



**Office of the Children's Commissioner's submission
to the UN Committee Against Torture's Periodic Review of
the United Kingdom of Great Britain and Northern Ireland**

August 2012

Office of the Children's Commissioner

The Office of the Children's Commissioner is a national organisation led by the Children's Commissioner for England, Dr Maggie Atkinson. The post of Children's Commissioner for England was established by the Children Act 2004. The United Nations Convention on the Rights of the Child (UNCRC) underpins and frames all of our work.

The Children's Commissioner has a duty to promote the views and interests of all children in England, in particular those whose voices are least likely to be heard, to the people who make decisions about their lives. She also has a duty to speak on behalf of all children in the UK on non-devolved issues which include immigration, for the whole of the UK, and youth justice, for England and Wales. One of the Children's Commissioner's key functions is encouraging organisations that provide services for children always to operate from the child's perspective.

Under the Children Act 2004 the Children's Commissioner is required both to publish what she finds from talking and listening to children and young people, and to draw national policymakers' and agencies' attention to the particular circumstances of a child or small group of children which should inform both policy and practice.

The Office of the Children's Commissioner has a statutory duty to highlight where we believe vulnerable children are not being treated appropriately in accordance with duties established under international and domestic legislation.

The United Nations Convention on the Rights of the Child

The UK Government ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1991.¹ This is the most widely ratified international human rights treaty, setting out what all children and young people need to be happy and healthy. While the Convention is not incorporated into national law, it still has the status of a binding international treaty. By agreeing to the UNCRC the Government has committed itself to promoting and protecting children's rights by all means available to it.

The legislation governing the operation of the Office of the Children's Commissioner requires us to have regard to the Convention in all our activities. Following an independent review of our office in 2010 we are working to promote and protect children's rights in the spirit of the recommendations made in the Dunford report and accepted by the Secretary of State.

In relation to the current consultation, the articles of the Convention which are most relevant to this area of policy are:

- Article 3:** In all actions concerning children, the best interests of the child shall be a primary consideration; institutions and services responsible for the care of children shall conform with the standards expected by competent authorities.
- Article 6:** Every child has the right to life and to optimal development.
- Article 19:** States shall take all appropriate measures to protect children from violence, abuse or neglect.
- Article 22:** Refugee and asylum-seeking children shall be provided with appropriate protection and humanitarian assistance.
- Article 34:** Children shall be protected from all forms of sexual exploitation and sexual abuse.
- Article 37:** No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment; the rights of children in detention shall be respected.
- Article 39:** States shall take all appropriate measures to promote the recovery and reintegration of child victims of maltreatment or abuse.
- Article 40:** Children accused of breaking the criminal law have the right to a fair, age-appropriate process, and where appropriate and desirable shall be dealt with without resorting to court proceedings.

The response below has therefore been drafted with these articles in mind.

¹ You can view the full text of the United Nations Convention on the Rights of the Child on the Office of the United Nations High Commissioner for Human Rights website at: <http://www2.ohchr.org/english/law/crc.htm>. A summary version, produced by UNICEF, is available at: http://www.unicef.org/crc/files/Rights_overview.pdf

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Introduction

The Office of the Children's Commissioner (OCC) has the power, under s2(8) Children Act 2004, to enter any place where a child is accommodated or cared for, other than a private dwelling, and interview a child in private there with that child's consent.

This power allows OCC to undertake both announced and unannounced visits to institutions and facilities where children are detained; thus far we have used it in order to visit children in the youth justice secure estate, in immigration detention and in secure mental health detention. This submission is informed by these visits.

Because of OCC's power under s2(8) of the 2004 Act we have been designated by the UK Government as a member of the National Preventive Mechanism for the purposes of the Optional Protocol to the UN Convention Against Torture (OPCAT).

OCC also has extensive powers to gather data under the Children Act 2004. These have been used to obtain and view records from places where children are detained. They are also being used in the context of OCC's major inquiry into Child Sexual Exploitation in Gangs and Groups (CSEGG), which has involved both interviews with children and professionals, and extensive gathering and analysis of data from police, local authorities and health and educational services. The inquiry is ongoing but an accelerated report on emerging findings, with a special focus on children in care was published in July 2012 and is available at www.childrenscommissioner.gov.uk.

