

## **NSPCC Response to the Secure College Rules Consultation**

**December 2013**

### **The National Society for the Prevention of Cruelty to Children**

The National Society for the Prevention of Cruelty to Children (NSPCC) is the UK's leading charity specialising in child protection and the prevention of cruelty to children.

The NSPCC aims to end cruelty to children in the UK over future generations. In pursuit of our vision we will:

- Create and deliver services for children which are innovative, distinctive and demonstrate how to enhance child protection most effectively;
- Provide advice and support to ensure that every child is listened to and protected;
- Provide advice and support to adults and professionals concerned about a child and if necessary take action to protect the child;
- Work with organisations which work with children to ensure they effectively protect children and challenge those who do not;
- Campaign for changes to legislation, policy and practice to ensure they best protect children;
- Persuade everyone to take personal responsibility for preventing cruelty to children;
- Inform and educate the public to change attitudes and behaviours towards children;
- Use our statutory powers as necessary to protect children.

## **Purpose and Ethos (Question 1)**

Children and young people in custody are among the most vulnerable in society and many have experienced violence or abuse prior to entering detention. Any form of secure estate must first and foremost recognise the particular needs of those children and place her or his welfare at the centre of its design.

Of those children in our secure estate: 80 per cent have experienced five or more factors of disadvantage<sup>1</sup>; 50% have had substantial involvement with social services; 25% have suffered violence at home; 31% suffer from a mental health disorder; and 88% have been excluded from school<sup>2</sup>.

Accompanying those aggregate statistics that describe children's experience before entering prison, a picture of their current lived experience illustrates some of the challenges of life in custody as a child. Between April 2012 and March 2013, 5,200 young people detained in young offender institutions (YOIs) contacted ChildLine, an anonymous counselling service for children. Of these contacts, major themes included suicidal feelings, experience of bullying and anger management issues, as illustrated by the following examples:

- I feel angry and frustrated and I can't sleep. I get really paranoid in here and feel angry all the time. Sometimes I feel like I just want to sleep forever so I don't have to wake up again in here.
- I'm really upset and have been cutting. Things aren't easy for me at the moment because I am so lonely and miss my family. I hate it in here and I hate the people; it makes me want to kill myself.
- I don't feel safe outside my cell. I'm getting threatened shouted at me all the time and getting ganged up on. I have self-harmed and feel depressed and unsafe.
- I am getting bullied by these guys in my ward. Sometimes they touch me in the shower and it makes me feel disgusting. I have made some complaints about it but I don't feel like anyone is taking me seriously.
- I am being bullied and threatened by another cell mate. I can't even eat anything because I'm so scared of him that it makes me feel sick. I haven't told my social worker or any of the officers because I am worried it will make things worse and I don't trust them either.
- I've been feeling down and upset and I'm getting more angry than usual. I have been hitting people and breaking things. People have promised me support to help me deal with my anger but still nothing has happened.

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<sup>1</sup> Jacobson J et al (2010) Punishing Disadvantage: a profile of children in custody, London: Prison Reform Trust

<sup>2</sup> Howard League For Penal Reform (2010) Life Inside: Accessed on 27/08/14  
[https://d19yipo4aovc7m.cloudfront.net/fileadmin/howard\\_league/user/pdf/Publications/Life\\_Inside\\_2010.pdf](https://d19yipo4aovc7m.cloudfront.net/fileadmin/howard_league/user/pdf/Publications/Life_Inside_2010.pdf)

- I'm on segregation at the moment and I'm so bored and angry. I keep getting into fights but I can't seem to avoid them because people keep bad mouthing me. I feel like I can't just walk away from confrontation because then everyone will think I'm weak.

The picture presented above is not congruent with the skills-deficit ethos set out in the proposed purpose and ethos of the Rules, which aims to provide the children it cares for with “the skills they need to stop offending and become law-abiding members of society”.

Instead, when children come into conflict with the law, the response of the secure estate must take into account the holistic set of circumstances which led to their incarceration and provide a positive and supportive approach to address their behaviour and any associated underlying negative life-experiences. While education is an important part of this approach, the wider welfare needs of the child are not adequately reflected in the current wording of the proposed Rules.

### **Cohorts of young offenders, including girls (Questions 2 & 45)**

It will be unsafe, inappropriate and potentially damaging to hold girls and under-15s with so many older boys. Last year, girls made up 5% of the custody population and under-15s made up 4%.<sup>3</sup> Children in such small minorities may feel isolated and vulnerable. Girls in custody have a high rate of experience of sexual abuse and placing them in such an environment is likely to be re-traumatising.<sup>4</sup> Large custodial institutions for young offenders have been shown to perpetuate hyper-masculine cultures and behaviours<sup>5</sup>. This is likely to be replicated in larger, secure colleges, and would further add to barriers against their rehabilitation. Evidence suggests that girls' recovery from sexual abuse is reliant on them feeling supported and safe.<sup>6</sup> The secure estate must actively work to address the implications of abuse against girls, not risk aggravating it further.

