

## The state of youth custody

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\* *The author has produced the paper at the behest of the NAYJ Board of Trustees who have approved and adopted the contents.*

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The NAYJ is a registered charity (no. 1138177) and membership organisation campaigning for the rights of – and justice for – children in trouble with the law.

### • The context

The National Association for Youth Justice (NAYJ) has consistently argued for a minimum use of custody for children who break the law: imprisonment should only be used as a last resort and for the shortest necessary period in those rare situations where a child's offending is such as to pose a demonstrable risk of serious harm to others and where, after thorough consideration, no other alternative is sufficient to mitigate that risk.<sup>1</sup> Where deprivation of liberty is necessary, children should only be detained in child care establishments that promote their wellbeing and longer term development. This longstanding opposition to the use of custody is informed by a well-established, international evidence base which clearly shows that incarceration is extremely damaging to children in the short term<sup>2</sup> and impedes their healthy development over the longer term.<sup>3</sup>

Nor is imprisonment an effective mechanism for preventing youth crime. In spite of some reduction in recent years, reoffending rates for children following a custodial episode remain extremely high (67.1% within 12 months for those released in 2014).<sup>4</sup> Analysis confirms that, controlling for

1 NAYJ (2015) National Association for Youth Justice: Manifesto 2015. London: NAYJ available at: <http://thenayj.org.uk/wp-content/uploads/2015/06/2015-Youth-Justice-Manifesto.pdf>

2 See, for instance, Willow, C (2015) *Children behind bars: why the abuse of child imprisonment must end*. Policy press: Bristol

3 Goldson, B (2005) 'Child imprisonment: a case for abolition', *Youth Justice* 5(2):77-90

4 Ministry of Justice/Youth Justice Board (2016) *Youth justice statistics 2014/15*. London: Ministry of Justice

a range of relevant factors, children who receive custodial sentences of between six and 12 months are significantly (4% points) more likely to reoffend than a comparison group sentenced to a high level community penalty.<sup>5</sup> Deprivation of liberty accordingly exacerbates rather than reduces the likelihood of offending, suggesting that far from acting as a deterrent, incarceration has a criminogenic effect. This conclusion is unsurprising given the nature of youth crime. Children who break the law have rarely given careful consideration to the consequences of their actions. Neither the prospect of incarceration, nor the subsequent experience of being locked up, is likely to deter them or others from further criminal activity.<sup>6</sup>

International standards acknowledge the counterproductive and damaging nature of custody. Article 37 of the UN Convention on the Rights of the Child, whose tenets the UK is obliged to uphold as a signatory to the Convention, proscribes the use of child imprisonment other than as a measure of last resort.<sup>7</sup> During the 1990s and much of the following decade, England and Wales was in clear breach of such obligations with child imprisonment characterised by a rapid and sustained escalation. More recently, the number of children in custody has declined sharply. In May 2008, the under-18 population of the secure estate for children was 3,006; by May 2016, it had fallen to 870, a reduction of more than 70%.<sup>8</sup> While the precise reasons for this contraction are open to debate,<sup>9</sup> it is clear that much of it can be explained as a consequence of a less punitive climate towards children in conflict with the law, permitting the development of a range of informal responses to youth crime that have, in turn, led to a substantial reduction in the number of children entering the formal parameters of the youth justice system.<sup>10</sup>

Such advances should, of course, be recognised, but the NAYJ considers that levels of child incarceration remain too high and continue to be out of step with more progressive youth justice practices and international standards.<sup>11</sup> Moreover, as will be argued in due course, effecting further reductions in child imprisonment may be an important consideration in ensuring a humane treatment of those children who continue to be deprived of their liberty.

## • The case for change

The fall in the child custodial population has led to a considerable reconfiguration of the secure estate involving the closure of several young offender institutions (YOIs), secure training centres (STCs) and secure children's homes (SCHs). However, the distribution of the child population remains heavily weighted towards YOIs: in May 2016, for instance, 73% of all imprisoned children were held in such provision. By contrast, just over one in ten incarcerated children were accommodated in secure children's homes.<sup>12</sup> Although the latter represents a slight proportionate increase over the period in question, the NAYJ stands by its previous criticisms of the failure to take advantage of the opportunity offered by the overall decline in the use of custody to ensure a substantial transfer to more child-appropriate forms of secure provision.<sup>13</sup>

This is of particular concern given that, while the number of children in custody has declined, those 'left behind' are typically more vulnerable, more disadvantaged and serving longer sentences. This is simply the inevitable consequence of the fact that

