



RIGHTS BEHIND BARS

Human rights of children
deprived of liberty; improving
monitoring mechanisms

the **Howard League** for **Penal Reform**

Children's Rights Behind Bars

*Human rights of children deprived of liberty:
improving monitoring mechanisms*

July 2014

the **Howard League** for **Penal Reform**

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1. Introduction

About the Howard League for Penal Reform

Founded in 1866, the Howard League is the oldest penal reform charity in the UK. The Howard League has almost 10,000 members, including prisoners and their families, lawyers, criminal justice professionals and academics. The Howard League has consultative status with both the United Nations and the Council of Europe. It is an independent charity and accepts no grant funding from the UK government.

Status on the children's rights behind bars project

The Howard League is not a formal partner in the Defence for Children International's project on children's rights behind bars. The Howard League has expertise in the youth justice system in England and Wales and has provided an assessment of the documentary evidence, in line with the requirements of for the national report, relevant to our expertise.

The Howard League has completed this work free of charge.

Children's rights

Children's rights are not the same thing as welfare or treatment. Of course children should be safe and protected but there is an important difference between human rights and humane treatment. Just because a child behind bars is given a hot meal it does not mean that their rights are being respected or implemented.

When children are in the care of the state, respecting and encouraging children to have a say, exert some control over their lives and participate, just as they would within a family, is how children's rights are realised. The complaints systems in prisons are an important indication of how, or indeed if, children's rights are perceived and given appropriate respect.

2. UK ratification status of treaties/conventions

	Signature date	Ratification date
United Nations Convention on the Rights of the Child (UNCRC)	19 April 1990	16 December 1991
United Nations Convention Against Torture (UNCAT)	15 March 1985	8 December 1988
Optional Protocol to the Convention Against Torture (OPCAT)	26 June 2003	10 December 2003
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)	26 November 1987	24 June 1988

3. International recommendations

Recommendations relating to monitoring of places of detention of children and complaint mechanisms.

UN Committee on the Rights of the Child

***'Forty-ninth session: consideration of reports submitted by states parties under article 44 of the convention: concluding observations'*¹**

Independent monitoring (page 4-5)

"The Committee welcomes the establishment of independent Children's Commissioners in all four component societies of the United Kingdom and the numerous initiatives they have taken for the promotion and protection of child rights, but is concerned that their independence and powers are limited and that they are not established in full compliance with the Paris Principles.

"The Committee recommends that the State party ensure that all four established Commissioners be independent, in compliance with the Paris Principles and mandated, inter alia, to receive and investigate complaints from or on behalf of children concerning violations of their rights. These bodies should be equipped with the necessary human and financial resources in order to carry out their mandate in an effective and coordinated manner so that the rights of all children in all parts of the State party are safeguarded. In this regard, the Committee draws the attention of the State party to its general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child."

Cruel, inhuman or degrading treatment or punishment (page 9)

"The Committee notes that the State party has reviewed the use of physical restraint and solitary confinement to ensure that these measures are not used unless absolutely necessary and as a measure of last resort. However, the Committee remains concerned at the fact that, in practice, physical restraint on children is still used in places of deprivation of liberty.

"The Committee urges the State party to ensure that restraint against children is used only as a last resort and exclusively to prevent harm to the child or others and that all methods of physical restraint for disciplinary purposes be abolished."

Administration of juvenile justice (pages 19-20)

"The Committee recommends that the State party fully implement international standards of juvenile justice, in particular articles 37, 39 and 40 of the Convention, as well as general comment No. 10 on "Children's rights in juvenile justice" the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("the Beijing Rules"), the United Nations Guidelines for the Prevention of Juvenile Delinquency ("the Riyadh Guidelines") and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty ("the Havana Rules"). It also recommends that the State party:

(a) Raise the minimum age of criminal responsibility in accordance with the Committee's general comment No. 10, and notably its paragraphs 32 and 33;

¹ <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

(b) Develop a broad range of alternative measures to detention for children in conflict with the law; and establish the principle that detention should be used as a measure of last resort and for the shortest period of time as a statutory principle;

(c) Children in conflict with the law are always dealt with within the juvenile justice system and never tried as adults in ordinary courts, irrespective of the gravity of the crime they are charged with;

(d) Following the welcome withdrawal of its reservation to article 37(c) of the Convention, ensure that, unless in his or her best interests, every child deprived of liberty is separated from adults in all places of deprivation of liberty.”

