during the pandemic, who found that children felt safer when they associated in smaller, more familiar groups, which allowed for enhanced relationships between children and staff. Moreover, the smallest youth justice establishments – Secure Children's Homes – managed to maintain a close to full

<sup>61</sup> <https://www.childrenscommissioner.gov.uk/publication/a-report-on-the-use-of-segregation-in-youth-custody-in-england/>

<sup>62</sup> <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2020/01/Separation-of-children-thematic-Web-2019.pdf>

<sup>63</sup> Referred to as 'Restrictive Physical Interventions' in the MoJ Youth Justice Statistics

<sup>64</sup> Ministry of Justice 2020. Youth justice statistics: 2018 to 2019.

<sup>65</sup> [https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2019/07/6.5563\\_HMI-Prisons-AR\\_2018-19\\_WEB\\_FINAL\\_040719.pdf](https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2019/07/6.5563_HMI-Prisons-AR_2018-19_WEB_FINAL_040719.pdf)



timetable for children during this period, with full access to in-person education. This is a useful learning for the future configuration of the youth estate, indicating the value of smaller units where children can build trusted relationships with staff and other children, which appear less prone to disruption of timetables. It is welcome that the YCS has commissioned a research project to learn from the experiences of dealing with the pandemic. It is intended to improve understanding of the impact of COVID-19, the response to the impact and the impact of the response. It is hoped that this research will draw out examples of best practice and be used to influence plans for reform of the secure estate. The YCS should publish their findings in full, alongside a resultant action plan.

## Covid in the secure estate

During the pandemic the conditions for children in custody have been particularly bleak. Strict social distancing guidelines and an early decision to withdraw in-person education services (in-line with plans for the adult estate) saw options for time out of cell severely limited. While staff have worked hard to provide innovative solutions at a local level, to give children the fullest timetables possible, children have still been spending too long in their cells.

From March to May, children in YOIs and STCs were:

- > Spending between 20-23 hours per day locked in their cells, with limited interactions with staff and other children.
- > Having severely limited access to time in the fresh air. In some prisons this was as low as 30 minutes per day.
- > Missing out in in-person education. Only two prisons kept delivering face to face education to children.
- > Eating most meals locked in their cells. By May some prisons started allowing children to 'dine out' in small 'family groups' of 3 or 4 children for one meal per day.

From June, restrictions began to relax, with some level of face-to-face education being delivered in all of the prisons. For example, children in Werrington YOI began attending daily three-hour education sessions, where they had previously only accessed in-cell workbooks. Children in Oakhill STCs' access to taught education increased to 10 hours per week from July and increased to 20 hours per week by the end of September. There was also increased access to out of cell activity, including arrangements for children to eat out of their cells in small 'family groups' of 3 or 4 for some meals, and some in-person visits from family were made available in all prisons.

While serious concerns remain about the amount of time children are spending in their cells (with a goal set for 5 hours as compared to the business-as-usual target of 10 hours), it is to the credit of the YCS that in the face of the announcement of the second lockdown they intend to protect education, family visits and on-site advocacy for children.

## Resettlement and rehabilitation of children and young people

One of the reasons for the high reoffending rates associated with youth custody is that not enough decisive action is taken to give a child the best chance of turning their life on release.

*“What does it do to kids when they get out, they go to jail when they’re 15 when they’re about to go college and they miss a critical part, miss a critical stage, come out when they’re 17 they’ve got nothing.... how you gonna eat the next day and then the next day? No-one’s helping you get a job, where you going to live? What you gonna do?”*

Plans for children’s resettlement should start from the day they enter custody. Too often, these plans do not result in an appropriate package of support for children on release. With such a high population of care experienced children, many children cannot return home to their families, and instead the local authority must find them an appropriate placement. Children without official care leaver status will not be automatically entitled to post-custodial support from children’s services, even though they are likely to be very vulnerable and would benefit from additional support to prevent them returning to old behaviours.

In the first three months of 2019, almost 14% of children did not even know ten days before they were released where they would be living after leaving the YOI. Most did not have education, training or employment arranged.<sup>66</sup> This is particularly challenging for those with additional care and support needs, particularly those with neuro- developmental needs like autism, for whom this transition is even more difficult.

