

Response to Review of the Youth Justice System interim report of emerging findings

by Her Majesty's Chief Inspector of Prisons

Introduction

1. We welcome the focus of the Youth Justice Review on 'the delivery models for detaining young people remanded or sentenced to custody' and would like to take this opportunity to respond to the interim report, in addition to the opportunities we have already had to exchange views in person.
2. Her Majesty's Inspectorate of Prisons (HMI Prisons) is an independent inspectorate whose duties are primarily set out in section 5A of the Prison Act 1952. HMI Prisons has a statutory duty to report on conditions for and treatment of those in prisons, young offender institutions (YOIs) and immigration detention facilities. HMI Prisons also inspects court custody, police custody and customs custody (jointly with HM Inspectorate of Constabulary), and secure training centres (with Ofsted).
3. HMI Prisons coordinates, and is a member of, the UK's National Preventive Mechanism (NPM) the body established in compliance with the UK government's obligations arising from its status as a party to the UN Optional Protocol to the Convention Against Torture (OPCAT). The NPM's primary focus is the prevention of torture and ill-treatment in all places of detention. Article 19 (c) of the Protocol sets out the NPM's powers to submit proposals concerning existing or draft legislation.
4. This submission draws on evidence from police custody, young offender institution (YOI), secure training centre (STC), and thematic inspections.¹ Inspections of YOIs are carried out against our *Expectations* - independent criteria based on relevant international human rights standards and norms. We examine outcomes for children in YOIs in areas relating to safety, respect, purposeful activity and resettlement.² We contribute to Ofsted-led inspections in STCs examining the areas set out in our inspection framework.³
5. HMI Prisons has welcomed the fall in the total number of children⁴ who are held in custody, largely as a result of the success of diversion work undertaken in the community in recent years. The impact of the reduction in numbers has been the decommissioning of space, particularly in YOIs. As the report points out, the resulting estate is not one that has been arrived at by design and reform is needed.
6. In December 2014, HMI Prisons expressed a number of concerns about the then government's plans to establish a 'secure college' that would have held around a third of the

¹ All reports cited in this submission can be found at:

<http://www.justiceinspectorates.gov.uk/hmiprisons/inspections/>

² <http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/02/expectations-children-young-people.pdf>

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/475844/Inspections_secure_training_centres_framework_and_evaluation_schedule_from_1_September_2015.pdf

⁴ In line with the legal definition of an under 18 years old as a child in both national and international law, we refer to 'children' rather than 'youth'.

youth custody population.⁵ We welcomed the decision not to go ahead with these plans. However, it remains the case that around 70% of children are held in a small number of large YOIs. While we welcome the opportunity this review provides to propose a suitable model for holding children in custody, we are increasingly concerned that progress to address the poor outcomes within the YOI sector continues to be delayed. Our inspection findings lead us to the conclusion that children cannot be held safely or access sufficient purposeful activity within the current YOI model.

7. We support the broad recommendations of the interim report in relation to the custodial estate and police custody; the creation of a larger number of smaller institutions, the increased focus on education (in particular English and maths) and the greater autonomy proposed for local managers. We do have some questions regarding local commissioning and oversight arrangements and raise concerns about how such fundamental changes to the custodial estate will be managed without impacting negatively on outcomes for children currently held in custody.

HMI Prisons evidence

Safety, behaviour management and relationships

8. HMI Prisons agrees with the review that too often the management of risk and the containment of children hinders the delivery of effective education. The evidence from inspection is that this is a particular problem within the YOI sector where a large number of children are on restricted regimes or feel too scared to leave their cell. It is unacceptable that outcomes in our test of safety are not sufficiently good in all but one YOI. These poor outcomes in safety are directly related to correspondingly poor outcomes in education.
9. Rates of violence, self-harm and the use of force have risen across all forms of children's custody over the past five years and our own survey data shows that perceptions of safety and engagement in activity in YOIs are the lowest they have been since 2010–11.⁶
10. In order to ensure that all children can achieve in the proposed secure schools, more detail is required regarding the role of residential staff in creating the safe environment needed to ensure all children can access improved educational provision. Inspections of both STCs and YOIs highlight the difficulties faced in the recruitment and retention of frontline residential staff. The resulting high turnover, cross deployment and in particular the practice of deploying staff on detached duty impact dramatically on the quality of relationships between children and staff and the ability of institutions to manage behaviour in a consistent fashion.
11. The current tools for incentivising good behaviour require improvement, particularly in YOIs. Fewer than half of all boys report that the rewards and sanctions scheme encourages them to change their behaviour.⁷ Inspection findings support this view (Feltham 2014, Cookham Wood 2015, Wetherby 2015, Werrington 2015, Wetherby report forthcoming). This is typically characterised by low expectations of children from frontline staff, low level poor behaviour, including shouting out of windows and insulting remarks being allowed to escalate before being challenged, and an over-reliance on the adjudication system. The result of this is that children often receive a sanction long after the infringement has taken place, if at all.

