

Prison Reform Trust response to the Justice Committee inquiry into children and young people in custody – October 2019

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. The Prison Reform Trust provides the secretariat to the All Party Parliamentary Penal Affairs Group and has an advice and information service for people in prison.

The Prison Reform Trust's main objectives are:

- reducing unnecessary imprisonment and promoting community solutions to crime
- improving treatment and conditions for prisoners and their families
- promote equality and human rights in the criminal justice system.

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Introduction

1. The PRT is a member of the Standing Committee for Youth Justice (SCYJ). We have contributed to the SCYJ's submission to the Justice Committee and endorse fully its contents and conclusions. We are also a member of the Transition to Adulthood (T2A) alliance and similarly endorse their submission to the committee. What follows are supplementary points to that submission, born of our experience of working with children and young adults who have previously offended and who have, as a consequence, disclosable records of past convictions.

What are the characteristics of those entering the youth justice system and what are the challenges in managing this group?

2. We published an important report on the characteristics of children¹ entering the youth justice system in 2010, *Punishing disadvantage – a profile of children in custody*. This showed that children in custody had already experienced high levels of disadvantage when compared to the general child population, both in terms of home and family and also in terms of psychosocial and educational problems. Almost three quarters of the children whose cases were examined were known to have two or more broad types of disadvantage.
3. The government appointed a Youth Custody Improvement Board in July 2016 to report on the state of the youth custodial estate and recommend how the system

¹ Throughout this submission we will use the terms 'child' and 'children' to denote anyone person aged under 18 years of age.

could be improved. They reported in February 2017 that “*there is not sufficient evidence to draw robust conclusions about the level of need [of children living in] the secure estate*” and recommended that “*the government should carry out a clear need analysis of young people in custody*”.² Despite this Board being chaired by a member of the Youth Justice Board, no action has been taken in respect of this recommendation. Our view is that an up to date analysis is essential and we do not understand why a government would consider making major strategic decisions in this field without one.

What is the experience of Black, Asian and Minority Ethnic offenders of the youth justice system and secure estate and what progress has been made in implementing the recommendations of the Lammy Review?

4. The over representation of BAME children in custody has increased since the publication of the Lammy Review. In September 2017 there were 409 children from BAME backgrounds in custody, constituting 47% of the total custodial population. In July 2019 there were 455 children from BAME backgrounds in custody, representing not only an overall increase but also constituting 56% of the total custodial population.³ The Government published a detailed progress report in September 2018 in response to the Lammy recommendations and other drivers but as yet these measures have not affected the growing trend, indeed the position has deteriorated.
5. The then Secretary of State for Justice accepted the challenge contained in David Lammy’s principle of *explain or reform* but greater priority needs to be attached to this work. We believe that this requires a degree of granularity, a case-by-case focus on each and every BAME child on the cusp of custody as well as a concentrated focus on high custody areas, which our five-year programme *Out of Trouble* championed between 2007 and 2012. As yet the response of the Government has been focussed on systemic change alone and this, however well intended, is clearly not enough.

How effective is the youth justice system in diverting children and young people away from custody and what more needs to be done?

6. There has been a 85% reduction in the number of children entering the youth justice system since 2007. Since this has not been accompanied by an increase in later entrants (either as children or as young adults) in general terms this must be counted a success.
7. Proper diversion, as against simply ignoring low level offending amongst children, is not cheap. Youth Offending Teams across the country report a reduction in local funding for this work, and the government’s own funding, which is channelled through the Youth Justice Board’s youth justice grant to local authorities, has similarly been subject to very significant reductions that have seen it halved in real terms over the past decade.⁴

² Youth Custody Improvement Board (2017) *Youth Custody Improvement Board: findings and recommendations* London: Ministry of Justice

³ There are seasonal factors in the use of custody of children so comparing figures for any September with any July is not entirely satisfactory. The 12-month trend in the absolute number of BAME children in custody shows a slight reduction of three children per month.

⁴ Provided under the terms of s 41 (5) (ha) of the Crime and Disorder Act 1998

8. At a time when the government seems prepared to spend heavily on increasing capacity in the adult custodial estate, this experience in the youth estate of reducing the use of custody and the incidence of crime simultaneously should serve as a powerful indicator of where investment delivers the best results—in the community.

Is the current minimum age of criminal responsibility too low and should it be raised?

9. The Age of Criminal Responsibility (ACR) in England and Wales has not been formally changed since 1963 despite the intention of Parliament in passing the Children and Young Persons Act in 1969 that it should be raised. The abolition of the application of the principle of *'doli incapax'* in cases involving children under 14 by Parliament in 1998 effectively reduced the ACR. The Scottish Government is in the process of raising the ACR in Scotland to 12, while the ACR in most parts of the world is higher than that.
10. We believe that a review of the ACR is long overdue, and that the ACR for England and Wales should be raised.
11. At the same time we are aware that one of the factors that holds back such a move is memory of a small number of highly publicised cases where very young children committed grave offences.⁵
12. Before the law can change, there needs to be a properly informed public debate that is not conducted in the immediate aftermath of a particularly shocking case. In these circumstances we favour the appointment of an independent and expert body to review the case for raising the ACR. Such a body should look at the international evidence and also examine how satisfactorily the welfare system currently responds to children under the age of 10 who commit grave offences.

