

# Submission to the Justice Select Committee's inquiry into children in custody

by Her Majesty's Chief Inspector of Prisons

## Introduction

1. We welcome the opportunity to submit a response to the Justice Select Committee's inquiry into children in custody.
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 and include reporting on the conditions for and treatment of those in prisons and young offender institutions (YOIs). On inspections of YOIs in England, we are joined by Ofsted, the Care Quality Commission (CQC) and Her Majesty's Inspectorate of Probation (HMI Probation); in Wales, we are joined by Estyn and HMI Probation. HMI Prisons also inspects secure training centres (STCs) together with Ofsted, and CQC joins these inspections.
3. HMI Prisons is a member of the UK's National Preventive Mechanism (NPM), the body established to comply with the UK's obligations arising from the UN Optional Protocol to the Convention Against Torture. The NPM's focus is to prevent torture and ill-treatment in places of detention.
4. HMI Prisons inspects all YOIs against our *Expectations: Criteria for assessing the treatment of children and conditions in prisons*, which contain four healthy prisons tests: safety; care; purposeful activity; and resettlement.<sup>1</sup> The Expectations are based on human rights standards and were developed following an extensive consultation process. Inspections of STCs are led by Ofsted and carried out in accordance with the *Joint inspection framework: secure training centres*.<sup>2</sup> This Framework considers the overall experiences and progress of children and young people, including judgements on: children's education and learning; children's health; and children's resettlement, taking into account: how well children and young people are helped and protected; and the effectiveness of leaders and managers.
5. Our response is based on evidence from our recent inspections of YOIs and STCs,<sup>3</sup> thematic reports and also from the survey that HMI Prisons conducts in each establishment ahead of inspection.
6. We hope that our response will assist the Committee in considering its terms of reference as they relate to the youth justice population and the suitability of the secure estate.<sup>4</sup>

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<sup>1</sup> The Expectations are available at <https://www.justiceinspectorates.gov.uk/hmiprison/our-expectations/children-and-young-people-expectations/>.

<sup>2</sup> The Framework is available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/792975/STC\\_framework\\_040419.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/792975/STC_framework_040419.pdf).

<sup>3</sup> The response is drawn from inspection reports that have been published with the exception of information about Feltham A, which is also drawn from the recently published urgent notification letter relating to the July 2019 inspection. The most recent inspection reports to be published for each establishment are: Wetherby and Keppel, March 2019; Cookham Wood December 2018; Feltham A, January 2019; Parc, October 2018; Werrington, February 2019; Medway, December 2018; Rainsbrook, October 2018; and Oakhill, April 2019. The inspection report from the September 2019 inspection of Cookham Wood will be published in the coming months.

<sup>4</sup> HMI Prisons has made a separate submission together with HMI Probation in relation to the resettlement and rehabilitation of young people.

## What does a good quality custodial place look like?

7. Our Expectations and the Inspection Framework set out the criteria against which we inspect YOIs and STCs respectively. Both sets of criteria detail what we consider to be good outcomes for children. Broadly speaking, good outcomes require a custodial place in which a child is: held safely and protected from harm; well cared for and can build positive relationships with staff; engaged and supported in learning and skills development activities and to address their behaviour; and supported to maintain and develop appropriate family and community ties. We expect to see each child's individual needs and goals being recognised and accommodated.

## Changing custodial population

8. HMI Prisons has welcomed the fall in the number of children who are held in custody over the last ten years. The reduction in numbers led to the decommissioning of places in the secure children's estate and many children are now held further from home than they would have been in previous years. Our thematic review, *The impact of distance from home on children in custody*,<sup>5</sup> published in October 2016, highlighted that children held further from home had significantly fewer visits from family members, friends and professionals.
9. The proportion of children held in custody who have committed serious offences has increased as the population has decreased. However, as discussed further below, we do not believe that this is the main driver of increasing violence.<sup>6</sup> The demographics of the children held in custody have also changed over the last ten years. The proportion of children from a Black, Asian and Minority Ethnic (BAME) background held in custody has increased and children from these backgrounds are more over-represented than in the adult estate.<sup>7</sup> Children from these backgrounds tell us that they feel more negatively than their white peers about a number of aspects of their treatment in custody (see immediately below).

