

Standing Committee
for Youth Justice



Children's
Rights Alliance
for England

the Howard League for Penal Reform

Dr Hywel Francis MP
House of Commons
London
SW1A 0AA

16 April 2014

Dear Dr Francis

Re: Secure colleges, restraint and the Joint Committee on Human Rights 2008 report

As Chair of the Joint Committee on Human Rights (JCHR) which has previously inquired into children's human rights and the use of force on children in custody we are writing to alert you to worrying legislative proposals from the Ministry of Justice.

The Children's Right Alliance for England (CRAE), the Howard League for Penal Reform and Standing Committee for Youth Justice (SCYJ) are seriously concerned by plans for secure colleges. This new custodial institution would house up to 320 children (potentially both girls and boys) aged 12-17 years old. The plans were originally set out in the *Transforming Youth Custody* consultation and are now contained in the Criminal Justice and Courts Bill (the Bill), currently making its way through Parliament. As organisations concerned with the treatment and safety of children in custody, we are working together to raise awareness of the dangers presented by the Bill (our briefings can be accessed on the SCYJ website: www.scyj.org.uk).

We are particularly concerned by the Bill's proposal to permit secure college custody officers to use "reasonable force... to ensure good order and discipline" (GOAD) "if authorised to do so by secure college rules" (Schedule 4, (8(c)) and (10)).

We believe these proposals directly contradict the expert evidence gathered by the JCHR's previous inquiries and, in particular, the findings and recommendations in the Committee's 2008 reports on *The Use of Restraint in Secure Training Centres* and *Children's Rights*. In the latter, the JCHR expressed "strong concerns" about the use of painful restraint techniques on children in custody and found that evidence showed it was used "disproportionately against vulnerable girls."

In its 2008 report scrutinising Rules allowing force to be used to maintain GOAD in Secure Training Centres (STCs) the Committee found:

"the phrase "good order and discipline" is imprecise, over-broad and inherently subjective. Far from achieving clarity about the circumstances in which physical restraint can be used on a child...instead it brings confusion. Recent events show that the use of force can lead to tragic results. It is therefore of paramount importance that the Rules governing its application leave no room for doubt. The Rules... do not achieve this."

The JCHR recommended that the Rules permitting the use of restraint for GOAD in STCs be repealed. The courts agreed and, following a judicial review challenge, quashed the Rules on the basis that using force to "*maintain good order and discipline*" breaches Article 3 of the ECHR because it can cause serious harm, and because the Government could not show it was necessary.

However, the Ministry of Justice is now attempting to turn back the clock. We can so reason why using force to maintain GOAD in secure colleges should not be a breach of Article 3, in line with the 2008 judgement.

The Government claim they have made no decision on whether restraint will be used to maintain GOAD in secure colleges. They say they have merely left the possibility open in the Bill and that the matter will be decided in the Secure College Rules.

Including different messages in primary and secondary legislation on when restraint is permitted has proved dangerous in the past and is likely to have led to its illegal use. The courts found that contradictory messages in primary and secondary legislation on when restraint could be used in secure training centres led to "confused thinking" about what was permitted –amongst staff, the Youth Justice Board and other bodies. This confusion led to the illegal use of restraint.

We believe that if the government has no intention of allowing restraint to maintain GOAD in secure colleges, then it should simply remove the possibility from primary legislation. Its inclusion is potentially very dangerous and we hope Parliamentarians will oppose it in the strongest possible terms.

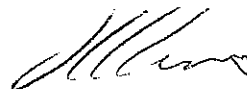
We attach a short joint briefing on the wider issues surrounding the use of restraint to maintain GOAD – particularly the legal context and on the wider issues of concern on the Bill.

We would be very happy to meet with you to discuss this in more detail, or to provide further briefing. We do hope that, as Chair of the Committee which has previously set out clear recommendations for children's human rights you will raise these important matters as the Bill makes its way through Parliament.

Yours sincerely



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for Youth Justice



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Secure colleges and the Criminal Justice and Courts Bill (Part 2 and Schedules 3 & 4) Submission to the Public Bill Committee March 2014

Introduction

The Criminal Justice and Courts Bill (the Bill) legislates for the introduction of secure colleges (SCs) as a form of youth detention. Plans for secure colleges were set out in the government's response to the Transforming Youth Custody (TYC) consultation, published in January 2014. TYC also set out plans to improve resettlement and existing educational provision in Young Offenders Institutions (YOIs).