5 Ministry of Justice (2012) *2012 compendium of reoffending statistics and analysis*. London: Ministry of Justice

6 See for instance, Professor Brian Littlechild cited in Carlile (2014) *Independent Parliamentarians' Inquiry into the operation and effectiveness of the youth court*. London: Michael Sieff Foundation

7 United Nations (1989) *UN Convention on the Rights of the Child*. Geneva: UN

8 Youth Justice Board (2016) *Monthly youth custody report May 2016: England and Wales*. London: Youth Justice Board

9 Goldson, B (2015) 'The circular motions of penal politics and the irrationalities of child imprisonment' in Goldson, B and Muncie, J (eds) *Youth crime and justice*. 2nd edition. London: Sage

10 Bateman, T (2012) 'Who pulled the plug? Towards an explanation of the fall in child imprisonment in England and Wales', *Youth Justice* 12(1): 36-52

11 House of Commons Justice Committee (2013) *Youth justice: seventh report of session 2012-13*. London: The Stationery Office

12 Youth Justice Board (2016) *op cit*

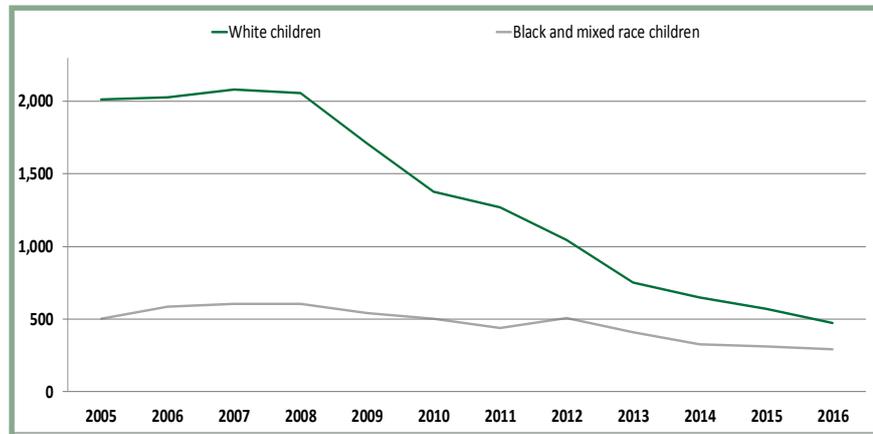
13 Bateman, T (2015) *The state of youth justice 2015: an overview of trends and developments*. London: NAYJ

children who commit less serious offences or have less extensive criminal histories are now, rightly, being filtered out of the custodial population. But it is important, nonetheless, to be aware that this trend is reflected in an increase in the average length of time spent in the secure estate, from 82 days in 2011 to 100 days in 2015.<sup>14</sup>

Unsurprisingly, this cohort of children is also more vulnerable in a number of other ways. For instance, while in 2011/12, 33% of boys in YOIs reported that they had problems with drugs on admission to custody, by 2014/15 that figure had risen to 36%. There was a similar increase in the proportion of boys describing themselves as having emotional or mental health problems from 21% to 24%. There was a rise too, over the same period, in the percentage of boys reporting a care history, from 27% to 38%.<sup>15</sup>

Disconcertingly, as shown in figure 1, the fall in the use of custody has not benefited minority ethnic children to anything like the same extent as their white counterparts and, as a consequence, there has also been a considerable increase in the overrepresentation of black and minority ethnic (particularly black and mixed race) children within the custodial estate. Whereas in May 2005, minority ethnic children made up 25% of the imprisoned population, by May 2016, they accounted for almost 45%.<sup>16</sup> Research confirms too that black and mixed heritage children within the youth justice system have significantly higher levels of need than their white peers, suggesting that they have grown up in less favourable circumstances and are likely to be more vulnerable to the negative consequences of custody.<sup>17</sup>

**Figure 1**  
Population of the children’s custodial estate by (selected) ethnicity: 2005-2016 (May)



But if the population of imprisoned children has changed, so too has the experience of children confined within the custodial estate. One in three boys detained in YOIs in 2014/15 reported having felt unsafe in the establishment at some point during their stay; a 5 percentage point rise over 2011/12.<sup>18</sup> This subjective concern reflects a shifting reality as the custodial estate has become an increasingly volatile and violent environment. As shown in table 1 (overleaf), relative to the number of children incarcerated, the use of restraint, levels of assault and the incidence of self-harm have all risen considerably over the past five years.<sup>19</sup>

14 Ministry of Justice/Youth Justice Board (2016) *op cit*

15 Murray, R (2012) *Children and young people in custody 2011–12: an analysis of the experiences of 15-18-year-olds in prison*. London: HMIP; Redmond, A (2015) *Children in custody 2014-15: an analysis of 12-18-year-olds' perceptions of their experience in secure training centres and young offender institutions*. London: HMIP