## Experiences of Black, Asian and Minority Ethnic children in custody

10. HMI Prisons offers each child the opportunity to complete a survey telling us how they feel about the treatment and conditions they have experienced in the establishment they are held in. Analysis of the survey results shows that the experience of children from a BAME background differs substantially from their white peers in a range of areas. In survey results from 2018/19,<sup>8</sup> children from a BAME background were less likely to report being victimised by other children. However, they were more likely to report being victimised by staff - 38% said they had experienced verbal abuse from staff compared to 28% of white children and 25% said they had experienced threats or intimidation from staff compared to 16%. They were also significantly less likely to say, amongst other things, that incentives systems were fair, that they

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<sup>5</sup> Available at <https://www.justiceinspectorates.gov.uk/hmiprisonswp-content/uploads/sites/4/2016/09/The-impact-of-distance-from-home-on-children-in-custody-Web-2016.pdf>.

<sup>6</sup> HMI Prisons, *Incentivising and promoting good behaviour*, March 2018, p. 9, available at <https://www.justiceinspectorates.gov.uk/hmiprisonswp-content/uploads/sites/4/2018/03/Incentivising-and-promoting-good-behaviour-Web-2018.pdf>.

<sup>7</sup> Youth Justice Board, *Youth Justice Statistics 2017/18 - England and Wales*, January 2019, pp. 40-41, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/792975/STC\\_framework\\_040419.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/792975/STC_framework_040419.pdf); HMPPS, *Youth Custody Data July 2019*, September 2019, available at <https://www.gov.uk/government/statistics/youth-custody-data>; and David Lammy MP, *The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System*, September 2017, p. 45.

<sup>8</sup> These surveys were conducted between October 2018 and April 2019.

felt cared for by most staff and that most staff treated them with respect (63% compared to 74%).<sup>9</sup>

11. We are particularly concerned about what children tell us about their relationships with staff as those relationships are fundamental to achieving positive outcomes across all areas of custodial life (see below section on barriers to a safe and decent estate). In March 2018, the inspectorate published *Incentivising and promoting good behaviour*, which detailed the findings of our thematic work on behaviour management in the children and young adult estates, including that children from BAME backgrounds reported more negatively about the fairness of incentives systems and relationships with staff. We recommended that HM Prison and Probation Service (HMPPS) investigate and address these poor perceptions.
12. Since then, inspections have found some improvements in equality and diversity work but also identified ongoing weaknesses, some of which were significant and resulted in some establishments being unable to identify and/or address disproportionality. For example, at Wetherby, the equality policy had not been informed by a needs analysis and progress against actions in the equality action plan was not monitored. Half of all the discrimination reports at Wetherby were coming from children in the Keppel Unit, but there was no specific action to follow up why this was the case. At Werrington, although there were regular, well-attended diversity and equality action team meetings, analysis of data was not effective and some concerns had not been identified or investigated because of a lack of accurate information. At Cookham Wood, there was little promotion of equality issues. We saw some examples of good initiatives, such as the independent scrutiny of discrimination complaints at Feltham A (by the Zahid Mubarek Trust) and the monthly consultation meeting with children at Werrington. The meeting had led to improvements, including a comprehensive calendar of events to celebrate different cultures and diversity.

## Physical condition of the secure estate

13. The physical design of establishments varies. In STCs, children live on units which have between five and eight cells. Living units in YOIs are far larger – there are around 30 cells per unit in Cookham Wood. Feltham and Parc have around 20 cells per unit and at Wetherby and Werrington living units are nearer 50 or 60 cells. Children are generally in single occupancy cells and some have in-cell telephony, showers and/or toilets. All establishments have communal areas for exercise and association although exercise yards in some establishments are small.
14. In addition to varied physical designs, inspections have found that physical conditions varied between and within establishments. Conditions at Feltham were found to be spartan and austere, cells were often dirty and untidy and the showers were in an unacceptably poor condition. We found widespread graffiti, some of which was offensive at Cookham Wood. At the remaining YOIs we found that staff and children worked hard to keep the facilities clean and decent. We found improvements in living areas at Oakhill and Rainsbrook, although some of the units at Rainsbrook remained stark, as were units at Medway. We found that communal areas across the estate were generally adequately equipped and clean and we saw improvements in these at Parc and Wetherby. Overall, despite some good efforts from children and staff to improve living spaces in most establishments, we have generally found that establishments are somewhat bare and cheerless.

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<sup>9</sup> The full results of the survey analysis for 2018/19 will be published in our annual *Children in Custody* report in the coming months. Reports for previous years are available at <https://www.justiceinspectorates.gov.uk/hmiprison/inspections?s&prison-inspection-type=children-and-young-people-in-custody-reports>.