The Government's stated aim in introducing SCs is to save costs, put "education at the heart of youth custody" and reduce reoffending. Construction of a 320-bed, £85million "pathfinder" SC will begin next year. SCs will hold children between 12 and 17 years of age and may hold a mix of girls and boys.

Summary

The Children's Rights Alliance for England (CRAE), Howard League for Penal Reform (HL) and Standing Committee for Youth Justice (SCYJ) are seriously concerned by several aspects of the plans for SCs including:

- The effect large institutions will have on the safety and outcomes of the most vulnerable children placed there.
- The safeguarding implications of accommodating girls and younger children with a large number of older boys.
- The permitted use of "reasonable force... to ensure good order and discipline" on children within secure colleges despite this being deemed illegal in 2008 and therefore removed from STC rules.
- The lack of a strong duty to assess and pursue each child's best interests to protect their welfare needs
- The high cost of the untested pathfinder secure college – £85 million – when youth justice budgets are tight and the lack of detail about Secure Colleges.

1. Size of secure colleges: child safety and outcomes

- SCs will house hundreds of troubled children between 12 and 17. This is to "achieve economies of scale" and thereby save costs.¹
- Research shows that small secure units, close to a child's home, with well-trained/highly qualified staff, and high staff to child ratios, which provide intensive support, are safest and have the best outcomes for detained children.²
- Large institutions – similar to the proposed SCs – have a poor record on child safety, education and rehabilitation.³
- Large institutions result in children being detained far from their homes; the child custody population is small so few large custodial institutions are required. Inevitably, these will be far from the homes of many of the children detained.
- YOIs often suffer from high levels of bullying and violence.
- Jake Hardy and Ryan Clark, both of whom killed themselves in custody, were detained in the largest Young Offenders Institutions (YOIs) in the country.
- Resettlement and service continuity are far more difficult when children are detained far from home. Smaller, local units enable staff to more effectively establish links to local

services and education providers⁴ in order to ensure the young people can continue their learning post-release.⁵

- Detaining children far from home makes it difficult to maintain relationships with friends and family which has a negative impact on rehabilitation⁶, oversight by children's services is more difficult, as are visits from social workers, which is particularly damaging for looked after children.
- Cost savings can be made in other ways, such as reducing the custody population⁷ and reducing re-offending by giving children effective, holistic support in custody and through the gate.
- **The Bill should limit the size of SCs.**

2. Secure Children's Homes

- Large institutions are wrong for all children but they are particularly damaging to the most vulnerable.
- Currently, young and vulnerable children are detained in Secure Children's Homes (SCHs). These best match the model of small secure units, with well-trained/highly qualified staff, and high staff to child ratios, which provide intensive support – which research shows have the best outcomes.⁸
- Of the 16 deaths of children in custody since 2000 none occurred in SCHs, all occurred in YOIs and Secure Training Centres (STC).
- However, the Government has recently cut 28 SCH beds. Reducing the number of YJB Commissioned SCHs by almost a fifth. The government is clear that SCs will accommodate some of the children currently detained in SCHs.⁹
- The Government has made an ambiguous commitment to maintaining some SCH places for the most vulnerable.¹⁰
- **It is of the utmost importance that SCH places are still available for all vulnerable children and that the definition of 'vulnerable' is not narrowly drawn. This should be included on the face of the Bill.**

3. Girls and younger children

- The "pathfinder" SC will hold 320 children over the age of 12. It may hold a mixture of girls and boys. We understand other SCs will be similar.
- In 2012/13, 95% of children in custody were male, 96% were 15-17 years old. This means each SC will hold a very small number of young children and girls with a large number of older boys. This creates serious safeguarding risks.
- YOIs only hold boys who are 15 or over.
- We have seen no evidence that the government has considered the impact of SCs on girls and younger children. If they have not done so they will be failing to meet the requirements of the Public Sector Equality Duty, set out in the Equality Act 2010.
- **The Bill should prevent children under-15 and girls from being detained in SCs.**