16 Youth Justice Board (2016) *op cit*

17 May, T, Gyateng, T and Bateman, T (2010) *Exploring the needs of young Black and Minority Ethnic offenders and the provision of targeted interventions*. London: Youth Justice Board

18 Murray, R (2012) *op cit*; Redmond, A (2015)

19 Ministry of Justice/Youth Justice Board (2016) *op cit*

**Table 1****The prevalence of physical restraint, assault and self-harm in the secure estate: 2010-2015**

Year	Number of monthly physical restraints per 100 children in custody	Number of monthly assaults per 100 children in custody	Number of monthly episodes of self-harm per 100 children in custody
2010	17.6	9.0	5.3
2011	20.5	9.7	4.1
2012	25.1	9.7	5.1
2013	23.8	10.2	5.2
2014	28.4	14.3	6.6
2015	28.2	16.2	7.7

- **What sort of change?**

It is perhaps for reasons such as these that Charlie Taylor, in the interim report of his Review of Youth Justice argued that the 'current youth custody system' was in need of 'fundamental change'.<sup>20</sup> The NAYJ welcomes this assessment<sup>21</sup> but is concerned that the report contains little recognition that the three types of institution which comprise the secure estate are radically different from each other, in terms of size, staffing and ethos. There is abundant evidence that the experience of children within those establishments reflects those distinctions in profound ways.

YOIs bear a marked similarity to adult prisons and are generally based in premises that have, at some time in the past, fulfilled that function. They are considerably larger than other secure facilities for children, ranging in size from a capacity of well over 300 at Wetherby to 64 at Parc in Wales. (The latter, which is a children's facility located within a much larger adult prison<sup>22</sup>, is something of an anomaly being less than half the size of any other under 18 YOI.)

YOIs accommodate boys aged 15-17 years and typically have a staff-to-child ratio of 1 to 10. Meanwhile, STCs were initially established as private custodial facilities for younger children aged 10-14 years subject to secure training orders but, following the replacement of that sentence by the detention and training order from 2000 onwards, have taken a broader population. STCs currently accommodate children aged 12-17, including boys aged 15-17 who are deemed too vulnerable to be placed in YOIs. They are considerably smaller than YOIs, each holding between 78-80 children, and they have better staff to child ratios of around 3 to 8.

By contrast, SCHs are child care establishments that can accommodate children detained on welfare grounds, under section 25 of the Children Act 1989, as well those subject to custodial orders. They cater for children aged 10-17 who are assessed as being particularly vulnerable. SCHs are substantially smaller than other forms of provision: the largest has capacity for 42 children whilst none of the others accommodates more than 24. SCHs also enjoy, by some margin, the highest staff to child ratio, an average of one member of staff to every two children<sup>23</sup> who tend to receive higher (and more

20 Ministry of Justice (2016) *Review of the youth justice system: an interim report of emerging findings*. London: Ministry of Justice

21 NAYJ (2016) *Response to Review of the youth justice system: an interim report of emerging findings*. London: NAYJ available at: <http://thenayj.org.uk/wp-content/uploads/2016/04/2016-Response-to-the-interim-report-of-the-Taylor-Review-of-youth-justice-.pdf>

22 It might be noted that a failure to separate children's custodial facilities from adult prisons constitutes a breach of Article 37 of the UN Convention on the Rights of the Child

23 Children's Commissioner for England (2015) *Unlocking potential: a study of the isolation of children in custody in England*. London: Children's Commissioner

appropriate) levels of education and training.<sup>24</sup> Perhaps most importantly, SCHs are characterised by a child care rather than a custodial ethos.

These structural and cultural differences have a significant impact on the experience and treatment of children placed in each of the settings. The influence of size and staffing levels is clearly demonstrated in the annual survey, conducted by Her Majesty's Inspectorate of Prisons, of the views of children in YOIs and STCs which allows some comparison of the two. The data indicate that the experiences of children in the former type of establishment are considerably worse on a range of indicators, as shown in table 2.<sup>25</sup> To take one – obviously critically important – example, while fewer than a quarter of children in STCs reported having ever felt unsafe while in the establishment, the equivalent proportion for YOIs was one in three.