We recognise that children are at potential risk of mistreatment in a variety of settings; however, this submission focuses on the following areas of OCC's current engagement and concern:

1. children in the youth justice secure estate;
2. immigration and asylum;
3. child sexual exploitation; and
4. corporal punishment.

For reasons of brevity throughout, we have highlighted particular concerns rather than the many examples of good practice that we have found through the exercise of our powers although notable improvements and progress are identified.

Areas of welcome progress

We acknowledge that there are many examples of good practice across all sectors where children and young people may be detained, and that both authorities and staff frequently have a difficult task of balancing the protection of children's rights with the State Party's legitimate role to punish wrongdoing and those who break the law, as well as upholding domestic legislation and protecting others in the community. While the majority of this report notes the areas where we believe further work needs to take place to achieve the correct balance between these different demands there are a number of positive developments that should be noted. These include:

1. Substantial decrease in the number of children detained in the Youth Justice system. While OCC remains concerned about aspects of detention of young people (see the following section) the reduction in numbers detained from around 2900 in 2007/08 to 1690 in 2012 is applauded.
2. Significant changes in the secure estate have arisen from our 2011 report 'I think I must have been born bad – Mental health and emotional well-being of young people in the youth justice system'. These covered management, leadership, and the living environment across the children's secure estate. OCC has intervened to change practices in several individual institutions. These have included the complete redecoration of one whole YOI; recruitment of child and adolescent trained mental health professionals employed; ending of "no hugging" rules during visits; the cessation of routine strip searches; and a review of both the timing of meals and the quality and quantity of food. OCC is continuing to work with Government Departments on improving general policy and practice in these areas.
3. Welcome progress on reforming the use of restraint in the youth justice secure estate, with a new Minimising and Managing Physical Restraint (MMPR) system being rolled out from the summer of 2012. This new system includes a code of practice on managing behavior, a policy framework and a comprehensive training manual. Drawing on the extensive work and recommendations of leading experts OCC broadly welcomes the new system and hopes that its implementation will be rolled out across the whole estate as quickly as possible. Our objective is the complete cessation of the use of pain compliance.
4. A new family removal process introduced in 2011, meaning that children and families now spend a minimum amount of time in family accommodation prior to deportation. Their rights are overseen by an independent panel whose judgements about their removals are binding on the UKBA.
5. A number of encouraging developments regarding the treatment of unaccompanied children and young people arriving in the UK. Following the publication of OCC's report *Landing in Dover* recoding the experience of unaccompanied children and young people into the UK, the UK Borders Agency announced that it would end the use of a "Gentleman's Agreement" between England and France which, since 1995, had entailed unaccompanied children arriving in the UK and not immediately claiming asylum being

returned, unrecorded and unassessed by social services or health professionals, to an uncertain reception in France.

6. Government have accepted all the recommendations contained in OCC's *Briefing for the Rt Hon Michael Gove MP, Secretary of State for Education, on the emerging findings of the Office of the Children's Commissioner's Inquiry into Child Sexual Exploitation in Gangs and Groups, with a special focus on children in care* (July 2012). This report considered how looked after children can be better protected from child sexual exploitation and abuse.

1. Children in the youth justice secure estate

An overview of the system

As at June 2012 there were 1690 children in custody (on remand or sentenced) in England and Wales.² This represents a substantial and very welcome reduction from a high of around 3000 in 2002/03 and 2007/08 levels of around 2900. However OCC shares the concern of the House of Commons Public Accounts Committee which in 2011 noted its concern that while “Prevention work has had an impact on reducing the number of first time entrants to the youth justice system... funding is being reduced. Cutting prevention funding now increases the risk of the unintended consequence”, that include rising offending and detention numbers in the medium term.³

The age of criminal responsibility in the jurisdiction remains at 10, although the imprisonment of 10 and 11 year olds is rare. This is an aspect of the system that has been challenged by the United Nations Committee on the Rights of the Child.⁴ Indeterminate (effectively life) sentences remain available for children for a range of serious offences.⁵

Children in custody are detained in one of three types of institution: young offenders institutions, which accommodate 15-17 year old boys or 17 year old girls; secure training centres, which can accommodate boys and girls aged 12-17 (although most older boys will go to YOIs), and secure children’s homes, which can accommodate children from 10-17 and can also accommodate children in the local authority care system who require secure care but have not been accused or convicted of any criminal offence. All children in the youth justice secure estate are detained separately from adults, although there are some 18 year olds in the system who have not yet been transferred/released.