To address this, the Children’s Commissioner’s Office has been working with governors in YOIs and STCs to achieve better resettlement outcomes for looked after children. The Commissioner wrote to Directors of Children’s Services on behalf of all looked after children due for release across three institutions. In many cases, prior to our intervention, the young person was due to be released from custody with no appropriate accommodation and support sourced by their responsible local authorities. We have even encountered children with serious physical and mental health problems leaving custody with no medication and no registered GP

Our work found that there is a lack of effective communication and cooperation between YOTs, children’s services teams and caseworkers in custody, which results in negative outcomes for children, because plans are arranged at the last minute. Too often, each professional will view the child, and their plans for resettlement, as the ‘responsibility’ of the other, and not make enough effort to work jointly to develop a comprehensive plan. There can often be confusion about shifting release dates, dependent on a child’s progress during their sentence. Squeezed budgets and large caseloads can also contribute to delays in developing comprehensive support plans.

Some caseworkers in the secure estate lack adequate training about children’s entitlements and the proper routes of escalation. In many cases, solutions were only found at the last minute, a day or two before a child left custody, when if it had been escalated weeks earlier a better solution could have been found for the child. A child-specific training module, with clear routes for escalation should be introduced for all caseworkers who work with children to combat these issues.

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<sup>66</sup> <https://www.justiceinspectorates.gov.uk/cjji/wp-content/uploads/sites/2/2019/08/Youth-resettlement-work-Web-2019.pdf>

Unfortunately, we have also found cases where children don't access appropriate interventions while in custody to 'reduce their level of risk', which can impede plans when it approaches their release date. YOTs and children's services may not support early release applications if they feel the child remains a risk to themselves and others and providers can be unwilling to offer placements because of the 'risk' posed by the child.

In our work we have also seen some very good examples of agencies working together to support young people when they leave custody. For example, one Local Authority and Youth Offending Team had worked intensively with a young person's family while he was in custody to help them prepare for his release, including finding a college place on a course he was interested in. They had also arranged to facilitate ongoing sessions where they would help to support the relationship between the boy and his family.

## Youth justice reform

Since its establishment in 2017, the Youth Custody Service (YCS) has been working on a reform programme to address some of the endemic issues explored in this report. This includes welcome plans for a new youth justice specialist role to replace all custody officers. It also introduced the Custody Support Plan (CuSP), an evidence-based model of care planning, which aims to develop a consistent relationship with a member of operational staff who monitors a child's progress through regular key work sessions. Unfortunately, however, implementation is slow and has been undermined in some establishments during the Coronavirus pandemic.

The introduction of Enhanced Support Units (ESU) in two YOIs is also positive. These units are designed to provide specialist psychological support and wrap-around services to children with the most complex needs which can include those waiting for a mental health bed. The Keppel Unit in Wetherby is often highlighted as a particularly positive example. However, the HMIP report into the use of separation raised concerns about the quality of support available to children in the ESU at Feltham YOI, which had been established 18 months prior to the inspection.<sup>67</sup>

In recent years, the Youth Custody Service has worked with the NHS to introduce a new Secure Stairs model, which provides a framework for training staff in secure settings to deliver psychologically informed care to children. This has undoubtedly improved the mental health provision in the secure estate and is a key component in the ambition to change the culture within children's prisons. However, the number of children needing specialist mental health provision continues to outstrip the capacity of the system to provide this. On visits to YOIs we have seen children struggling with serious mental health conditions who are unable to get the help they need. In one case, a child had been assessed by a psychiatrist as requiring specialist inpatient care but had waited in excess of 6 weeks to get a bed in a mental health ward. Our Help at Hand advice service has also become involved in cases where a young person is considered too unwell to be in custody (in spite of staff's good intentions, the setting cannot adequately meet their needs), but not 'unwell enough' to meet the threshold for secure mental health care. Well-meaning but under-trained staff do their best to care for young people with severe needs – but the reality is these children need to be in a place which can provide more intensive therapeutic support.