4. Restraint and the use of force

- The Bill sets out that an SC custody officer may "use reasonable force" "to ensure good order and discipline" (GOAD) "if authorised to do so by secure college rules" (Schedule 4, (8(c)) and (10)).
- The Secure College Rules are yet to be drafted. The Government plans to introduce them via Secondary legislation.
- This matter is too important to be left to Regulations, particularly since Secondary Legislation is subject to less scrutiny.
- Including provisions on the use of force to maintain GOAD in both primary and secondary legislation has proved dangerous in the past.
- The courts have found that the confusion between the primary and secondary legislation relating to the use of force in secure training centres (STCs) resulted in the widespread illegal restraint of children for GOAD in the STCs.¹¹ Primary legislation needs to be clear and definitive on this issue.

- The term “use of force” is so broad that it can include use of restraint. “Maintaining GOAD” is so broad it will allow force to be used in almost any situation.
- In response to the first inquest into the death of Adam Rickwood – who committed suicide after being illegally restrained in Hassockfield STC – the government amended the Secure Training Centre Rules to allow restraint to be used to maintain GOAD. In 2008 the Court of Appeal ruled that this was unlawful because it amounted to “inhuman or degrading treatment” and the Government had not shown that use of force to maintain GOAD was necessary. The Rules thus breached Article 3 of the ECHR.¹²
- Allowing force to maintain GOAD in SCs would be unlawful, given the 2008 judgement. There has been no significant change in circumstances which is likely to make the use of force “necessary” for GOAD now, when it was not necessary in 2008. In addition, these provisions would not be compatible with the UN Convention on the Rights of the Child.¹³
- **The Bill should be absolutely clear about the circumstances in which force can be used and should prevent SC officers from using force to maintain GOAD.**

5. Rights and welfare

- Article 3 of the UN Convention of the Rights of the Child (UNCRC) sets out that, “in all actions concerning children... the best interests of the child shall be a primary consideration.” This provision is reflected in legislation regulating the treatment of children in various contexts.¹⁴ As per Article 3 UNCRC, the best interests of children in custody should be a primary consideration in all matters affecting them. We would like to see this reflected in the Bill.
- Schedule 4 (8) of the Bill sets out that an SC custody officer must “attend” to children’s wellbeing.
- **We would like to see a stronger duty to assess and pursue each child’s best interests in the Bill.**

6. Cost, evidence, priorities and a lack of detail

- SCs are an expensive experiment at a time when youth justice budgets are being stretched.
- Parliament is being asked to approve plans in the absence of evidence or detail.
- The “pathfinder” SC will cost £85million. Yet SCs have little evidence base, no small-scale pilots have been tested and there is little detail in either the Bill or TYC about what they will look like – most is left to Regulation (Secure College Rules), as yet unpublished.
- Improving education in custody is a welcome ambition but building a new prison is not necessary to achieve it.
- The £85million could be better spent and the MoJ could build on its recent successes to save costs in the long term in other ways.¹⁵
- There is no detail on staff to children ratios, the education or support to be provided¹⁶, how the education on offer will be developed, or how SCs will manage and educate a large, complex population.¹⁷
- Highly trained, experienced, engaging and qualified staff will be key. Yet there is a lack of detail about the qualifications SC staff will need, or the support and training they will receive.
- **Details of the qualifications staff require should be included on the face of the Bill and the Secure College Rules should be published alongside the Bill.**

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¹ Impact Assessment: Transforming Youth Custody

² For example, a recent review found that smaller units allowed staff to develop closer and more supportive relationships, and fostered a more caring environment; larger facilities were expected to function as institutions. (Khan, L. (2010) *Reaching out, reaching in: Promoting mental health and emotional well-being in secure settings*, London: Centre for Mental Health, p43). A major review of youth justice found that the low staffing ratio (10-15:1) in YOIs was seen to be a key determinant of their safety and security problems. Institutional size was also said to be another important determinant of culture. (Centre for Social Justice (2012) *Rules of Engagement: changing the heart of youth justice*, London: Centre for Social Justice). The Missouri custodial model comprising small therapeutic and "home like" secure facilities was found to produce substantially lower reconviction rates than larger alternatives. (Justice, p143 47 Peterson J (2006), *A Blueprint for Juvenile Justice Reform: Second Edition*, Youth Transition Funders Group, p9). There is a growing body of evidence that young person-worker relationships are central to achieving engagement and reducing reoffending. (See for example: Youth Justice Board (2004) *The summary of the initial report on the Intensive Supervision and Surveillance Programme*, p33; Knight B (2010) *Back from the Brink: How Fairbridge transforms the lives of disadvantaged young people*, Newcastle: The Centre for Research and Innovation in Social Policy and Practice.)

