

Submission to the Joint Committee on Human Rights inquiry on Youth Detention: Solitary confinement and restraint

by Her Majesty's Chief Inspector of Prisons

Introduction

1. We welcome the opportunity to submit a response to the inquiry into youth detention, considering solitary confinement and restraint.
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 Fire & Rescue Services), and secure training centres (STCs) (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 OPCAT sets out the NPM's powers to submit proposals concerning existing or draft legislation.
4. HMI Prisons inspects all YOIs against our Expectations for Children and Young People, which contain four healthy prisons tests: safety; respect; purposeful activity; and resettlement.¹ The Expectations are based on international human rights standards current at the time they were drafted. Inspections of STCs are led by Ofsted and carried out in accordance with the Inspection Framework for the inspection of STCs.² This Framework considers the following areas: the safety of young people; promoting positive behaviour; the care of young people; the achievement of young people; the resettlement of young people; the health of young people; and the effectiveness of leaders and managers. Both the Expectations and the Framework include consideration of whether the use of force and the use of separation and segregation in an establishment are appropriate.
5. Our response includes evidence in relation to these considerations from our recent inspections of YOIs and STCs (for which reports have been published)³ and also from the

¹ The Expectations can be found in full at <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/02/Children-and-young-people-expectations.pdf>. We note that we are revising these Expectations and are currently undertaking a public consultation on a draft of these. The draft in full can be found at <https://www.justiceinspectorates.gov.uk/hmiprisons/about-hmi-prisons/current-consultations/>.

² The Framework can be found at <https://www.gov.uk/government/publications/inspecting-secure-training-centres-framework>. References to young people in the Framework are those aged 12 to 18.

³ In the period 1 April 2017 to 31 March 2018, we published inspection reports on all YOIs: Cookham Wood, Feltham A, Wetherby (including the Keppel Unit), Werrington and the young persons unit at Parc. Ofsted published inspection reports on all STCs: Medway, Oakhill and Rainsbrook. In the 2018/19 year to date, we published reports on Feltham A and Werrington, and Ofsted published a report on Medway. The reports relate to inspections that took place between March 2017 and January 2018. When there are two published reports on the same establishment within this timeframe, we have referred to the year of the inspection to make it clear which report we are referring to.

survey that HMI Prisons conducts in each establishment.⁴ In addition, we have included evidence from two thematic inspections: one considering the implementation of Minimising and Managing Physical Restraint (MMPR) published in November 2015;⁵ and one exploring how incentives and behaviour management systems operate in YOIs and STCs published in March 2018.⁶ Although the focus of our response is on areas where improvements need to be made, it is important to note that restraint and separation⁷ are sometimes necessary as a last resort to protect children and staff, and that we have seen some improvements during recent inspections (which we have therefore highlighted).

Use of force (restraint)

6. HMI Prisons expects that force should only be used as a last resort when there is an immediate risk to the safety of a child or others. In inspection reports published in 2017/18 and to date, we reported that force was largely an appropriate response to protect children from high levels of violence. We also found that governance of use of force had generally improved across the estate. For example, during our 2017 inspection of Feltham A we reported that some staff had not been trained in MMPR, continued to use control and restraint techniques designed for adults and carried batons. We made recommendations for these practices to end and for staff to be trained in MMPR. When we returned in 2018, these recommendations had been achieved and we found that the use of force had reduced significantly and its governance was generally good. However, despite some improvements in governance across the estate, the use of force across YOIs and STCs remained high in 2017/18, largely due to increasing levels of violence. In 2017/18, 56% of children in STCs and 50% of children in YOIs answering our survey questions reported having been subject to restraint. For the 2016/17 year, the figures were 35% and 44%.
7. The use of any restraint technique has the potential to hurt and cause injury to children and we continue to find that techniques are not always applied correctly. For example, at both Medway (2018) and Oakhill we reported that not all staff were confident in the use of MMPR techniques, which can prolong the restraint and increase the level of restraint used. We also found that children were caused pain through the use of restraints not designed to inflict pain. We continue to hear consistent accounts from some children (who are located in different establishments and not known to each other) of staff using excessive force by failing to attempt to de-escalate a situation verbally, using a higher-level hold than required or not releasing holds when the child had calmed down sufficiently to do so. In our 2015 thematic on the early implementation of MMPR, the majority of children told us that staff had made efforts to de-escalate the situation before using restraint, although this did not occur on every occasion:

‘They make more of an effort to talk to me and calm me down and that’s avoided me being restrained. Sometimes they give you a chance to calm down, sometimes they give you mouth and I end up shouting back and maybe threaten them.’