Although these incremental reforms are positive, they are too slow and not sufficiently radical to deliver the real change required to develop a truly child-friendly system. The YCS currently sits within Her Majesty's Prison and Probation Service (HMPPS) but, as the children's estate accounts for a very small part of the overall custodial system, it risks being overlooked in terms of resource and political attention.

A whole new approach to the delivery of secure care for children in England is therefore needed. A separate system should be built around the therapeutic support children so desperately need, rather than trying to import this support into punitive institutions. Any system which does not do this is likely to fail both to appropriately care for children and to prevent future crime.

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<sup>67</sup> <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2020/01/Separation-of-children-thematic-Web-2019.pdf>

## International examples of secure care

The Children's Commissioner's Office (CCO) organised a study tour to Sweden and Norway in early 2020, in conjunction with the children's ombudsmen in both countries.

Through a mixture of visits and meetings with officials we were able to witness two quite different approaches which both sought to provide a flexible approach which could adapt to children's needs and change with children as their needs evolve.

### Sweden: multi-tiered centres

In Sweden we visited a large site, sub-divided into a series of specific homes. The centre accommodated a range of children with complex needs, including a significant number with violent and sexualised behaviours, held under both welfare and criminal justice orders. The level of security within the centre varied significantly between the homes across the site, with each home accommodating a maximum of 8 children and shared education facilities for all but the most high-risk children. The more secure units were similar in size and feel to England's secure children's homes. The benefit to this approach is that a child could move between homes according to their needs, essentially supporting a staggered approach to re-engagement in the community. We heard directly from children who had been through this process and described moving from a high-level of security to a more open environment which enabled short-term periods of release, access to off-site training and visits to family. All of this is theoretically available within the youth custody estate in England, the difference being the level of flexibility which individual settings need to be able to change the regime to meet children's needs.

### Norway: small, flexible units

In Norway we saw a different approach to a similar challenge: ensuring one centre can be flexible to a child's needs. The approach in Norway was driven by the need to provide local care solutions to small local populations. As a result, centres were small, but multi-disciplinary with a large clinical team supporting a small number of children with a potentially wide range of needs. The result was intensive therapeutic work to manage complex behaviours and highly flexible care plans to meet the needs of children. Again, there was a strong focus on rehabilitation back to the community and a very clear emphasis on involving parents, including in the therapeutic process through systemic family therapy. At any one time Norway has just a handful of children incarcerated for criminal justice reasons, so most of the children held in these settings were held for welfare reasons because they were engaging in dangerous behaviours or were self-harming.

## Difference in approaches

One major difference in the approach in England compared to that adopted by Sweden and Norway is in the level of integration between criminal justice and welfare provision. In Sweden and Norway, the division between being in a specialist care placement and a youth justice placement was much smaller.

In both countries, there were combined authorities responsible both for children requiring specialist social care and for children under a custodial sentence. In England the two systems only really overlap

where children can be placed in Secure Children's Homes on either welfare or youth justice grounds. However, this is only a small minority of children in youth custody.

The same level of integration was not in place between mental health facilities and social care facilities: these remained separate and both countries described an ongoing process of attempting to embed health within care settings. In practice, there were strong parallels between this process and the Secure Stairs system implemented by NHS England in youth custody settings in England.

### **A new approach to secure care**

A new model of care would focus on the needs of children and challenge the concept of 'youth justice' as we know it. This means it should not separate children out arbitrarily depending on their 'sentence' or the legislation used to detain them, but instead take a holistic approach to each child, based on their individual needs. This is one of the key strengths of the approach in Norway and Sweden, as children there are treated according to their need, and experience similar conditions regardless of whether there for a welfare or justice placement. This new approach would not only benefit the children currently ending up in custody, but also those in, or in need of, secure welfare accommodation. The many difficulties of accessing appropriate accommodation for these children are set out in our report, 'Who are they? Where are they? 2020'.<sup>68</sup>

The new secure school initiative, as laid out in the 2016 Taylor review is a step in the right direction. The initiative has transformative ambitions, aiming to get to the root causes of offending using a welfare-led, therapeutic approach, and to equip young people with the tools to succeed in society once they leave custody with a strong focus on education. There is a danger, however, that secure schools could repeat the mistakes of the past, delivering a child-prison by another name. The introduction of Secure Training Centres in the 1990s was also an attempt to bring education to the heart of detention, though these institutions have been mired in controversy since their inception. Serious concerns are raised again and again about the maltreatment of children, overuse of restraint and struggles to provide a safe environment.