‘Thirty-first session: consideration of reports submitted by states parties under article 44 of the convention: concluding observations’²

Reservations and declarations (pages 2-3)

“While welcoming the State party’s withdrawal of its reservations made to article 37(d) and to article 32, the Committee remains concerned that the State party does not intend to withdraw its wide-ranging reservation on immigration and citizenship, which is against the object and purpose of the Convention. In addition the Committee is concerned that the State party is not in a position to withdraw its reservation to article 37 (c) due to the fact that children are still detained with adults in the State party. In that regard, the Committee is concerned that, while the State party has made efforts to reduce the numbers of children detained with adults, it appears that only resource considerations now prevent the withdrawal of the reservation.

“The Committee in line with its previous recommendation (ibid., paras. 22 & 29), and in light of the Vienna Declaration and Programme of Action (1993), recommends the State party to take all necessary measures to end the detention of children in the same facilities as adults and to withdraw its reservation to article 37(c) The Committee furthermore recommends that the State party reconsider its reservation to article 22 with a view to withdraw it. (given the State party’s observation that this reservation is formally not necessary because the State party’s law is in accordance with article 22 of the Convention).”

Independent monitoring structures (page 4)

“The Committee welcomes the establishment of an independent Children’s Commissioner in Wales but is concerned at the limited powers of this Commissioner, in particular in relation to non-devolved matters. The Committee welcomes the plans for the establishment of an independent human rights institution for children in Northern Ireland and in Scotland. The Committee is however deeply concerned that the State party has not yet established an independent human rights institution for children in England.

“The Committee, in line with its previous recommendation (ibid, para. 23) recommends that the State party:

a) establish independent human rights institutions with broad mandate and appropriate powers and resources all across the State party and at the national level, in accordance with the Paris Principles (General Assembly resolution 48/134), to monitor protect and promote all the rights of the Convention for all children. They should be easily accessible to children; able to determine their own agenda; empowered to investigate violations of children’s rights in a child-sensitive manner; and ensure that children have an effective remedy for violation of their rights;

² https://www.essex.ac.uk/armedcon/story_id/000020.pdf

- b) ensure that all the human rights institutions have formal advisory functions with the respective legislative bodies and that they establish formal links, including of cooperation, with each other;
- c) provide national human rights institutions with adequate resources and appropriate staff; and
- d) ensure that children and children's organisations are effectively involved in their establishment and activities."

Torture or other cruel, inhuman or degrading treatment (page 8)

"The Committee is particularly concerned at the recent figures according to which between April 2000 and February 2002, 296 children sustained injuries following restraints and control in prison. In addition, the Committee is concerned at the frequent use of physical restraint in residential institutions and in custody as well as at the placement of children in juvenile detention and in solitary confinement in prisons.

The Committee urges the State party to review the use of restraint and solitary confinement in custody, education, health and welfare institutions throughout the State party to ensure compliance with the Convention, in particular articles 37 and 25."

The administration of juvenile justice (page 15)