**Table 2**  
**Self-reported experiences of children in YOIs and STCs in 2014/15<sup>26</sup>**

Percentage of children reporting	YOI	STC
Having ever felt unsafe in the establishment	33%	24%
Currently feeling unsafe	13%	7%
Having a sentence or remand plan	41%	52%
Having a key worker/personal officer	73%	87%
That education inside will help me on release	65%	74%
That their key worker/personal officer helps them	63%	87%
That staff treat me with respect	70%	97%

There are no equivalent data for secure children's homes since these are not included in the survey<sup>27</sup> but, to the extent that size and staffing levels explain the differences between YOIs and STCs, it might be anticipated that children's experiences in SCHs would be better than in either of the larger forms of establishment. Some support for that expectation comes from research conducted for the Youth Justice Board in 2011. As shown in table 3, while almost two thirds (65%) of children in SCHs felt that, if they had to be in custody, the establishment they were currently in was the best place for them, less than one third of those in STCs (32%) or YOIs (28%) thought so.<sup>28</sup>

**Table 3**  
**Proportion of children reporting that their current placement was the best place for them (if they had to be in custody)**

Response	YOI	STC	SCH	Total
Yes	28%	32%	65%	30%
No	52%	50%	23%	51%
Not sure	19%	16%	12%	18%

Research by the Children's Commissioner for England provides further confirmation of the differential experiences of detained children depending on where they are placed.<sup>29</sup> The use of isolation, whereby children are separated from their peers and removed from the standard regime – sometimes for lengthy periods – tends to exacerbate existing emotional vulnerabilities and mental health difficulties by impairing the normal processes

24 Goldson, B. (1995) *A sense of security: curricula for the induction and training of staff in secure accommodation*. London: National Children's Bureau

25 Redmond, A (2015) *op cit*

26 Derived from Bateman, T (2016) 'Youth justice news', *Youth Justice* 16(2)

27 HM Inspectorate of Prisons has no remit for secure children's homes

28 Youth Justice Board (2011) *Developing the secure estate for children and young people in England and Wales: young people's consultation report*. London: Youth Justice Board

29 Children's Commissioner for England (2015) *op cit*

of social interaction. Isolating children has been likened to putting them in 'deep freeze'.<sup>30</sup> The Istanbul Statement on the use and effects of solitary confinement notes that solitary confinement is associated with symptoms ranging from insomnia and confusion to hallucinations and psychosis adding that:

'Negative health effects can occur after only a few days... [T]he central harmful feature of solitary confinement is that it reduces meaningful social contact to a level of social and psychological stimulus that many will experience as insufficient to maintain mental health and well-being'.<sup>31</sup>

The use of isolation is common across the children's secure estate and, on average, one in three children will experience it at some point during their detention. Moreover, those who might be considered particularly vulnerable are more likely to be isolated.

- Children with a recorded disability are two-thirds more likely to experience isolation
- Children in care are similarly two thirds more likely to be isolated
- Children assessed as a 'suicide risk' are almost 50% more likely to be separated from their peers
- Black and mixed race children are subject to isolation at three times the rate of their white peers.<sup>32</sup>

But the research also shows that the extent to which children experience isolation varies significantly by establishment type: over a seven month period, children in YOIs were likely to spend between eight and nine times longer separated from their peers than those in an SCH. Indeed, the true differential is likely to be considerably greater even than these figures suggest, since recording mechanisms in the latter form of establishment are more reliable. At the time the research was conducted, most YOIs only logged episodes of isolation that resulted in transfer to a dedicated care and separation unit; cellular confinement, which is a common practice, was frequently not formally recorded for these purposes.<sup>33</sup>

The researchers concluded that the more extensive use of isolation in YOIs was a function of a number of factors that included: size of the establishment and density (larger units are predictive of a higher rate of isolation); staffing ratios (lower staffing ratios encourage the use of segregation as a response to conflict); building geography (smaller establishments often have a physical layout that enables children to be separated where necessary without removing them from their normal timetable); institutional culture (institutions based on a custodial ethos are less likely to try to resolve issues in other ways and more likely to adopt a default response of physical segregation).<sup>34</sup>

It should be noted too that isolation is not a uniform experience. Within SCHs in particular, it frequently functions as a 'cooling off' mechanism which is ended at the earliest opportunity; by contrast in YOIs isolation is often associated with, and experienced by children as, punishment. This is reflected in the places where 'isolation' occurs: in YOIs, it usually results in children being confined to their cells or transferred to a care and separation unit whereas, in SCHs and STCs they are more likely to be placed in their bedrooms, and/or to spend time with staff in communal spaces or 'time out' areas. The researchers conclude that the environment in which children experience isolation was 'most appropriate in secure children's homes and least appropriate in young offender institutions'.<sup>35</sup>

30 Haney, C (2001) cited in Associate Development Solutions (2015) *Isolation and solitary confinement of children in the English youth justice secure estate*. Sheffield: Associated Development Solutions

31 The Istanbul Statement on the use and effects of solitary confinement, adopted on 9 December 2007 at the International Psychological Trauma Symposium, Istanbul.