To avoid these mistakes, the initiative must be properly resourced to achieve its aims, so staff with the appropriate training and backgrounds can be recruited to support children in an atmosphere which supports the delivery of therapeutic interventions and encourages learning. Adequate funding is also needed to allow for changes to the existing infrastructure (the first secure school is being built on the site of the old Medway Secure Training Centre), as without a radical redesign of the physical environment it is hard to see how the initiative can meet its aims. The proposed size of the schools may also undermine rehabilitative ambitions, as even catering to the proposed 50 children leaves them significantly bigger than even the largest SCH.

An education provider was chosen to lead this initiative in an attempt to adopt a truly innovative and different approach. It is important that the provider – Oasis Charitable Trust – have sufficient autonomy in developing plans for the secure school to avoid replicating previous ways of working, while also being held fully accountable by the YCS.

More broadly, the secure school plans need to be the first step in a redesign of the whole system, putting children's needs at the heart of provision. The SCH model already more closely resembles an integrated

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<sup>68</sup> <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2020/11/cco-who-are-they-where-are-they-technical-report-2020.pdf>

model of secure care with links between welfare and justice provision. The capacity of the SCH system should be increased, with more innovative and flexible design, alongside secure schools so that all children requiring secure care can be accommodated in settings designed to provide therapeutic care and support. The flexibility of provision is key, to ensure that children are supported as their needs change and develop, with strong step-down provision to help manage children's transition back into the community.



## Conclusion

As this report demonstrates, not enough is being done to keep vulnerable children from being caught up in the youth justice system, nor is it designed in a way which creates the best chance of preventing reoffending or delivering good outcomes for those children who do end up in custody. Opportunities are being missed to support children before they ever come into contact with the system, evidenced by the high numbers of children from care experienced backgrounds, with mental health difficulties and other additional needs. While there have been some impressive reductions in the number of children entering the youth justice system, and in particular entering custody, other worrying trends such as the overrepresentation of certain groups, the increasing use of custodial remands and the unacceptable conditions within custody remain.

If we are to reduce reoffending and give children who are held in the secure estate a chance to turn their lives around, we need a child-friendly approach to youth justice - focusing on the needs of children, ensuring their rights are upheld and that they can participate meaningfully when decisions are made about them. The new system should put more emphasis on preventing criminalisation, diverting children from custody, providing excellent recovery and restorative support for those in custody and delivering effective resettlement on release. Every Government has choices about how it treats children's risk of getting into trouble with the law, and with so much progress made on reducing the number of children entering custody, now is the time to deliver a radical overhaul of the system.

## Recommendations

To build on the gains of recent years and further reduce the numbers of children going into custody, welfare-based early interventions must be prioritised to address children's underlying needs without pushing them further toward crime.

### Recommendations to divert children away from the youth justice system and custody

- > There needs to be a significant expansion of early help services, which can identify emerging issues and prevent problems from developing. This requires increased investment in mental health, with a NHS trained counsellor in every school, levelling up on spending on speech and language therapy around the country, and an expansion of Troubled Families style intensive support to prevent children from reaching crisis point. A national plan should also be introduced to identify and provide support for additional needs in the Early Years.<sup>69</sup>
- > Funding is needed for schools to stay open at evenings and weekends and throughout school holidays, to provide a range of activities. Investment is also needed in high quality support from youth workers able to work with children at risk in their community.
- > The Government's proposals for reform of the alternative provision sector in education must place a greater focus on avoiding exclusions, improve the quality of alternative provision and increase accountability on providers for the destinations of children excluded from mainstream settings in order to prevent school exclusion acting as a trigger for involvement in criminal behaviour.
- > Given the strong links between exclusion, vulnerability and criminality, there is a case for better data sharing across the Department for Education (DfE) and Ministry of Justice (MoJ), to

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<sup>69</sup> <https://www.childrenscommissioner.gov.uk/report/best-beginnings-in-the-early-years/>

identify key points for intervention and potential cost savings, such as when a child is excluded from school. The data-sharing pilot announced in the Spending Review provides a useful opportunity to further these discussions.

