

Prison Reform Trust response to the Joint Committee on Human Rights inquiry into solitary confinement and restraint in the youth estate – May 2018

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.

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We welcome the Joint Committee on Human Rights' inquiry on solitary confinement and the restraint of children in detention. Our response concentrates on three key issues: the grounds for use of force; the use of pain compliance techniques; and policy and practice on segregation.

The grounds for the use of force

1. The UN Committee on the Rights of the Child (UNCRC) provides the fundamental principle for maintaining the welfare of children in detention:

"In all decisions taken within the context of the administration of juvenile justice, the best interests of the child should be a primary consideration."

International standards (see more below) also clearly state that the use of force against children in detention is not justified for the purpose of gaining compliance.

2. For both restraint and segregation, international standards draw a distinction based on age (17 years and under) but not on the type of detention. The circumstances in which force can be used legitimately to restrain children in detention were defined by the UNCRC:

*"Restraint or force can only be used when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted."*¹

¹ UN Committee on the Rights of the Child (2007) Children's Rights in Juvenile Justice, CRC/C/GC/10, Geneva: United Nations, available at <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>

This guidance is sufficiently clear.

3. In 2008, the Court of Appeal quashed rules for secure training centres which allowed restraint on the additional grounds of good order and discipline as being in contravention of Articles 3 and 8 of the European Convention on Human Rights. Staff in STCs may not use force on these grounds. However, in England and Wales, the instructions for young offender institutions continue to authorise the use of force in response to ‘passive non-compliance’:

“Governors have a duty to maintain order and control, and in exceptional circumstances, the use of restraint on passive, non-compliant young people may be the only reasonable option available...”²

4. The Criminal Justice and Courts Act (2015) which defined secure colleges, included the maintenance of good order and discipline as a possible justification for the use of force.³ Under paragraph 10, the use of force by custody officers is regulated in these terms:

“If authorised to do so by secure college rules, a secure college custody officer may use reasonable force where necessary.”

5. Both the YOI rules and the legislation ignore the expert advice of the Joint Committee on Human Rights, whose 2008 report on the Secure Training Centre Amendment Rules found, as the Court of appeal did, that they were in breach of the ECHR:

“...the Amendment Rules introduce a new concept, that of “good order and discipline,” into the circumstances in which STC staff can use restraint. ... The use of force in such widened circumstances is unacceptable and unlawful, and in breach of both ECHR standards given domestic effect by the HRA and international human rights standards contained in the UNCRC.”⁴

6. The JCHR’s objection to the criterion of ‘good order or discipline’ was that it was vague and would therefore:

“pose the very real danger of entrenching in legislation ambiguity for staff and detained young people...The phrase ‘good order and discipline’ is imprecise, overbroad and inherently subjective.”⁵

7. In England and Wales, the prisons inspectorate has expressed concern about both the frequency at which young people are restrained, and the stated justification for applying force. In two Young Offender Institutions, it found that ‘passive non-compliance’ was given as the reason force was applied in 34% of incidents in Wetherby and 22% in Hindley. This would equate to about 20 incidents per month at Wetherby and 15 at Hindley.⁶

² National Offender Management Service (2014) Prison Service Instruction 06/2014, Use of Force – Implementation of Minimising and Managing Physical Restraint, paragraph 4.3.7, London: NOMS available at <https://www.justice.gov.uk/downloads/offenders/psipso/psi-2014/psi-06-2014-use-of-force-in-yp-estate.pdf>

³ Criminal Justice and Courts Act 2015, Part 1, Schedule 4, paragraph 8(d)

⁴ Joint Committee on Human Rights (2008) The Use of Restraint in Secure Training Centres, London: The Stationery Office

⁵ Ibid.

⁶ Simonds, J. (2016) Children in Custody 2015–2016, London: HM Inspectorate of Prison

8. We conclude that guidance on the restraint of children in YOIs, and the provision made for secure colleges in the future, breaches international standards. This breach is at least partly to blame for actual practice on the ground, which also contravenes those standards. We recommend that the Government adopt the criteria provided by the UNCRC:

“Restraint or force can be used only when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted.”⁷

Pain compliance techniques

9. When force is required, international standards make clear that restraint techniques that deliberately cause pain are not suitable for children. In 2011, the Equality and Human Rights Commission expressed concern:

“We consider that the deliberate infliction of pain might be contrary to Article 3 of the ECHR particularly as it is applied to children, many of which are highly vulnerable with mental health impairments or at risk of racial stereotyping as aggressive and confrontational.”⁸

10. The exceptional use of pain compliance forms part of the current policy on restraint. When this policy was introduced, the government undertook to review it. We are not aware that such a review has been undertaken and consider that it is now urgent that it should. In theory, there might be circumstances in which the exceptional use of pain compliance represented the least worst option for preventing more serious harm to the child. But we know of no evidence as to whether this theoretical problem has actually emerged in reality. Our concern is that allowing pain compliance in exceptional circumstances may in fact have legitimised its use more widely and in circumstance falling short of an “exceptional” threshold.