⁵ <http://www.justiceinspectorates.gov.uk/hmiprisonson/wp-content/uploads/sites/4/2014/02/HMIP-response-to-Secure-College-Rules-consultation-05-12-14.pdf>

⁶ http://www.justiceinspectorates.gov.uk/hmiprisonson/wp-content/uploads/sites/4/2015/12/HMIP_CP_-Children-in-custody-2014-15-FINAL-web-AW.pdf

⁷ http://www.justiceinspectorates.gov.uk/hmiprisonson/wp-content/uploads/sites/4/2015/12/HMIP_CP_-Children-in-custody-2014-15-FINAL-web-AW.pdf

12. In addition we consistently find insufficient incentives to encourage good behaviour in YOIs. At Feltham (2014) the system of rewards and sanctions was weighted towards sanctions against poor behaviour, with little focus on positive reinforcement. This was similar to Cookham Wood (2015) where children and staff confirmed that the differentials between the levels of the IEP scheme were not enough to encourage good behaviour.

Education and activity

13. We strongly support the interim proposal that all children should be able, and expected to attend education. We also support the emphasis on provision of English and maths. As the report points out, this will require a significant change in the culture within custodial settings to one that would improve attainment and behaviour of consistently high expectations. Our inspection findings in this area highlight the scale of this task.
14. Of the YOIs we have inspected only Parc achieved our expectation that children should be unlocked and out of their cells for 10 hours a day, and even there this was only achieved on weekdays. Elsewhere, we noted big variations in the time boys were unlocked, dependent on their behaviour and rewards level. At Cookham Wood, fully occupied boys could have nine hours out of cell on a weekday, but this was a minority. Staff shortfalls had led to regime curtailment at Cookham Wood, Werrington and Feltham. At Feltham 26% of boys were on restrictions and these boys received less than one hour out of cell each day. In all establishments, we found too many boys with insufficient time out of cell each day. Boys also still had little time in the fresh air, and rarely met our expectation of at least one hour a day. Some had as little as 15 minutes and some wouldn't go out at all if it was raining at the scheduled time for exercise. We remain very concerned about the impact this has on the growth and development of children.
15. For many children in the criminal justice system arrival at a custodial institution provides the only opportunity to access education and vocational training opportunities. The implementation of 27-hour-a-week education provision in YOIs is a positive step but too many children do not access it. For those that do we still find outcomes are consistently lower in English and maths than in vocational subjects. In addition, more able children and those serving longer sentences too often have to repeat qualifications rather than progress to higher level work.

Greater autonomy, oversight and commissioning

16. In principle we support the proposals for giving local managers greater autonomy to commission services, recruit and train staff and develop links with the local community. The modelling of secure schools on alternative provision in the community does raise some questions. The interim report rightly points out that outcomes for children attending the best alternative provision in the community are good, but overall the picture is variable. Despite improvements since the Taylor review in 2012, a recent Ofsted survey⁸ shows that in some settings problems remain, including a lack of oversight and insufficient focus on English and maths. This highlights the important role for central government in setting clear standards for the proposed secure provision and a mechanism for intervening if providers fall short.
17. Independent inspection is a key part of any system of oversight. Currently there are three inspection regimes that operate in this sector and we agree with the review that there is no good reason for this. We also support the principle that education expectations for these children should be the same as for children attending school in the community. However, secure settings are different to non-secure provision, not least because the deprivation of liberty increases the risks of torture and other cruel, inhuman or degrading treatment. This is

⁸ <https://www.gov.uk/government/publications/alternative-school-provision-findings-of-a-three-year-survey>

particularly the case with children as they are far less likely to complain about their treatment than their adult counterparts.⁹ In ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in 2003, HM Government accepted that specific measures were necessary in secure settings and that detained people are at increased risk of abuse compared to those in other settings. It is our view that the proposed inspection framework would inevitably limit the scope and frequency of inspection. In particular we are concerned that there will be insufficient attention to the issues of 'Safety' and 'Respect' in the current inspection framework that are essential prerequisites to enable effective education to be delivered; if a child does not feel safe they will inevitably struggle to engage in the classroom.

18. The proposed move to local or regional commissioning raises issues about the mechanisms that are required to ensure adequate provision. The experience of local commissioning in secure children's homes has led to an undersupply of beds leading to children having to endure unsuitable placements.

Conclusion and recommendations

19. In order for children to achieve positive outcomes during a period of custody they must be held in a safe, secure environment that protects them from harm. The evidence from inspection supports the review's interim finding that this is best achieved by placing children in small living units. Small establishments can facilitate positive relationships between children and staff, as well as between the children themselves. The creation of smaller institutions would also mean that more children are held closer to home, thus enabling them to maintain relationships with family and friends.
20. Education provision must be integrated with and supported by residential staff. Residential units should be staffed consistently by suitably qualified local staff in order to improve relationships and deliver effective behaviour management. Establishments should provide meaningful incentives for children who behave well, at the same time as consistently challenging low-level poor behaviour, including swearing and shouting out of windows. More serious infringements should be dealt with in a timely fashion and a range of graduated sanctions needs to be developed.
21. A system of national oversight is required to set standards and to intervene if these are not met.
22. Custodial settings are fundamentally different to non-secure placements, and the inspection regime should reflect that. It is our strong view that the interests of the children and our international obligations are best met by a multidisciplinary inspection regime. This should include a strong focus on education, informed by experience in community settings. However, it must also recognise and have a strong focus on the essential elements of safety, respect and health care.
23. Any system of local commissioning needs to include safeguards to ensure sufficient places are provided.
24. Transition to these new institutions will take time. In the meantime there should be a continued focus on improving the outcomes for children currently held in secure children's homes, STCs and YOIs.

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⁹ http://www.ppo.gov.uk/wp-content/uploads/2015/03/Why-do-women-and-young-people-in-custody-not-make-formal-complaints_final.pdf