15. Inspections also look at living conditions in dedicated segregation/separation units.<sup>10</sup> It is welcome that children are no longer placed in the segregation unit at Feltham B, which we found to be wholly unsuitable. We found that the conditions in the Phoenix Unit at Cookham Wood were dark, oppressive and dirty and we recommended it no longer be used (the recommendation was partly agreed as alternatives were subject to funding).<sup>11</sup> In contrast, cells and communal areas in the Anson Unit at Wetherby were clean, although the exercise yards were stark.

## Staff training and support

16. In *Incentivising and promoting good behaviour*, we noted that good supervision and leadership of frontline residential staff was essential to staff developing positive and trusting relationships with children. As children rely on staff for almost all aspects of their daily lives, these relationships are key, especially as we found a clear link between the strength of children's relationships with staff, and their perceptions of, and engagement with, behaviour management systems.
17. Inspections have found that there are areas in which residential staff need to improve their professional skills and knowledge. We have also found that residential staff do not receive adequate and regular support and supervision from managers to improve their practice. At Cookham Wood, half of the staff had been in post less than a year at the time of our inspection. They were a welcomed resource but we were told by managers and staff that there were a limited number of experienced staff who were able to mentor them. About 40% of frontline staff at Werrington had been in post for less than a year. These staff were enthusiastic and most had received training on providing personal support and motivational interviewing. However, the skills learnt were not being sufficiently reinforced and staff told us they generally did not use them. Staff were not aware of the impact of adverse childhood experiences on behaviour. We noted that "[t]here was an absence of visible senior leadership on the wings to model good practice, ensure consistent implementation of policy and process and support staff to become effective in their role." At Oakhill, new secure care officers had regular refresher training but staff working directly with children would have benefited from an earlier knowledge of trauma-informed practice and the impact of adverse child experiences. We found improvements in oversight of junior staff at Medway, but there was still room for further improvement. At Wetherby, staff had a good understanding of the needs and behaviours of children, which was particularly impressive in the context of the number of new officers.
18. We have been told by staff about incidents of their colleagues goading children, treating them with disdain, using inappropriate language or ignoring their requests.<sup>12</sup> Inspectors have also witnessed some incidents of inappropriate language being used by staff or staff demonstrating poor attitudes towards the children in their care. For example, at Feltham A, inspectors heard staff use inappropriate language to describe children in several different locations around the prison, and many staff had low expectations of children. Although this was a minority of staff, these incidents can have a negative impact on relationships across an establishment. In contrast, we saw positive examples of staff demonstrating care for children, for example, at Parc, we saw many staff being patient and caring, and we were particularly impressed with the efforts of staff to motivate boys.

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<sup>10</sup> HMI Prisons has also undertaken a thematic inspection of the separation of children in YOIs, these findings will be published in the coming months.

<sup>11</sup> The full action plan in response to the inspection report can be found at <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2019/04/Cookham-Wood-HMIP-Action-Plan-2019.pdf>, see 5.2.

<sup>12</sup> *Incentivising and promoting good behaviour*, p. 23.

19. Our survey asks children questions about their relationships with staff, including whether most staff treat them with respect and if there are any staff they could turn to for help if they had a problem. Results varied across YOIs – fewer than half of children felt they were treated with respect by most staff at Feltham A, whereas 82% at Parc felt they were treated with respect. Eighty-seven per cent of children on the Keppel Unit at Wetherby reported they could turn to a member of staff with a problem in contrast to only 45% of children at Feltham A. Children in STCs reported much more positively. At Rainsbrook, 84% of children told us they had a staff member they could turn to and 92% said they were treated with respect by most staff, at Oakhill this was 85% and 82% respectively and at Medway it was 90% for both.

## Use of force

20. As violence has risen across the estate so has the number of incidents where staff have used force on children. In surveys conducted in 2018/19, 64% of children reported having been physically restrained.
21. We found sound local governance arrangements at Parc, Rainsbrook and Oakhill (although there were still areas for improvement). However, elsewhere we found significant weaknesses in the monitoring and oversight of use of force and we repeated recommendations around fundamental aspects of governance such as timely completion of use of force statements, utilising body-worn cameras and the need for proper scrutiny of incidents.
22. We had particularly serious concerns at our most recent inspection of Feltham A where, as outlined in our Urgent Notification letter,