Segregation

11. International standards are unequivocal in condemning the imposition of solitary confinement on children. The United Nations Rules regarding the detention of juveniles state:

“All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned.”⁹

⁷ UN Committee on the Rights of the Child (2007) Children’s Rights in Juvenile Justice, CRC/C/GC/10, Geneva: United Nations

⁸ Submission by Equality and Human Rights Commission to Lord Carlile of Berriew QC’s Public Hearing on 11 May 2011; see also Prison Reform Trust Punishing Disadvantage, available at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/PunishingDisadvantage.pdf>

⁹ United Nations (1990) United Nations Rules for the Protection of Juveniles Deprived of their Liberty, available at <http://www.un.org/documents/ga/res/45/a45r113.htm>

12. The UN defined solitary confinement in the Nelson Mandela Rules, Rule 44:

“For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact.”¹⁰

13. Taken together, these make clear that international standards prohibit the confinement of a juvenile for 22 hours or more a day without meaningful human contact. The British Medical Association joined with others in calling for a ban on the solitary confinement of children.¹¹

14. In a recent report, the Howard League for Penal Reform produced evidence of a practice of imposing cellular confinement on the person’s wing.¹² While main locations may constitute the ‘non-segregation environment’ which the BMA recommended, managers should, in practice, be alert to the likelihood that such segregation carries significant risk of harm, particularly when there are few activities open to the young person.

15. The UK Government denies that it uses solitary confinement, as stated in Parliament by Dr Phillip Lee:

“I would like to be clear from the outset that I have been assured that young people are never subject to solitary confinement in this country. When a child in custody is putting themselves or others at risk, segregation can be used as a last resort for limited periods of time and under regular review, when no other form of intervention is suitable to protect both the child and others.”¹³

16. However, understanding the prohibition against solitary confinement requires both the definition (based on duration of separation) and the empirical description of the experience.

17. The Prison Reform Trust report, *Deep Custody*, by Sharon Shalev and Kimmett Edgar, described three characteristics of segregation:

- Social isolation
- Reduced sensory input
- Increased control of the person.¹⁴

The segregation of children, as currently practised, features all three characteristics and so presents a grave risk of harm.

18. Inevitably, situations requiring temporary separation occur in managing young people in detention. But these can be managed without imposing solitary confinement. While it is conceivable that, in very exceptional circumstances, a ‘time out’ may extend to

¹⁰ United Nations (2015) Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Vienna: UN Office on Drugs and Crime

¹¹ BMA website, accessed on 21 May 2018, ‘Joint position statement on solitary confinement of children and young people’, available at

<https://www.bma.org.uk/collective-voice/policy-and-research/equality/the-medical-role-in-solitary-confinement/our-joint-position-statement-on-the-medical-role-in-solitary-confinement>

¹² The Howard League for Penal Reform (2016) *The Carlile Inquiry 10 years on*, London: The Howard League for Penal Reform

¹³ Hansard HC, 1 May 2018, c99WH, available at <https://goo.gl/Lv9vEL>

¹⁴ Shalev, S. and Edgar, K. (2016) *Deep Custody: Segregation units and Close Supervision Centres in England and Wales*, London: Prison Reform Trust

22 hours, there is no operational reason that the 'time out' must impose complete social isolation, a total lack of meaningful activity, and no options offered to the young person. Such a reaction would conflict with the international standard, risk imposing deliberate harm to the young person's mental wellbeing, and undermine the positive aims of the separation.

19. Guidance on 'time-out' should specify that all detention centres (including YOIs) ensure that:

- The involuntary isolation of a child for 22 hours or more, without human contact, is likely to cause harm and is prohibited
- Time out should be used minimally, and only when all alternatives have been exhausted
- When time out is necessary, managers have a responsibility to ensure that the child has regular social contact, that meaningful activities are provided, and that the child is given choices.

20. The Prison Reform Trust believes that the rights of children in detention and their protection from cruel, inhuman or degrading punishment depend on the minimal use of social isolation; a strict definition of the circumstances in which force is legitimate; explicit limitations on the way force is imposed; robust methods of implementing the policy; and effective monitoring processes, including data collection and inspection visits.