What impact has the changing nature of the population had on the management of the secure estate?

13. There have always been children with very profound needs in the custodial estate, including many who would be much better placed in welfare placements because of the nature of their unmet needs. The argument is made that the reduction in numbers of children in the custodial estate has led to a greater concentration of such children but in the absence of any assessment of the needs of children in the custodial estate this can only be, at best, an intuitive judgement. Whilst it is clear that the rising number of children with convictions for serious youth violence, together with the growing number of children who identify with Organised Crime Groups has increased the challenges faced by custodial staff, too glib an assumption is often made that this equates to an innately more “problematic” cohort of children. The “changing nature of the population” may be more about the circumstances which children are facing in the community than about the children themselves—in fact that is by far the most logical starting assumption. It is why an up to date need analysis is so crucial—without it, assumptions are likely to be made which feed public prejudice and which may misdirect the work of the secure estate in particular.

⁵ Offences that carry a maximum sentence for an adult of 14-year imprisonment.

What does a good custodial place for a child or young person look like and is there sufficient provision across England and Wales?

14. The *Campaign to End Child Imprisonment* has recently described the elements that they believe should characterise ‘a good place’ and we are in broad agreement with them. Key characteristics which commend themselves to us from our experience include:
- Clarity that the sole purpose of the custodial establishment is to rehabilitate and resettle the child in the community, and so an absolute focus on the test ‘*how does this approach contribute to the chances of an eventually successful resettlement and rehabilitation of this child?*’;
 - Extensive use of Release on Temporary Licence (ROTL)/Mobility following an initial assessment of risks to the public;
 - Reduction of the maximum size of a custodial establishment so that each provides places for no more than 35 children – this should bring with it the additional advantage, also a good characteristic, of allowing children to be held much nearer their home;
 - Subject to the findings of an updated need analysis, the development of more small, specialist units of the type that has been successfully developed in the Keppel Unit at HMP YOI Wetherby for the past decade;
 - Staffing levels that much more closely resemble those to be found in Secure Children’s Homes, together with a separation out of the roles of resettlement worker, carer and teacher from those of guard, which we have observed at first hand to be working well in other states – this needs to be combined with a rethink of the selection, skills, and training needed for these very different roles;
 - An emphasis on the rights and responsibilities of children as citizens, with a way of life in custody that involves them fully in how that closed community works and prepares them to exercise those responsibilities after release; and
 - No children with a learning disability or mental illness should be held in a custodial establishment.

What is the physical condition of the secure estate and is it an appropriate environment to hold children and young people?

15. Few existing custodial establishments comply with our description of ‘a good place’.
16. The Government has explicitly adopted Charlie Taylor’s vision of replacing in time the existing Young Offender Institutions (YOIs) and Secure Training Centres (STCs) with new Secure Schools. This type of establishment is untested as yet but given the obvious evidence of failure of YOIs and STCs it is clearly right for the government to be seeking to replace them. On that basis we support the initiative in principle while remaining cautious about it until the model to be introduced is much more clear.
17. Little is known as yet about the first Secure School in Rochester, other than the name of the Academy Group, Oasis, that will run it. We believe the location is wrong, the school being planned appears to be too large, and we are uncertain whether the funding earmarked for the school will prove to be sufficient. However the alternative, to continue with YOIs and STCs in which the great majority of children remain

placed, is unacceptable. Furthermore some important elements of the government's current vision, for example that Secure Schools should be considered under the arrangements that govern Children's Homes, are clearly right.. So, for pragmatic reasons, we support the new development.

Do staff receive appropriate training and support and what more can be done to improve this?

18. We applaud initiatives taken by the Government over the past two and a half years to improve the training of staff working in the custodial estate. If the clarity that we propose over different roles were also to be introduced we believe this process could be accelerated.
19. Support is a slightly different matter. The *Secure Stairs* initiative will improve the level of support for staff working in these very challenging roles. But there is more work needed to increase the level of supervision provided to custodial staff. In our children's prisons the ratio of front line custodial staff to supervisors remains high and is out of step with similar ratios in any other occupation working with children. The fact that this is one of the most challenging roles carried out by people working with children makes its outlier status the more concerning. There has been little attention paid to this issue and we believe it is in urgent need of review.

What other barriers are there to providing safe and decent accommodation in the secure estate and what more can be done to improve this?

20. Reducing the size of institutions is an obvious first step and within that reducing the size of typical units. We are not surprised that the institutions most consistently praised by HMI Prisons, the self-contained Keppel Unit at HMP YOI Wetherby and the Young People's Unit at HMP Parc, are also the smallest YOIs. At the same time the progress made since 2016 in improving all aspects of the regime at Medway STC was secured against a background of significant reductions in the size of the establishment.
21. At the same time many of our prison establishments remain buildings that were originally commissioned in a different era and for a different purpose. This needs attention.