- > The age of criminal responsibility should be raised to 14 years old, in line with the recommendations of the UN Committee on the Rights of the Child.
- > The MoJ should expand evidence-based diversion schemes with welfare-based early intervention for the range of additional difficulties these children often face. This should be coupled with improved national data to allow for better empirical evidence on what works, both for children's wellbeing and to reduce criminalisation and reoffending. This data collection should include demographic information to support analysis to understand if (and why) diversion is less available to, or works less effectively for, subsets of children i.e., BAME and care-experienced children who we know are overrepresented in custody.
- > The court system should be reformed to be more child-friendly and address children's health, welfare and education needs to put the focus on wider determinants of offending rather than the symptoms. The Royal Commission should explore different approaches (such as those used in Scotland and Spain) to assess which alternatives deliver the best outcomes for children.
- > The changes to custodial remands and community sentences put forward in the sentencing white paper should be seen as a first step in reducing the population in custody. The MoJ should work with the DfE, Youth Justice Board and other stakeholders to design evidence-based community sentences which work for children and reduce reoffending. This must be accompanied by investment in specialist placements for children remanded to local authority care when they are refused bail to their previous home, support and intervention with children and their families for those awaiting trial, giving courts confidence that children can be safely managed in the community.
- > Consideration should be given to a national network of accommodation providers and youth organisations to provide support to children leaving custody, as is being explored by Oasis. Such a network could tap into existing provision in children's local areas, to find accommodation, education, and intensive support for children during their transition into the community, with links that begin during their time in custody.

### Short term recommendations to improve custody

- > The YCS should produce a strategy for girls, which specifically considers gender-specific needs in the context of their care.
- > Restraint in youth custody settings should no longer be permitted in order to maintain good order and discipline but should be reserved for incidents where it would prevent harm to a child themselves or to others. Good practice on positive behaviour management and reducing restrictive practices should be shared across all secure settings where children are accommodated.
- > Data on the use of separation must be published, and Government must present a clear plan for how they can implement the Separation Taskforce's recommendations.
- > The YCS should publish the findings of their research project commissioned to learn from the experiences of dealing with the pandemic, alongside a resultant action plan.
- > Additional funding is required to ensure that there is sufficient staffing, and funding for youth work agencies in custody, to allow children more time out of their cells and access to activities.

## Recommendations for a new model of secure care for children

There is need for an urgent rethink of how we treat children who require secure care. The current system arbitrarily separates children based on the legislation they are detained under, rather than focusing on the needs they are presenting with, or how best to treat and rehabilitate them.

- > We need an integrated system of secure care, with enough inbuilt flexibility to respond to children's needs as they evolve, would truly promote the child's best interests and would ultimately provide a greater degree of rehabilitation.
- > The design of the new system should explore international approaches to youth justice to learn from other countries whose responses to youth criminality give a higher priority to addressing child vulnerability and to prevention and rehabilitation.
- > Plans for reform and to further reduce the numbers of children in custody must also consider the wider system of secure care for children. There must be adequate accommodation to provide safe and supportive environments for those vulnerable children who are (thankfully) diverted away from custody but may also have very high levels of complex needs and for those with similar needs who have not committed a crime, in order to prevent children's lives escalating further into crisis
- > A cross-government working group including MoJ, DSHC, DfE, and NHS England should be convened to develop a joint strategy to improve the integration of care for children within, and on the edge of, secure care. This group could work together to pilot an integrated model of secure care (available to children from welfare/justice/mental health pathways) as part of this year's spending review (SR) settlement, with a view to building on this work with a strong integrated bid for next year's Spending review



Children's Commissioner for England  
Sanctuary Buildings  
20 Great Smith Street  
London  
SW1P 3BT

Tel: 020 7783 8330  
Email: [info.request@childrenscommissioner.gov.uk](mailto:info.request@childrenscommissioner.gov.uk)  
Visit: [www.childrenscommissioner.gov.uk](http://www.childrenscommissioner.gov.uk)  
Twitter: @ChildrensComm