The vast majority (1294 as at June 2012)⁶ of children in custody are in young offenders’ institutions. This is of concern as these are the institutions that most resemble adult prison accommodation, both in their appearance and built environment and in their regime and customs, and are least suited to the particular needs of children. The majority of YOIs, run by the public sector, draw their workforce from the general prisons workforce and therefore general staff are not routinely specifically recruited for their skills in relation to the care and supervision of children although this is being addressed incrementally. We are particularly concerned that the Government’s latest plans for the secure estate for children, published in 2012, include likely proportionately higher decommissioning of beds in the secure training centre and secure children’s home sectors.⁷ Secure children’s homes offer the highest staff-

² Youth Justice Board. (August 2012). *Monthly data and analysis custody report – June 2012*. London: Youth Justice Board.

³ House of Commons Committee of Public Accounts (February 2011). *The youth justice system in England and Wales: reducing offending by young people. Twenty first report of the 2010/11 session*. London; The Stationery Office

⁴ Recommendation 77(a) of the *Committee on the Rights of the Child, Concluding observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4, 20 October 2008)*. Accessed at <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf> (August, 2012)

⁵ Section 226, Criminal Justice Act 2003.

⁶ Youth Justice Board, n2 above.

⁷ Youth Justice Board. (2012). *Developing the Secure Estate for Children and Young People in England and Wales – Plans until 2015*. London: Youth Justice Board, para 26.

child ratio and the most child-centred approach of all three types of institution.

Extreme vulnerability of children in custody

All of the above should be considered in the context of the particular vulnerability of the child custodial population. Children in custody are characterised by disproportionate levels of:

- Having been in local authority care: a study in 2009 found that 24% of boys aged 15-18 and 49% of girls aged 15-18 in custody had been in care.⁸
- Traumatic loss (including bereavement) and separation.⁹
- Abuse and neglect.¹⁰
- Poor and disrupted educational experiences: in 2008-09, 88% of boys and 89% of girls in young offenders institutions had been excluded from school at some point and more than a third were younger than 14 when they last attended mainstream school.¹¹
- Consistently high levels of complex developmental issues and unmet emotional and other mental health needs: approximately 60% of children in the youth justice system have significant speech, language and communication needs.¹² It is estimated that around 50% of children in custody have a learning difficulty.¹³ One in 10 boys and one in five girls in YOIs have attention deficit hyperactivity disorder.¹⁴ Research commissioned by the Youth Justice Board has found that 19% of 13-18 year olds in custody have depression, 11% anxiety and 11% post-traumatic stress disorder.¹⁵ A further study found that 85% of 16-20 year olds in custody showed signs of personality disorder¹⁶ compared with 10-13% in the general population.¹⁷
- Self-harm: 33 children have died in custody since 1990; all but 2 committed suicide.¹⁸ Young people in prison are 18 times more likely to kill themselves than others of the same age.¹⁹ In 2007, 89% of girls in custody had self harmed.²⁰

⁸ Tye, D (2009). *Children and young people in custody 2008-2009: an analysis of the experiences of 15 to 18 year olds in prison*. London: HM inspectorate of Prisons.

⁹ Bhardwa, B et al (2010) *Punishing Disadvantage: a profile of children in custody*. London: Prison Reform Trust.

¹⁰ Eg a 2008 Youth Justice Board report stated that two out of five boys and one in five girls in custody had experienced violence in the home; one in twenty boys and one in three girls reported sexual abuse: (2007). *Accommodation needs and experiences*. London: Youth Justice Board.

¹¹ HM Inspectorate of Prisons/Youth Justice Board. (2009). *Children and young people in custody 2008-2009*. London: HMIP.

¹² Bryan, K et al. (2007). 'Language and communication difficulties in juvenile offenders', *International Journal of Language and Communication Disorders*, 42, 505-520.

¹³ Department of Health. (2009). *Healthy children, safer communities*. London: Department of Health.

¹⁴ Fazell, D (2008). 'Mental disorders among adolescents in juvenile detention and correctional facilities: a systematic review and metaregression analysis of 25 surveys', *Journal of American Academy of Child and Adolescent Psychiatry*, 47(9), September 2008, 1018-1019.

¹⁵ Chitsebesan et al. (2006). 'Mental health needs of young offenders in custody and in the community', *British Journal of Psychiatry*, vol 188, 534-540.