"The Committee welcomes the State party initiatives to introduce restorative justice and other constructive community based disposals for juvenile offenders; the almost complete inclusion of 17-year-olds in the juvenile justice system and the creation of multidisciplinary teams to respond to child offenders behaviours, but the Committee notes with serious concern that the situation of children in conflict with the law has worsened since the consideration of the initial report. The Committee is particularly concerned that the age at which children enter the criminal justice system is low with the age of criminal responsibility still set at 8 years in Scotland to 10 years in the rest of the State party and the abolition of the principle of doli incapax. The Committee welcomes the different approach reflected in the Children's Hearings in Scotland and the debate on including young people of 16 to 18 years of age in the Children's hearings. The Committee is particularly concerned that since the State party's initial report, children between 12 and 14 years of age are now being deprived of their liberty. More generally, the Committee is deeply concerned at the high increasing numbers of children in custody, at earlier ages for lesser offences, and for longer custodial sentences imposed by the recent increased court powers to give detention and training orders. Therefore, it is the concern of the Committee that deprivation of liberty is not being used only as a measure of last resort and for the shortest appropriate period of time, in violation of article 37 (b) of the convention. The Committee is also extremely concerned at the conditions that children experienced in detention and that children do not receive adequate protection or help in young offender's institutions (for 15- to 17-year-olds), noting the very poor staff-child ratio, high levels of violence, bullying, self-harm and suicide, the inadequate rehabilitative opportunities, the solitary confinement in inappropriate conditions for long time as a disciplinary measure or for protection, and the fact that girls and some boys in prisons are still not separated from adults.

In addition the Committee notes with concern that:

- a) the Crime and Disorder Act 1998 introduced in England and Wales measures that may violate the principles and provisions of the Convention;
- b) children can be tried in adult courts in certain circumstances;
- c) children in custody do not always have access to independent advocacy services and to basic services such as education adequate health care, etc.;

d) the privacy of children involved in the criminal justice system is not always protected and their names are in cases of serious offences often published; and that

e) young people of 17 years of age are considered as adults for the purpose of remand.

In line with its previous recommendations (ibid., paras. 35 & 36), the Committee recommends that the State party:

- a) establish a system of juvenile justice that fully integrates into its legislation, policies and practice the provisions and principles of the Convention, in particular articles 3, 37, 40 and 39, and other relevant international standards in this area, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, and the Vienna Guidelines for Action on Children in the Criminal Justice System.

In particular, the Committee recommends that the State party:

- b) considerably raise the minimum age for criminal responsibility;
- c) review the new Orders introduced by the Crime and Disorder Act 1998 and make them compatible with the principles and provision of the Convention;
- d) ensure that no child can be tried as an adult irrespective of the circumstances or the gravity of his/her offence;
- e) ensure the privacy of all children in conflict with the law is fully protected in line with article 40 (2)(b)(vii) of the Convention;
- f) ensure that detention of children is used as a measure of last resort and for the shortest appropriate period of time and that children are separated from adults in detention, and encourage the use of alternative measures to the deprivation of liberty;
- g) ensure that every child deprived of liberty have access to independent advocacy services and an independent child sensitive and accessible complaint procedure;
- h) take all necessary measures, as a matter of urgency, to review the conditions of detention and ensure that all children deprived of their liberty have an equal statutory right to education, health, and child protection as other children;
- i) review the status of young people of 17 years of age for the purpose of remand with the view of giving special protection to all children under the age of 18 years;
- j) allocate appropriate resources in Children's Hearings in Scotland to substantively increase disposals and allow young offenders of 16 to 18 years of age to be also included in the Children's Hearings system."

UN Committee against Torture

Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-13 May 2013)³

Incorporation of the Convention in the domestic legal order (page 3)

“The Committee notes the position of the State party that the Human Rights Act incorporates the European Convention of Human Rights, including the prohibition of torture contained therein, in its legislation. The position of the Committee is, however, that the incorporation of the Convention against Torture into the State party’s law and the adoption of a definition of torture in full conformity with article 1 of the Convention would strengthen the protection framework allowing individuals to invoke the provisions of the Convention directly before the courts (art. 2).

“The Committee recommends that the State party incorporate all the provisions of the Convention against Torture in its legislation and raise awareness of its provisions among members of the judiciary and the public at large.”

Age of criminal responsibility (page 10)

“The Committee remains concerned, however, that criminal responsibility starts at the age of 10 years in England, Wales and Northern Ireland and regrets the State party’s reluctance to raise it despite the call of more than 50 organizations, charities and experts in December 2012 and the repeated recommendations made by the Committee on the Rights of the Child (CRC/C/15/ADD.135, CRC/C/15/ADD.188, CRC/C/GBR/CO/4) (arts. 2 and 16).