32 Children's Commissioner for England (2015) *op cit*

33 Children's Commissioner for England (2015) *op cit*

34 Children's Commissioner for England (2015) *op cit*

35 *Ibid*

In the view of the NAYJ, such evidence provides a strong case for the abolition of YOIs at the earliest opportunity as being totally unsuited to meeting the needs of vulnerable children. The findings from the most recent inspections of these institutions confirm that assessment. As indicated in table 4, all of the YOIs in England were rated as being 'not sufficiently good' in terms of providing a safe environment; only Parc in Wales, which as noted above is anomalous by virtue of being considerably smaller than other institutions of its type, was considered to be 'reasonably good'.<sup>36</sup>

**Table 4**  
**HM Inspectorate of Prison's ratings of YOIs' performance in relation to safety**

Establishment	Assessed performance	Date inspection published
Cookham Wood	Not sufficiently good	September 2015
Feltham	Not sufficiently good	November 2015
Parc	Reasonably good	June 2016
Werrington	Not sufficiently good	March 2016
Wetherby	Not sufficiently good	July 2016

HM Chief Inspector of Prisons, in his annual report for 2015/16, notes that 'high levels of violence and staffing shortages meant time out of cells was poor and unpredictable for most boys'. At Wetherby and Werrington, just under one third of boys were locked in their cells during the core day when they should have been in education; the figures for Cookham Wood and Feltham were higher at 36% and 38% respectively. Many of these boys experienced 'very little time out of cell'.<sup>37</sup>

STCs, because of their smaller size, enhanced levels of staffing and significantly better standard of accommodation and facilities, might have the potential to offer children a less damaging experience. In practice, however, it is clear that these establishments, while delivering better outcomes on some indicators than YOIs (as noted in table 2), fall well short of providing the minimum standards to which vulnerable children are entitled. In common with YOIs, but unlike SCHs, STCs use a system of physical restraint - Minimising and Managing Physical Restraint (MMPR) - that permits the deliberate infliction of pain on children. The Howard League suggests that, as the level of restraints has escalated in recent years, so too has the use of pain inducing holds.<sup>38</sup>

But the problematic nature of STC provision is not limited to the use of MMPR. As noted in table 5, in the most recent round of inspections, none of the three STCs has demonstrated their care of children to be 'good'.<sup>39</sup>

**Table 5**  
**Ofsted/HM Inspectorate of Prison's ratings of STCs' performance against indicators of safety and care of young people**

Establishment	The safety of young people	The care of young people	Date inspection published
Medway	Inadequate	Inadequate	August 2016
Oakhill	Good	Requires improvement	March 2016
Rainsbrook	Requires improvement	Requires improvement	May 2016

<sup>36</sup> YOI inspection reports are available on HM Inspectorate of Prisons website at: <https://www.justiceinspectorates.gov.uk/hmiprison/inspections/>

<sup>37</sup> HM Chief Inspector of Prisons (2016) *Annual report 2015/16*. London: HM Inspectorate of Prisons

<sup>38</sup> Howard League for Penal Reform (2016) *The Carlile Inquiry ten years on: the use of restraint, solitary confinement and strip searching on children*. London: Howard League

<sup>39</sup> STC inspection reports are available on HM Inspectorate of Prisons website at: [https://www.justiceinspectorates.gov.uk/hmiprison/inspections/?post\\_type=inspection&s&prison-inspection-type=secure-training-centre-inspections](https://www.justiceinspectorates.gov.uk/hmiprison/inspections/?post_type=inspection&s&prison-inspection-type=secure-training-centre-inspections)

The inspection of Medway took place five months after a BBC investigation, aired as a Panorama programme in January 2016, showed significant maltreatment of children by staff at the centre. A team of inspectors from Ofsted and HM Inspectorate of Prisons visited Medway shortly after the programme was broadcast and recorded ongoing 'significant concerns'.<sup>40</sup> They concluded that staff other than those involved in the assaults 'must have been aware of unacceptable behaviour at the centre' and were concerned that it had nonetheless gone 'unreported to senior managers or external agencies'.<sup>41</sup> In response to the programme, the government established an Independent Improvement Board whose remit extended to consideration of the situation in all of the STCs. The Board's report noted that the culture within STCs prioritised 'control and contract compliance over rehabilitation' and 'too little emphasis was given to safeguarding'. This was contrasted with the ethos in SCHs which was characterised as being 'driven by moral purpose' and focused on creating a 'nurturing, family atmosphere'.<sup>42</sup>