*[u]se of force had risen to very high levels. Seventy-four per cent of children reported they had been physically restrained at Feltham A. There had been over 700 incidents in the last six months. Governance of this area was overwhelmed: nearly 300 incidents had not been reviewed by specialist staff and over 900 use of force reports were outstanding at the time of the inspection. These failings had led to significant delays in the initiation of child protection investigations, and it was not possible for managers to be sure that force was always used legitimately.*

23. At Werrington, we found that body-worn video footage was only viewed in about 13% of incidents and managers could not therefore be confident that use of force was always necessary or that staff were de-escalating incidents following the use of force. At Medway, there were 90 incidents from the three months prior to the inspection that had not yet been reviewed. Inspectors found that oversight of use of force was too often focussed on the technicalities of particular approved techniques rather than assessing whether the incident could have been dealt with in a different way, including how best it could have been de-escalated to avoid the use of force.
24. Inspections have identified disproportionate uses of force. For example, at Medway, we were concerned about the use of restraint in response to passive non-compliance, including when children refused to go to bed. Such incidents were not in accordance with the Secure Training Centre Rules. Senior managers told us that these restraints were always authorised by a duty governor but we found no evidence of this occurring other than in the week prior to the inspection. At Wetherby, we saw officers applying pain to children already under restraint when there was no immediate risk of serious physical harm to staff or other children and we also saw children being returned to their cells under full restraint with little attempt to review and de-escalate. We reviewed one case at Wetherby in which a child

refused to leave a classroom and was then prematurely grabbed by an officer despite another member of staff's reasonable attempts to negotiate with the child to return to their cell.

25. Overall, we found too many examples of force being used that is not proportionate and not properly monitored. Oversight arrangements were not robust enough to identify and address all incidents of poor practice and disproportionate use of force. Disproportionate and unnecessary use of force has a negative impact upon children. In 2017/18 surveys, children in YOIs who had been restrained reported more negatively in a number of areas, including being significantly less likely to say they were treated with respect by staff (55% compared to 73%) or that they had been treated fairly in their experience of the reward scheme (31% compared to 51%). They were also significantly more likely to report victimisation by staff (44% compared with 17%).

## Barriers to a safe and decent estate

26. A significant barrier to improving outcomes in the children's estate is the ongoing weaknesses in behaviour management, including failures to identify and address the high levels of violence in the children's estate. The consequent high levels of poor behaviour and violence have had a severe impact on children's progress in education, training and rehabilitation across the estate.
27. In *Incentivising and promoting good behaviour*, we reported that the key to improving behaviour management is the relationships between children and the staff charged with their care. As noted above, there is still much work to be done to improve relationships between staff and children across much of the estate. In addition, *Incentivising and promoting good behaviour* highlighted the negative impact of inconsistency in challenging poor behaviour and rewarding good behaviour and the importance of fair and timely incentives schemes, which are reward focused rather than punitive in approach. Inconsistent approaches damage the trust children have in processes and staff and can lead to children disengaging with staff and incentives systems.
28. Since our thematic report was published, inspections have found some improvements in behaviour management and incentives schemes. The incentives scheme at Parc had been reviewed, including the instant rewards scheme, which was proving effective at motivating children. Staff demonstrated a sensible balance between tolerating and challenging inappropriate behaviour and managers were visible to support staff at critical times. At Cookham Wood, a system of green cards (for positive behaviour) and yellow (for inappropriate behaviour) was used. There were improvements to the behaviour management strategy at Rainsbrook. However, at both Cookham Wood and Rainsbrook and more generally across the estate, we found inconsistencies in behaviour management and incentives schemes and in some cases, schemes were still not designed to be sufficiently motivating. At Oakhill, we reported that the "incentives and sanctions scheme is poorly applied and the inconsistency in the way it is applied does not motivate children to modify their behaviour. The differences between the awards for each of the three levels are too narrow to encourage most children to try and reach the higher levels." At Feltham A, we saw staff struggling to challenge poor behaviour and found some staff were unaware of the instant rewards scheme. The approach to violence reduction had focused on containing the problems rather than changing behaviour and the result was that policies to keep apart children from different gangs or who were likely to be violent to one another dominated. This approach had prevented Feltham running a reasonable regime and restricted many children's access to education, training or meaningful human contact.
29. High numbers of children continue to report in our survey that staff do not explain why their behaviour is good or bad, that they are not motivated by incentives schemes and that they think schemes are unfair. For example, at Werrington, only 39% of children said that the incentives for good behaviour encouraged them to behave well and less than a third (30%)

said the system of rewards and incentives was fair. Less than half (43%) reported that staff told them when their behaviour was good and only 36% said staff usually explained what they had done wrong when they got into trouble.