¹⁶ Lader, D. (2000). *Psychiatric morbidity among young offenders in England and Wales*. London: ONS

¹⁷ National Institute for Mental Health. (2003). *Personality Disorder: no longer a diagnosis for exclusion. Policy implementation guidance for the development of services for people with personality disorder*. London: NIMHE.

¹⁸ Statistics at www.inquest.org.uk [accessed 14 August 2012].

¹⁹ Fruhwald S et al, 'Suicide in prison', *The Lancet*, vol 366, issue 9493, 8 October 2005.

Issues of concern

In the context of improvements and progress noted above we do wish to highlight there remain areas of concern in relation to children in custody. Those that we have noted on our visits and through other research, include:

a. Time out of cell/room

This is a particular problem in some young offenders' institutions (YOIs). Children in these units have often missed the HM Inspectorate of Prisons target of 10 hours per day out of cell: we believe that this is likely to be due to a combination of factors including staffing and occupation levels, regime and the built environment. Data from September 2009 revealed that 12 out of 16 YOIs were missing this target; in two, children were spending an average of at least 16 hours per day in their cells.²¹ By contrast, in all secure children's homes and secure training centres (STCs) the figures were between 9.5 and 11.5 hours out of room per day. Our own visits to YOIs suggest that the worst days for time in cell are at the weekends. Already limited time out of cell in YOIs can be further reduced for those children on the lowest level of the sanctions and rewards scheme, or by specific sanctions for behavioural infractions. In some institutions this is linked to insufficient outdoor exercise – extremely important for physical and mental health. Children have spoken eloquently to us of the psychological effects of excessive time in cell, including regarding propensity to self-harm as they have told us that it is during these lonely hours that they dwell on their problems.

b. Use of segregation/separation

Young offenders' institutions feature or have access to segregation units of the type present in the adult prison estate (although not all are currently used). We have also observed the unofficial use of healthcare facilities for segregation in a secure training centre. In YOIs children can spend long periods in segregation – months in some cases. The regime in these units is characterised by very little time out of cell/room, limited opportunity for education and little or no other purposeful activity for children. We have seen cases where in the initial period after removal to the segregation unit children may spend no time out of cell whatsoever (not even for a shower) – in one case for 4 days. Long periods can arise where police charges are being brought or where a child is placed there 'in his or her own interest'. Particularly vulnerable children may therefore find themselves in this environment simply because they cannot cope on the main units and/or are being targeted for bullying. We have also come across the use of segregation following attempted suicide/self-harm. In the light of the UN Special Rapporteur on Torture's remarks regarding the use of solitary confinement for children,²² this situation is of considerable concern.

²⁰ HM Chief Inspector of Prisons for England and Wales. (2008). *Annual Report 2006-2007*. London: HMIP.

²¹ *Hansard*, Commons Written Answers, 11 Jan 2010, Col 800W, data from Youth Justice Board in response to question from David Burrowes MP.

²² UN Human Rights Council Special Rapporteur on Torture. *Interim Report of UN HRC Special Rapporteur on Torture*, UNGA, A/66/268:

Thus the Special Rapporteur holds the view that the imposition of solitary confinement [the physical and social isolation of individuals who are confined to their cells for 22 to 24 hours a day], of any

c. Restraint

The use of force/restraint techniques on children in the secure estate has been controversial for a number of years, particularly after the deaths of two boys following restraint in 2004.²³

Our issues of concern are:

- i. Level of use of force/restraint: this varies by individual institution; some institutions have been characterised by high numbers of incidents of use of force/restraint. The Government has recently announced a new policy/set of techniques to be rolled out across YOIs and STCs, aiming to minimise the use of restraint.²⁴
- ii. Deliberate use of pain: while pain 'distraction' techniques remain in use in secure training centres and young offenders' institutions the new system emphasises that this must be used as a last resort to protect a child or others from immediate risk of serious physical harm and only a small part of a comprehensive behaviour management system and culture.²⁵ It is our intention to monitor the use of restraint as part of our visits to the secure estate and hope that the new *Minimising and Managing Physical Restraint* system will address many of our concerns.

d. Strip searching/ 'full searching'

Full searching remains routine on first reception for boys entering YOIs; in other institutions, where it occurs, it is now intelligence-led only.²⁶

e. Aspects of the physical environment and food

During our visits to the secure estate in 2010 we had reason to be concerned on several occasions about the condition of the physical environment and quality and quantity of food being provided to young people. We raised these concerns directly with the institutions and the Youth Justice Board, publishing some of our findings in a public report.²⁷ We are pleased to note that many of the issues we raised have been addressed and we continue to discuss the quality, quantity and serving of food to young people as part of the Youth Justice Board's review of the secure estate 'core day'.

duration, on juveniles is cruel, inhuman or degrading treatment and violates article 7 of the International Covenant on Civil and Political Rights and article 16 of the Convention against Torture.