Is the use of force in the secure estate proportionate and properly monitored?

22. The use of force on children in custody, particularly deliberately painful techniques, is a matter of profound public concern which should be subject to continuous, rigorous, independent and transparent scrutiny. The restraint related deaths in custody of Adam Rickwood and Gareth Myatt should serve as a constant reminder of this fundamental requirement. We are therefore concerned at the apparent over-use of restraint, apparent deficiencies in monitoring and a continuing lack of transparency in the scrutiny of policy and practice in this area.
23. We acknowledge that there will be occasions when extreme action is needed to prevent a child seriously harming another child, or himself or herself, or a member of staff. However we are opposed in principle to the deliberate infliction of pain as part of a restraint system for children.

24. We urged Charlie Taylor to publish the evidence gathered during his review of the use of pain before reaching his conclusions and recommendations, so that those conclusions could be informed by a full, public debate. He declined to do this and publication of his conclusions, expected this Summer, is overdue.
25. In the meantime, HM Inspectorate of Prisons reports weaknesses in the monitoring of the use of force, particularly in respect of pain-distraction, which they believe is under reported. Even the reported levels of pain infliction suggest that its use is more widespread than would be consistent with a 'last resort' justification . There has been an increase in the use of the '*mandibular angle technique*', the most intrusive and (probably) most painful technique sanctioned by the Managing and Minimising Physical Restraint (MMPR) system, which is suggestive of a creep towards greater use and is deeply concerning.
26. We hope the committee will be more successful in extracting the evidence that Charlie Taylor has spent many months compiling and look forward to hearing his conclusions and recommendations.

How does the experience of children and young adults differ across the different types of secure custody and what lessons can be learnt ahead of the opening of the new secure school?

27. We will only comment here on the experiences of children, that is those under 18 rather than young adults (those aged between 18 and 20).
28. The views of children are very well represented by the two Inspectorates, both in the individual inspections of custodial establishments, and then aggregated form in their annual reports. These show that children consistently describe receiving a more positive experience across every dimension in STCs than in YOIs, and in smaller YOIs than in larger ones. There is no easy comparison with the experiences of children living in SCHs but we anticipate a similar survey would show more positive experiences there than those in STCs. While there will be many reasons for this, size of establishment and staff: child ratios undoubtedly contribute to the more favoured response.
29. We would also like draw the Committee's attention to the position of girls here.⁶ One of the successes of the last decade has been the radical reduction in the numbers of girls in custody, down from a high point of 245 in July 2004 to 25 in July 2019. But girls report markedly less favourable experiences in custody than do boys (girls in STCs are, for example nearly three times as likely to report feeling unsafe than are boys), while a number of characteristics of the girls in custody show how different a group they are to boys (for example, girls in custody are five times more likely to have a history of self-harming than are boys). Since there are only 25 girls in total in custody, and there have been for many months substantially more vacancies than this number in the beds in Secure Children's Homes (SCHs) for which the Youth Custody Service has already paid, we believe there is a compelling case for placing all girls in custody in SCHs. This would also reflect the greater welfare needs of girls in custody than those of boys, without having any impact on the ability to continue to place boys with higher needs in SCHs.

⁶ Goodfellow, P. (2019) Outnumbered, locked up and overlooked? The use of penal custody for girls in England and Wales, London: The Griffins Society

Are children and young people able to access purposeful activity, education, healthcare and other support as needed whilst in custody?

30. Our own experience supports the findings of the HMIP thematic inspection of this subject published in August 2019, which concluded that children are being let down by the current arrangements. This area was also reported on comprehensively by NACRO during its six-year programme *Beyond Youth Custody*.⁷
31. All activities within a custodial institution should be geared to the primary purpose of custody which we believe should be to enhance resettlement and rehabilitation with the long-term consequence of reducing offending, the statutory aim of the youth justice system. Set against this test it is undoubtedly the case that more could and should be done in this area.

Is there good collaboration between the secure estate, Youth Offending teams, Local Authorities, Social Services and other relevant organisations?

32. It is clear that while pockets of very strong practice exist this position is not consistent. We would propose two new initiatives.
33. First, the government should reintroduce the previously successful Resettlement Consortia, sub regional combinations of local authorities and their local partners, whose sole purpose was to improve resettlement. These have worked well in the past but have suffered from neglect from the Youth Justice Board and have therefore, with one notable exception covering Yorkshire, been allowed to cease to exist.
34. Secondly the government should review the option of linking strong performance on resettlement to the payment of the Youth Justice Board's youth justice grant. We have proposed this to Ministers in the past and feel the case to link this still significant amount of central funding to improved outcomes in resettlement is compelling. At the moment payment of the grant is not linked to any particular performance. We believe this is a missed opportunity.

Is there effective release planning to ensure children and young people have access to accommodation, training and education upon release and what more could be done to ensure that they do not reoffend?

Performance is inconsistent, see our previous answers.

⁷ See Nacro's Beyond Custody legacy website: <http://www.beyondyouthcustody.net>