On this basis, we continue to argue that girls and under-15 should not be kept in the secure college. However, should this argument be lost in Parliament, on those same grounds as above, the imperative to focus on the welfare of those children is all the more important.

The proposed Rules specify only the need for “separate accommodation”. This provision does not account for the existence and impact of the overall culture of institution and the potential impact, as described above. Should girls and children and under-15s be kept in the same institution, we are strongly of the view that more prescriptive Rules are required to reflect and recognise the particular needs of these children and young people and ensure their safety. For example, a recent review of related research found that: “Generic services should be strengthened by providing treatment and care that is sensitive to girls' experiences, styles of communication, need for empowering relationships, and common presenting problems ... the research suggests that this alternative may produce the best

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<sup>3</sup> Ministry of Justice, Youth custody report: August 2014.

<https://www.gov.uk/government/statistics/youth-custody-data>

<sup>4</sup> See “I think I must have been born bad”, 2011, the Office of the Children's Commissioner.

[http://www.childrenscommissioner.gov.uk/content/publications/content\\_503](http://www.childrenscommissioner.gov.uk/content/publications/content_503)

<sup>5</sup> Phillips, Coretta (2012) The multicultural prison: ethnicity, masculinity, and social relations among prisoners Clarendon studies in criminology. Oxford University Press, Oxford, UK.

<sup>6</sup> Allnock, D and Hynes, P (2011) Therapeutic Services for Sexually abused children and young people Scoping the Evidence Base. NSPCC.

results, especially for girls with histories of physical or sexual abuse. Gender-specific programmes aimed at reducing reoffending in girls have shown positive effects on other outcomes such as education, employment, relationships with family and friends, self-esteem, self-efficacy and other social-psychological outcomes<sup>7</sup>.

### **Staffing, learning assessment, and healthcare assessment (Questions 6, 8 & 9)**

All professionals working with children should have the skills and knowledge required to effectively safeguard those in their care. The proposed Rules do not adequately ensure that all staff will be able to fulfil this commitment.

The proposed Rules in relation to staffing set an aspiration for Secure Colleges to model their approach on that of school Academies and anticipate that staff will not be required to hold Qualified Teacher Status. This means that staff may be employed who will not necessarily have any prior training or experience of safeguarding. While all staff in Secure Colleges will be subject to the safeguarding requirements set out in Working Together 2013, which stipulate that they should “be given a mandatory induction, which includes familiarisation with child protection responsibilities” the level of safeguarding knowledge of those who do not hold QTS will be comparatively severely impaired and they may have little or no experience of safeguarding in practice. It is also not clear whether or how those staff will be bound by professional standards. This is particularly concerning when working with young people who are likely to present complex vulnerabilities and, recognising this, far greater clarity is required over the approach required for safeguarding. For example, the Government’s Keeping Children Safe in Education guidance signposts its readers to resources provided by the NSPCC. We also present other specific features of safeguarding knowledge that are particular to the vulnerable cohort of children who will be placed in Secure Colleges below.

The proposed Rules state that all custodial staff working in secure colleges must have undergone training approved by the Secretary of State. It is unclear what this will involve. In addition to basic safeguarding knowledge, it is essential that any training must provide staff with a fundamental understanding of the way in which the child’s experiences will have affected them and the subsequent impact on their conduct, relationship with others and ability to engage with education.

As set out in response to question one, children in the secure estate have experienced a disproportionate level of disadvantage in their lives. A high proportion of those in the system will have learning difficulties, underdeveloped attachment and mental health problems as a result of this disadvantage<sup>8</sup>. While the proposed Rules provide expectations that operators should “provide a flexible curriculum which can be tailored to learners of all abilities, including those with Special Educational Needs and Disabilities”, this does not adequately recognise the specific needs of this cohort of children and the safeguarding issues these introduce.

An approach that recognises and responds to the wide range of needs of these children is

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<sup>7</sup> McNeish and Scott, 2014, Women and girls at risk Evidence across the life course, DMSS Research

<sup>8</sup> Jacobson J et al (2010) Punishing Disadvantage: a profile of children in custody, London: Prison Reform Trust

important to improve their levels of educational attainment and achieve the overarching aims set out by the Government for Secure Colleges. Supporting this aim, but more fundamentally, staff must also have the skills to respond to these needs so that all children are appropriately safeguarded. This is applicable to each child's specific needs but also to ensure they are protected from the potentially more volatile behaviour of those around them, recognising for example, the high level of communication problems identified among young offenders<sup>9</sup>.

The Rules must ensure that staff training should be underpinned and rooted in the principles that:

- children in custody are children first and foremost;
- staff have a duty of care and responsibility to balance the best interests of the individual child and the safety and the wellbeing of others in the establishment.

Furthermore, recognising the particular disadvantages and backgrounds of young offenders, the Rules must ensure that training includes elements such as an understanding of child development and how it is affected by life experiences; an understanding of the limitations of children's cognitive abilities, including their ability to hear, interpret and act upon information given; attachment theory; mental health and conduct problems, learning disability, and speech and language disability awareness.