⁴ Survey results are from establishments inspected during the financial year. For example, a reference to the 2017/18 survey refers to establishments inspected between 1 April 2017 and 31 March 2018 (rather than reports published during that year).

⁵ The full report can be found at: <https://www.justiceinspectorates.gov.uk/hmiprison/inspections/behaviour-management-and-restraint-of-children-in-custody/>.

⁶ The full report can be found at: <https://www.justiceinspectorates.gov.uk/hmiprison/inspections/incentivising-and-promoting-good-behaviour/>.

⁷ HMI Prisons expects that no child (including those separated or segregated) will be subject to a regime that amounts to solitary confinement (which is defined in the United Nations Standard Minimum Rules for the treatment of prisoners as confinement “for 22 hours or more a day without meaningful human contact”). The draft of our revised Expectations for children which was published for consultation includes an indicator to make this clear.

'They did give me a chance and told me it was my last chance and I ignored it. A week later I did the same thing and refused to go back and one of the members of staff involved last time did talk me down this time and walked me back to my cell.'

'I didn't have a chance to put my side of the story. They were very quick to restrain me. If they had talked to me I could have explained the situation to them.'

'They told me to calm down, but I was angry that I couldn't get a phone call and that they didn't tell me when I could have one. They tell you to calm down, but don't try and sort the problem out.'

8. We have also seen some use of force that is not informed by the known medical conditions of individual children, and there were issues with handling plans for children with medical conditions at some establishments. For example, at Medway (2018) all children had a plan but not all staff understood why, and at Oakhill not all staff were aware of the location or content of the handling plans. However, at Cookham Wood, we saw plans displayed clearly in the orderly office and in secure residential areas to ensure staff were aware of plans for particular children.
9. In addition to incidents of disproportionate and poor use of force, we continue to see force used in ways which we consider unacceptable at any time. In our own Expectations, we state that pain infliction techniques should not be used. HMPPS does not prohibit the use of pain inducing techniques but set out very specific criteria within which pain can be applied. However, when we do find pain inducing techniques used, it is often not in accordance with these criteria. We also find that other methods (not involving the use of pain inducing techniques) could have been used to handle the incident without prolonging restraint or putting staff or children at further risk. In addition, we continue to find that children are being strip-searched while under restraint, which is clearly unacceptable.
10. It is important that governance is effective as this protects children by both ensuring there is adequate oversight of force and utilising learning from incidents to drive improved practices. While we have seen improvements in governance across the estate since the introduction of MMPPR, some long-standing issues continue to arise, including delays in completing documentation. For example, at Feltham A (2018) around 200 staff statements were outstanding at the time of our inspection although plans were in place to address this. At Cookham Wood, a high number of F213 forms were outstanding. We also saw delays in reviewing the use of restraint and providing feedback at Oakhill. However, delays are not true of all establishments, for example, Parc had no backlog of outstanding forms at the time of our most recent inspection and incidents were reviewed the same day. In addition to delays, we sometimes find that MMPPR coordinators are re-deployed, which undermines good governance. Further, the active involvement of MMPPR coordinators in the use of restraint, as seen at Medway (2018), undermines their impartiality.
11. While we have seen increased use of body-worn cameras in some establishments (for example, Medway (2018) and Parc), it is concerning that we regularly find establishments where staff either do not carry or do not use body worn video cameras (for example, at Wetherby and Keppel and at Werrington (2018)). CCTV and body worn video cameras are an important safeguard for children and staff and it is notable that children in our 2015 thematic generally reported poor practice particularly in areas where there are no cameras.

'At other times, when the cameras are around they give you a chance to stop what you are doing. When they [cameras] are not there they assault you.'

'Everything on the camera will look legit, it was when they went into my room that he really hurt me.'

12. While it is clear that the implementation and oversight of use of restraint requires improvement, in order to reduce the use of force and restraint in the children's estate, the focus should be on addressing the reasons why levels of use of force and restraint are so high. The most commonly recorded causes of restraint are to prevent violence (69%) or self-harm (16%).⁸ Any strategy to reduce the harm caused by restraint should therefore focus on providing support to children, including through implementing a consistent, effective approach to promoting good behaviour. The evidence we found during our 2018 thematic inspection into incentivising and promoting good behaviour showed a clear link between children and young adults' ('young people') relationships with staff and their engagement with, and perception of, behaviour management systems. Both young people and staff told us that meaningful interactions had a positive impact on behaviour. Children who reported that they were treated with respect and had someone to talk to had greater confidence in adjudication systems and incentive schemes and were less likely to have been restrained. For example, children in YOIs who reported being treated with respect were less likely than those who did not feel treated with respect to have been physically restrained within the establishment (38% compared with 57%). They also reported more positively that they had been treated fairly in their experience of the reward scheme (51% compared with 18%) and that the different levels of the scheme made them change their behaviour (47% compared with 32%). It is therefore concerning that only 66% of children in YOIs reported that most staff treated them with respect and, although 89% of boys in STCs reported that most staff treated them with respect, one in five children (21%) in STCs reported they had no one to turn to if they had a problem.
13. In addition, our thematic found that behaviour management schemes were implemented inconsistently (with children reporting favouritism), were too focussed on punitive aspects, and operated over timeframes that were too long for children. We were therefore pleased to be able to report on efforts to move towards immediate rewards, reduce timeframes and focus on incentives at our most recent inspection of Werrington.