30. During our thematic work, we asked what incentives would have the greatest impact on promoting positive behaviour. Both children and staff agreed on the need for more time out of cell. Increasing time out of cell is necessary for children to access education, activities and association and also to provide time for staff to build positive relationships with children. It is therefore concerning that our inspections found many children locked up for far too long during the day. At Feltham A, monitoring showed children spent an average of 4.2 hours out of their cell each day during June. At Cookham Wood, children spent about six hours of their cell on weekdays. At Werrington, children accessed an average of 7.2 hours out of cell on weekdays and as little as 4.2 hours on weekends. In contrast, at Parc, children were usually out of their cell for between 9 and 11 hours each day. Children on the Keppel Unit at Wetherby could spend up to 8 hours out of their cell on weekdays. We found some children who are separated or who self-isolate spent excessive amounts of time in their cells. For example, at Feltham A, many separated children spent less than two hours out of their cell each day and did not have any meaningful contact with staff or other children.
31. As noted above, we do not believe that the higher proportion of children held for serious offences is the main driver of increasing violence across the estate. In many cases where children require additional support to address consistently poor behaviour, we have found that not enough has been done to put in place a behaviour management strategy that addresses their individual needs.

## Experiences across secure custody

32. Children’s perceptions typically vary depending on the type of custody they are held in (STC or YOI). Children in STCs reported more positively in a number of areas, including, from 2018/19 surveys, time out of cell, whether staff usually told them they had behaved well, whether staff treated them with respect (88% compared to 65%) and whether there was a member of staff they could turn to for help (86% compared to 66%).
33. Children’s experiences also vary between establishments of the same type. The most recent inspection scores for YOIs are as follows:<sup>13</sup>

	Safety	Care	Purposeful Activity	Resettlement
Feltham A	Poor	Poor	Poor	Not sufficiently good
Cookham Wood <sup>14</sup>	Not sufficiently good	Not sufficiently good	Not sufficiently good	Not sufficiently good
Werrington	Not sufficiently good	Reasonably good	Reasonably good	Reasonably good
Parc	Reasonably good	Good	Good	Reasonably good
Wetherby	Reasonably good	Reasonably good	Reasonably good	Good
Keppel Unit (Wetherby)	Good	Good	Reasonably good	Good

34. All three STCs most recently received an overall assessment of requires improvement to be good.<sup>15</sup>

<sup>13</sup> Assessments are made on a four-point scale - outcomes for children are: good; reasonably good; not sufficiently good; or poor.

<sup>14</sup> These scores are drawn from the September 2019 inspection. The report for this inspection will be published in the coming months.

<sup>15</sup> Inspectors now use a four-point scale (outstanding, good, requires improvement to be good and inadequate).

35. In February 2017, I wrote to the then Minister to inform him that there were no YOIs or STCs that we had inspected which we could say were sufficiently safe to hold children. Despite improvements at some establishments since then, it is extremely concerning that we continue to find establishments that are not holding children safely. Progress in improving outcomes has been too slow and sometimes when made, has not been able to be maintained (which means children's experiences may also vary over the time that they are held in custody).

## Conclusion

36. In its current form the secure estate does not meet the needs of the children in its care. Levels of violence and poor behaviour are hindering children's progress and leading to high levels of use of force, not all of which is proportionate or subject to proper oversight. In order to improve it is clear that establishments need to address weaknesses in behaviour management and create a reward based, motivational ethos which maintains appropriate boundaries. This requires the development of positive relationships between staff and children. To do this, the potential of frontline staff, most of whom are committed and caring, needs to be fully drawn out by providing significant training and support.

37. We welcome the ambition to replace the current estate with smaller institutions with a different ethos to existing provision. However, as is the case with progress in improving existing establishments, we have significant concerns about the slow pace of developing new establishments. Many children will have finished their sentences and become adults in the time it will take to establish one secure school. We also think consideration needs to be given to the impact of further fragmentation of the sector; by 2021 there will be four separate models of custody for children. While we recognise that children have differing needs, the children's custodial estate needs to be able to hold all children in safe, caring environments where they access education and training and are well prepared to return to their communities. Given that this baseline is not currently being met for a number of children, it may be an opportune time to closely review the rationale for differing institutions and rules, including whether the current and planned complexities and inequity of funding hinder the delivery of safe care.

38. I hope that you find this information useful and should you require anything further, please do not hesitate to contact me.

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