Nor are these concerns new ones. Lord Carlile's independent inquiry into the treatment of children in custody published a decade ago was launched in the wake of the death of two children in Secure Training Centres, including 15-year-old Gareth Myatt who died while being restrained by staff at Rainsbrook. The inquiry received evidence that within STCs physical restraint was routinely used to secure compliance and there was an extensive use of handcuffs.<sup>43</sup>

## • The way forward

Charlie Taylor's interim report proposes that much existing custodial provision should be supplanted by a network of 'secure schools' that would be smaller than YOIs and have a greater focus on education.<sup>44</sup> At the time of writing, few concrete details of what is envisaged for these new establishments have emerged, but the NAYJ welcomes the ambition of the proposal for the rapid replacement of YOIs and STCs by alternative forms of provision. However, it is not convinced that the development of secure schools is necessarily the most appropriate mechanism for so doing. The Association considers that, given the backgrounds of the children in detention, a model based on the premise of placement in a secure child care establishment offering high quality education (as opposed to a school in a locked setting) would better reflect the complex realities of the children's lives and would reinforce the importance of long term healthy development alongside education. While it is true that many children in custody have been out of education for some time prior to their incarceration, and that educational achievement is vital for their longer term prospects, this cuts both ways. Previous negative experiences of schooling, compounded by a broad gamut of other vulnerabilities, means that in order to engage children successfully in education it will first be necessary to ensure that they are 'education ready'. This points to the delivery of high quality care, emotional support and, where necessary, treatment as priorities.<sup>45</sup>

Developing custodial provision as schools would also have implications for the way that such establishments are inspected. The interim report indicates that the new facilities would be regarded as equivalent to residential schools for these purposes. Given previous experience, the NAYJ considers that the importance of minimising the potential for maltreatment of children in any form of detention, through monitoring and inspection, cannot be underestimated and inspectors of custodial facilities accordingly

40 HM Chief Inspector of Prisons (2016) *Advice note to the Secretary of State for Justice on Medway secure training centre*. London: HM Inspectorate of Prisons

41 HM Chief Inspector of Prisons (2016) *Annual report 2015/16*. London: HM Inspectorate of Prisons

42 Medway Improvement Board (2016) *Final report of the Board's advice to Secretary of State for Justice*. London: Medway Improvement Board

43 Lord Alex Carlile (2006) *An independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children's homes*. London: Howard League for Penal Reform

44 Ministry of Justice (2016) *Review of the youth justice system: an interim report of emerging findings*. London: Ministry of Justice

45 Bateman, T, Hazel, N and Wright, S (2013) *Resettlement of young people leaving custody: lessons from the literature*. London: Beyond Youth Custody

require considerable expertise in this area of work rather than proficiency in inspecting educational provision.<sup>46</sup>

As outlined above, the size of secure establishments in which children are detained is also a critical consideration. Speaking at the annual conference of the Association of Directors of Children's Services, Charlie Taylor indicated that secure schools would have 'around 60 to 80 places', scarcely any smaller than existing STCs.<sup>47</sup> The performance of these establishments, summarised above, clearly suggests that such a capacity is too large for dealing with the complexity of the needs exhibited by the child custodial population. The effectiveness of SCHs in dealing with this group suggests that custodial provision should offer placements for no more than 30 children. It might be countered that secure schools would differ from STCs in their focus on educational outcomes but the original remit of the latter institutions included a clear focus on education and training. Conversely, achieving significant progress in educational outcomes does not require a school setting as the success of the SCH sector against this measure attests.<sup>48</sup>

Finally, in this context, one has to consider the geographical location of effective custodial provision. Taylor's interim report rightly notes the importance of aligning youth justice arrangements with other children's services. The centrality of local authorities in safeguarding and other children's services means they are ideally placed to provide secure facilities of a kind and on a scale to respond to local need - although economies of scale are likely to require consortia arrangements.

SCHs are already integrated into local authority provision in the required manner. Secure schools, which it appears would probably be developed on a 'free school' model, would by contrast be divorced from those local structures that facilitate easy alignment, potentially undermining high quality resettlement provision and inhibiting the movement of children from secure to non-secure provision at the earliest opportunity. The logical response, in light of these considerations, would be for the abolition of the YOIs and STCs to be achieved through an expansion in the SCH sector, rather than the creation of a new model of child imprisonment.