Segregation and separation

14. The rules governing separating children from their peers differ greatly in STCs and YOIs. Children are able to be separated for much longer periods in YOIs and generally have less contact with staff during periods of separation. In our 2017/18 survey, 64% of children in STCs reported being made to stay in their room away from the other children because of something they did. In YOIs, use of separation in designated care and separation (segregation) units fell in all establishments during 2017/18 and remained commendably low at Parc where there is no dedicated segregation unit. In our 2017/18 survey, 30% of children in YOIs reported spending a night in a care and separation unit. Of those, only 38% said they were treated well by staff while in the unit.
15. We found that the environment (with the exception of Werrington) and regime (with the exception of Parc) in these units was poor and children often spent less than 2 hours out of their cell. The segregation unit at Feltham continues to be shared with the adult site and is a wholly unsuitable unit to hold children. Cells in the unit were stark and dirty and communal areas were also dirty. The special accommodation cells were particularly grim (no beds, toilets or sinks) and we were not assured that all uses of these cells was justified. In contrast, at Werrington (2018), we found living conditions were generally good and

⁸ Ministry of Justice and Youth Justice Board, *Youth Justice Statistics: 2016 to 17* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/676072/youth_justice_statistics_2016-17.pdf. The 69% is recorded in the statistics as "preventing harm to third party".

communal areas were very clean and bright. We also observed staff in the unit at Werrington interacting positively with children.

16. We have recently reported concerns about overly restrictive risk assessments and unlock arrangements in segregation units. For example, at Wetherby and Keppel, all boys were subject to an unlock protocol which required a minimum of two staff in standard uniform and up to four staff in full personal protective equipment. The approach to restricting staff access to the unit at Wetherby had resulted in education and health care interventions being carried out through a fence on the cage-like exercise yard. This is in contrast to our findings at Parc, where we found that the regime offered was decent.
17. We are concerned that we find some children separated for excessive periods of time. For example, one boy was held in the segregation unit at Wetherby and Keppel for 120 days before being relocated, and one boy had been segregated for nearly three months at the time of our inspection of Werrington (2017). Experiencing poor regimes for prolonged periods may, for some boys, amount to ill-treatment.
18. In addition to those separated from their peers in designated units we found many boys locked up for more than 22 hours a day on normal location in some YOIs. These boys typically experience an impoverished regime that can sometimes be worse than for those held in segregation units. On the most restricted regimes, we found boys who were out of their cells for as little as 30 minutes (to shower, make calls and exercise). However, both Parc and Werrington met our expectation of 10 hours out of cell for most boys.
19. Following a judicial review in July 2017 which challenged the separation of a boy at Feltham, we have seen increased use of good order and discipline processes designed for segregation units being used on normal location. While this should ensure that managers are aware of this group, we have not yet seen evidence that this process has improved outcomes for children subject to regime restrictions on normal location.
20. As with use of force, the key to improving outcomes for children who are separated and to reducing the use of separation is to address the reasons which lead to children's separation, particularly behaviour management and case management.

Conclusion

21. There is a clear need to improve the policies that govern use of force and separation to better protect children's rights, including removing pain inducing techniques from MMPR, improving the use of body worn video cameras and implementing decent regimes in segregation units. However, the focus needs to be on reducing the use of force and separation. Evidence from our thematic and inspection reports shows that a focus on supporting children, including behaviour management, would reduce the behaviours that often lead to them being separated or restrained. In particular, those working on residential units with children should have the skills, and crucially the time, to build positive, caring and effective relationships with children. Staff should use these relationships to implement motivational rewards and sanctions schemes rather than punitive schemes. Clear and human rights compliant process and policy is necessary, but it is also necessary to focus on developing positive relationships.
22. I hope that you find this information useful and should you require anything further, please do not hesitate to contact me.