²³ 14 year old Adam Rickwood took his own life following restraint involving the deliberate infliction of pain in a Secure Training Centre; 15 year old Gareth Myatt died in a secure training centre in 2004 as a result of a restraint technique subsequently withdrawn from use. For more information see www.inquest.org.uk

²⁴ Ministry of Justice et al. (2012). *Minimising and Managing Physical Restraint*. London: Ministry of Justice.

²⁵ Ministry of Justice. (2012). *Use of restraint policy framework for the under-18 secure estate*. London: Ministry of Justice.

²⁶ Prison Service Instruction 2012-08 – *Care and management of young people*. London: National Offender Management Service.

²⁷ For further information on this and other aspects of the youth justice secure estate see Office of the Children's Commissioner. (2011). *I think I must have been born bad*. London: Office of the Children's Commissioner.

2. Immigration and asylum

OCC's research into the processes followed for children arriving at the Port of Dover in 2011²⁸ disclosed that, immediately upon arrival, some children were being detained while significant interviews that would inevitably bear on their prospects of being granted permission to stay were conducted. The local authority was only informed well into the interviewing process. Children who were not children but adults in the view of the Chief Immigration Officer, following a preliminary age assessment, would not benefit from the procedural safeguards provided to children during this process. There was considerable discretion to carry out interviews even where children were claiming to be tired or ill or said that they needed to see a doctor immediately.

Our research also uncovered that where children did not claim asylum during these initial interviews there was provision – in a 1995 document named the 'Gentleman's Agreement' – to return them immediately to France, without recourse to social care services. The UK Border Agency has agreed to cease forthwith using this provision in respect of children, although it remains in place for adults.

Other issues during these interviews included the use of inadequate telephone interpretation and the fact that children were in practice unable to instruct a legal representative or in most cases have an independent Responsible Adult present during interviews, yet the interviews can be relied upon by UKBA in the asylum decision.

3. Child sexual exploitation

The emerging findings of OCC's Inquiry into Child Sexual Exploitation in Gangs and Groups (CSEGG) have revealed that children are being victimised through gang and group associated sexual exploitation from the age of 10 upwards, and are both male and female (though predominantly female). They come from a full range of ethnic backgrounds represented in England, and some are disabled. The abuse is taking place across England in urban, rural and metropolitan areas. While the majority of children being sexually exploited are not being 'looked after' by the local authority, a disproportionate number of them are. The sexual abuse concerned has come to the attention of a large and diverse group of agencies. Some groups of abusers are linked to extended or immediate family of some of the victims, with some overlap with intra-familial abuse. There are some links to adult based prostitution and brothels.

In relation to children looked after by the local authority, they are inherently vulnerable and therefore require greater vigilance in terms of their protection. OCC, at the request of Government, has made a number of recommendations in its report, *Briefing for the Rt Hon Michael Gove MP, Secretary of State for Education, on the emerging findings of the Office of the Children's Commissioner's Inquiry into Child Sexual Exploitation in Gangs and Groups, with a special focus on children in care* (July 2012), as to how looked after children can be better protected from child sexual exploitation and abuse. These recommendations have been accepted by the Government.

²⁸ For further information please see Office of the Children's Commissioner. (2012). *Landing in Dover: the immigration process undergone by unaccompanied children arriving in Kent*. London: Office of the Children's Commissioner.

4. Corporal punishment

OCC remains concerned that the defence of 'reasonable punishment' allows parents and other adults acting in loco parentis – babysitters, nannies, private tutors, sports coaches, Sunday schools and madrassas – to use corporal punishment against children provided that the act does not amount to the offence of actual bodily harm (for example causing bruising, reddening or another mark to the skin). See also the section on restraint in the youth justice secure estate above.

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August 2012**