It should be acknowledged that the considerable reduction in the average size of custodial establishments that a wholesale shift to SCH provision would entail has short-term resource implications. However, it is also important to recognise that over the longer term, child-appropriate provision for the relatively small but extremely vulnerable population subject to custody is likely to generate significant savings through improved rehabilitation, reintegration and resettlement. But the sums involved in any event are scarcely prohibitive. The average per annum cost of a placement in an SCH is roughly £200,000, so that the entire existing custodial population could be accommodated in secure children's homes for around £174 million. During 2015/16, the Youth Justice Board's expenditure on the provision of custodial placements was £136.9 million.<sup>49</sup> The replacement of YOIs and STCs by SCHs could accordingly be achieved through a modest budgetary expansion of £37.1 million. Moreover, this increased figure is still 57% below the £316 million allocated for the provision of custodial accommodation in 2009/10.<sup>50</sup> Given the current state of youth custody, and the potential longer term benefits, the NAYJ considers that this is a price worth paying.

Moreover, at least some of this budgetary expansion could be offset through effecting further reductions in the use of child imprisonment - a laudable, evidence-based, goal in its own right. It is not unrealistic to suppose that considerable further progress can be made in this regard.

<sup>46</sup> NAYJ (2016) *op cit*

<sup>47</sup> Puffet, N (2016) 'ADCS Conference: youth justice review to call for greater integration with social care', *Children and Young People Now*, 8 July 2016.

<sup>48</sup> Justice Studio (2014) 'They helped me, they supported me'. *Achieving outcomes and value for money in secure children's homes*. London: Justice Studio

<sup>49</sup> Youth Justice Board (2016) *Annual report and accounts 2015/16*. London: Youth Justice Board

<sup>50</sup> Youth Justice Board (2009) *Corporate and Business Plan 2009/10*. London: Youth Justice Board

More than one third of children currently deprived of their liberty are in custody for crimes that are not sexual or violent in nature.<sup>51</sup> The NAYJ has previously argued that this points to limitations of the current custodial threshold for children and to the need for legislative reform.<sup>52</sup> The existing sentencing framework is, in large part, the same as that which applies to adults and it allows - and in some circumstances encourages - the imposition of a custodial sentence for relatively minor, persistent, property offending and for breach of community orders imposed for behaviour that did not warrant custody in the first instance. Levels of detention show also considerable geographic variation: table 6 indicates that in Islington, during 2014/15, 2.9 children per 1,000 in the 10-17 population were incarcerated; in the same year, three youth offending team areas recorded no custodial sentences at all.<sup>53</sup> While the extent and nature of crime varies from one area to another, it seems intuitively implausible that such extreme variation simply reflects patterns of youth offending and suggests that there is considerable scope for further reductions in child imprisonment by aligning outcomes in areas with a higher use of custody to those where deprivation of liberty is low.<sup>54</sup>

**Table 6**  
**Rates of custodial sentencing per 1,000 10-17 population by region and by highest and lowest rates of custody in each region: 2014/15**

Region/country	Rate of custody per 1,000 children	Highest user of custody in region	Rate of custody per 1,000 children	Lowest user of custody in region	Rate of custody per 1,000 children
East Midlands	0.35	Derby	1.1	Leicestershire	0.14
Eastern	0.43	Southend	1.38	Cambridgeshire	0.16
London	0.73	Islington	2.19	Sutton	0
North East	0.50	Newcastle	0.73	Northumberland	0.15
		Stockton on Tees	0.73		
North West	0.68	Bury/Rochdale	1.56	Cheshire East	0.09
South East	0.24	Isle of Wight	1.09	Oxfordshire	0.02
South West	0.18	North Somerset	0.81	Bath/NE Somerset	0
Wales	0.41	Newport	1.59	Ceredigion	0
				Powys	0
West Midlands	0.51	Coventry	1.03	Warwickshire	0.1
Yorkshire	0.52	Leeds	0.97	North Yorkshire	0.26
				York	0.26
England and Wales	0.35				

Ensuring that custody is only used as a last resort, in accordance with the UN Convention on the Rights of the Child, accordingly requires a considerable tightening of the circumstances in which a child can be imprisoned.<sup>55</sup> The NAYJ considers that there should be a statutory presumption of a community based response to children's offending and that deprivation of liberty should only be permitted in cases:

51 Ministry of Justice/Youth Justice Board (2016) *op cit*

52 NAYJ (2016) *op cit*

53 Ministry of Justice/Youth Justice Board (2016) *op cit*

54 Bateman, T and Stanley, C (2002) *Patterns of sentencing: differential sentencing across England and Wales* London: Youth Justice Board

55 NAYJ (2016) *op cit*

- That involve serious violent or sexual offending;
- Where the child poses a serious immediate risk of harm to the public;
- Non-custodial options have been fully explored;

and

- Clear reasons are given in open court why such alternatives are not adequate to protect the public from serious harm from the child.