³ For example, YOIs provide an average of 15 hours of education per week, compared to 30 in SCHs (Transforming Youth Custody p.8). The Prisons and Probation Ombudsman (*Learning Lessons Bulletin Fatal Incidents Investigation Issue 3: Child Deaths*) reported that 'busy YOIs can struggle to ensure a consistent and reliable staff presence which allows for the building of trusting relationships and a supportive environment' (para 5.2) and 'Care and discipline were not consistently co-ordinated and the formal adult-orientated adjudication system appeared an inappropriate way to manage vulnerable children' (para 3.3.). Custody can 'destroy the potential to build positive attitudes towards and within social relationships. It does not ... help engender respect for others or enhance empathy to others'. (Brian Littlechild, *evidence to the Justice Select Committee 2012/13 inquiry into youth justice*. See the Committee's report, p28.)

⁴ The average length of stay in custody is 107 days (See TYC, paragraph 12). This is not a lot of time for young people to progress with their learning. There will need to be effective links between local education providers and custodial institutions if children are to continue their learning post-release

⁵ The importance of joining-up custody and community was stated in the TYC green paper. This is not reflected in the Bill. Detaining children far from their homes makes "joining-up" more difficult.

⁶ A review of recent inspections of the six under-18 YOIs in England shows that on average only 34% of children found it "easy" or "very easy" for friends and family to visit.

⁷ Reducing the custody population results in significant savings. In response to a recent Parliamentary Question, the government said: "The budgetary savings to the YJB delivered by each planned reduction in the youth secure estate since 2009-10 total £76 million." (HC Deb, 4 March 2014, c810W)

⁸ SCHs are smaller, have higher staff ratios and provide more intensive support than other custodial institutions. Children's reports of their experiences in SCHs are far more positive than their reported experiences of YOIs. Compare, for example, the Howard League for Penal Reform's evidence in Life Inside or inspection reports for YOIs to the 2009 Children's Rights Director and OFSTED report, 'Life in Secure Care'. The latter looked at the experiences of children in SCHs and noted that the units were a safe place to be that helped children keep out of trouble and sort themselves out. Children spoke very positively of the support they get and many found the staff to be caring. The perception of the amount of bullying was low.

⁹ See TYC, paragraph 33.

¹⁰ Paragraph 34 of TYC states: "We accept that there is always likely to be a small number of the very youngest, most vulnerable and most challenging young people who will be unsuited to the mainstream provision in a Secure College and will require specialist custodial services. To cater for this population we are continuing to provide sufficient places in SCHs, while seeking to secure improvements in service and reductions in cost."

¹¹ Confusion between the Criminal Justice and Public Order Act 1994 and the Secure Training Centre Rules resulted in illegal restraint of children for GOAD in the STCs. (See *R (on the application of C) (a minor) v Secretary of State for Justice [2008] EWCA Civ 882*)

¹² *R (on the application of C) (a minor) v Secretary of State for Justice [2008] EWCA Civ 882*

¹³ In 2010 the government made a commitment to have regard to children's rights when developing law and policy affecting children. Article 19 of the the UN Convention on the Rights of the Child (UNCRC) protects children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Article 37 of the UNCRC requires state parties to ensure that every child deprived of liberty shall be treated with humanity and respect for their inherent dignity. The proposals to authorise the use of restraint techniques run counter to these provisions.

¹⁴ e.g. S.1 of the Children Act 1989; and S.55 of the Borders, Citizenship and Immigration Act 2009

¹⁵ For instance, "since 2009-10, reductions in the child custody population has saved £76 million." (HC Deb, 4 March 2014, c810W)

¹⁶ TYC (e.g. para 11) says that detainees will receive holistic support. It is not clear what this would mean in practice.

¹⁷ Delivering education in an SC will be very different to delivering learning in an outside school or college due to young people entering and leaving custody at different times and having a wide variety of other needs.