Further requirements of the training given should be included in the Rules, based on the above principles, including reference to minimum frequency. Failing that, a separate consultation on staff training requirement must be conducted.

### **Use of force and restraint (Questions 33-37)**

The NSPCC accepts that it is sometimes necessary to use appropriate physical restraint on children in custody. However, we consider that physical restraint of children should only ever be used as a measure of last resort and for transparent, narrowly defined purposes set by regulations. Restraint should only be permissible where necessary to prevent significant physical injury to the child or another person.

We consider that there are no circumstances that warrant the use of pain or distraction techniques on children. Furthermore, while restraint may be used in custodial settings for the purpose of safety, it must not be used as a form of behaviour management. Many children in custody have experienced violence or abuse prior to entering detention. Being restrained can not only make these previous experiences more vivid and it can also encourage the child in question to react violently in response.

The consultation begins by stating that the use of force should be "a last resort, respecting the young person's dignity and physical integrity, and must never be used as punishment". However, the detail that follows serves to undermine this aim. There are a number of ways in which this is the case:

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<sup>9</sup> [http://www.rcslt.org/about/young\\_offenders\\_and\\_criminal\\_justice/registered\\_intermediaries](http://www.rcslt.org/about/young_offenders_and_criminal_justice/registered_intermediaries)

1. the general complexity of the guidance and subsequent risk associated with this
2. the inclusion of the use of force, alongside restraint, and the associated the lack of specificity over the form that force may take and the occasions in which it is applicable;
3. the lack of a definitive position relating to the use of approved restraint techniques
4. the wide application of 'safe and stable environment'

Firstly, the Rules on the use of force and restraint are both complex and unclear. The use of force must be clear and comprehensible if force is to be used legally and proportionately. This is illustrated by the 2008 Court of Appeal judgement on the use of force in secure training centres (STCs) which found that confusion over when force could be used had led to the widespread illegal use of restraint.<sup>10</sup> Simplicity and clarity are key if custody officers, faced with explosive situations, are to know which techniques can safely and legally be applied. The proposed Rules on force and restraint may lead to the widespread use of dangerous and illegal restraint.

Given that most restraint occurs in urgent situations, there are far too many factors for custody officers to consider in order to ensure the force they use is safe and legal. One clear and independently assessed system of restraint, applicable to all situations, is required.

Second, setting aside from the general complexity of the force / restraint system, there are two key concerns with the mode of force stipulated within the proposed Rules. Primarily, the proposed Rules state that the application of force should be applied, "as far as reasonably practicable", through an approved restraint technique; in this case Managing and Minimising Physical Restraint (MMPR). This phrase is open to wide interpretation and also provides no limitation over the type of force that might be applied. By comparison, MMPR has a medical risk assessment to minimise risk and a reporting mechanism for warning signs of distress. Allowing another, seemingly entirely unspecified and unregulated, system of restraint is dangerous and unnecessary. It should be removed from the Rules.

Building on this issue, the proposed Rules define one of the circumstances in which this unregulated level of force may be applied as "preventing damage to property". This justification effectively prioritises the condition of an inanimate object over the wellbeing of a child. We strongly disagree with this prioritisation and reassert that the only conditions under which any form of restraint (or force) should be applied to a child are in order to prevent significant physical injury to the child or another child.

Third, we are concerned about the form of governance in place within the proposed Rules to ensure that a transparent method of restraint – currently MMPR – is maintained. The proposed Rules call only for "methods approved by the Secretary of State (i.e. MMPR)". It is unclear what governance or oversight is in place to manage any future changes to those methods, either through adaptations to MMPR and a complete change in approach. The proposed Rules would thus allow for different restraint methods to replace MMPR without consultation or assessment. For example, the proposed Rules supply a list of principles that currently apply to restraint, extracted from MMPR, but explicitly states that "we do not

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<sup>10</sup> R (on the application of C) (a minor) v Secretary of State for Justice [2008] EWCA Civ 882

propose that all of the above principles will be set out in the Rules". We believe any restraint methods introduced to replace MMR in secure colleges must be independently assessed. The Rules should specify this by requiring the system of restraint "approved by the Secretary of State" to be independently assessed

Finally, neither the use of force or restraint should be employed to maintain good order and discipline (GOAD). The qualification of GOAD as the provision of a "safe and stable environment" introduces a wide potential interpretation of the circumstances in which this may be applicable. In particular, the term "stable" is particularly subjective and does not directly adhere to the provision of a safe environment. Thus any form of force or restraint is not appropriate in these circumstances.

### **Addendum**

As currently drafted, the Secure College Rules place children's lives in danger. In particular, it is imperative that the rules governing the use of force are clarified and any sanctioning of unauthorised restraint techniques must be removed. The NSPCC would welcome the opportunity to discuss the concerns and proposed changes presented within this consultation response, alongside key stakeholders from the youth justice community, in order to promote the best possible outcomes for the vulnerable children who will resident in Secure Colleges.