The custodial population is a function not just of the number of children deprived of their liberty, but also of how long they remain in detention. In the Crown court, the two-year upper limit that pertains in the youth court ceases to apply and children tried in the former are liable to the same maximum custodial sentences as adults convicted of the same offence. As a consequence, children in England and Wales routinely receive lengthy sentences that would not be available in other jurisdictions: 29 European states have opted for an upper limit of 15 years, most Eastern European jurisdictions have a limit of ten years, and in Switzerland, the maximum permissible period of imprisonment of a child is four years.<sup>56</sup> The NAYJ has previously argued that a maximum of ten years imprisonment would be adequate to accommodate any offence committed by a child below the age of 18 years.<sup>57</sup>

Currently, the Crown court provisions described in the previous paragraph extend to life imprisonment where such a sentence is available for adults - despite the UN Committee on the Rights of the Child having recommended that states 'abolish all forms of life imprisonment for offences committed by persons under the age of 18'.<sup>58</sup> Moreover, detention at Her Majesty's pleasure - in effect a life sentence - is the mandatory penalty in England and Wales where a child is convicted of murder. Only two jurisdictions in Europe outside of the UK permit life imprisonment for offending as a child. In Cyprus there is no evidence of the power having been used; in France just two children (both boys) have been subject to life imprisonment in the past 25 years.<sup>59</sup> By contrast, in England and Wales between 10 and 25 children are given mandatory life sentences per annum.<sup>60</sup> The introduction of child-specific maxima and the abolition of life imprisonment for offences committed below the age of 18 years, would lead to further falls in the number of children in custody at any one time and would facilitate the redeployment of resources necessary to ensure that children who remain in detention are accommodated in appropriate facilities.

The NAYJ is also concerned that the arrangements for children incarcerated for shorter periods are unnecessarily and unhelpfully inflexible. Release typically occurs at a designated point of the sentence as a matter of course so that children may continue to be detained for considerable periods irrespective of their progress or whether they still pose a risk to the public. Recent research by Hart shows how a more flexible approach is frequently deployed in other jurisdictions.<sup>61</sup> The NAYJ has previously proposed the introduction of a less rigid approach, predicated on moving children to non-secure accommodation as soon as they no longer pose a serious immediate risk of harm to the public.<sup>62</sup> Such a proposal has clear financial advantages, again enhancing the prospect that the child custodial population could all be accommodated within the SCH sector. It would also provide tangible incentives for children to engage with programmes of rehabilitation within the custodial environment and would offer improved opportunities for effective resettlement that promote children's longer term healthy development.<sup>63</sup>

<sup>56</sup> Children's Rights International Network (2015) *Inhuman sentencing: life imprisonment of children around the world*. London: CRIN

<sup>57</sup> NAYJ (2016) *op cit*

<sup>58</sup> UN Committee on the Rights of the Child (2007) *General Comment no. 10 (2007) - Children's rights in juvenile justice*. Geneva: UN Committee on the Rights of the Child

<sup>59</sup> Children's Rights International Network (2015) *op cit*

<sup>60</sup> Bateman, T (2015) 'Youth justice news', *Youth Justice* 15(3): 294 -305

<sup>61</sup> Hart, D (2015) *Correction or care? The use of custody for children in trouble*. London: Churchill Memorial Trust

<sup>62</sup> NAYJ (2016) *op cit*

<sup>63</sup> See for instance, Pettersson, T (forthcoming) *Young offenders and open custody*. Abingdon: Routledge and Bateman, T, Hazel, N and Wright, S (2013) *op cit*

## • Conclusion

The youth custodial estate in England and Wales is in a state of crisis. Addressing the root causes of that crisis requires radical, and urgent, action. YOIs and STCs have repeatedly shown themselves to be incapable of caring for vulnerable children, especially those whose behaviour might often be challenging. They should therefore be abolished forthwith. Conversely, the performance of SCHs, at their best, demonstrates that a model of secure accommodation based on a child care ethos can provide a safe environment that has the potential to minimise the damage caused by custody while preparing children for a positive future on release. In short, the solution to the current crisis is not a 'reinvention of the wheel' - as the 'secure school' model implies - but simply the provision of adequate funding for the best existing secure provision. Legislative, and other, changes to ensure that child imprisonment is genuinely used as a last resort and for the shortest possible period, could make an important contribution to securing such funding.