“The State party should raise the minimum age of criminal responsibility and ensure the full implementation of juvenile justice standards, as expressed in the General Comment No. 10 of the Committee on the Rights of the Child (paras. 32 and 33). The State party should ensure the full implementation of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines).

Restraint of children (page 10)

“The Committee is concerned that the State party is still using techniques of restraint that aim to inflict deliberate pain on children in Young Offender Institutions, including to maintain good order and discipline (arts. 2 and 16).

“The Committee reiterates the recommendation of the Committee on the Rights of the Child to ensure that restraint against children is used only as a last resort and exclusively to prevent harm to the child or others and that all methods of physical restraint for disciplinary purposes be abolished (CRC/C/GBR/CO/4). The Committee also recommends that the State party ban the use of any technique designed to inflict pain on children.”

Detention conditions (page 11)

“The Committee is concerned about the steady increase in the prison population throughout the past decade and the problem of overcrowding, and its impact on suicide rate, cases of self-injuries, prisoner violence and access to recreational activities. The Committee echoes the concerns raised by

³ <http://www.justice.gov.uk/downloads/human-rights/cat-concluding-observations-may-2013.pdf>

the UK National Preventive Mechanism in 2010 concerning deficiencies in the access to appropriate mental health care and treatment and inappropriate placements of children. It is deeply concerned that children with mental disabilities can sometimes be placed in police custody in England for its “own interest or for the protection of others” (arts. 11 and 16).”

Consideration of reports submitted by state parties under article 19 of the Convention: conclusions and recommendations of the Committee against Torture⁴

“The Committee expresses its concern at reports of unsatisfactory conditions in the State party’s detention facilities including substantial numbers of deaths in custody, inter-prisoner violence, overcrowding and continued use of “slopping out” sanitation facilities.

“The State party should develop an urgent action plan, including appropriate resort to criminal sanctions, to address the subjects of concern raised by the Committee in paragraph 4(g) as well as take appropriate gender-sensitive measures.”

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

- Reports only included if they involved visits to penal institutions for children in England and Wales, as per the Howard League for Penal Reform’s remit.

Report to the government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 18 November to 1 December 2008⁵

Young offender institutions and the detention of juveniles:

Preliminary remarks

- The authorities to pursue with vigour their efforts to reduce the number of juveniles being placed in custody

Material conditions

- All young persons at Huntercombe YOI to be offered a minimum of one hour of outdoor exercise every day and, preferably, considerably more. Further, provision should be made to enable outdoor exercise to take place during inclement weather
- The breakfast packs and baguette lunches to be reviewed as to their sufficiency. Further efforts should be made to install a regular practice of communal evening meals
- Ventilation in the cells was somewhat restricted and the cells were rather cramped. Further, it would be desirable for the toilet and sink to be equipped with a partition.

Regime

- The United Kingdom authorities to reinstate the five day core week in juvenile establishments
- Efforts should be made to ensure young people do not spend most of their day confined to their unit but instead are offered activities on a daily basis outside the unit.

⁴ <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhshvVcmWTul6%2fu%2bWI9YGTvqAMxfi58KK5y0Z3X6%2bHyJGcriM2i8Yoi8GOnoigbCyWuxW9nd5MLoc%2bzJTxaqv0%2bt4SqOsI9OdobztR32vHafSJ>

⁵ <http://www.cpt.coe.int/documents/gbr/2009-30-inf-eng.htm>

- The CPT encourages the United Kingdom authorities to seek ways of offering young persons more purposeful activities during their association periods

Staffing issues

- All necessary steps to be taken to ensure that staffing levels are sufficient to provide a full regime
- The United Kingdom authorities to take the necessary steps to ensure that a rigorous selection and training is in place for all staff allocated to a juvenile YOI

Good order and discipline

- The necessary resources to be allocated to ensure that the Intensive Support Unit can live up to its name and provide a more developed regime to assist juveniles reintegrate rapidly onto mainstream accommodation
- The United Kingdom authorities to amend the relevant Prison Service regulations in order to end the routine practice of strip-searching juveniles and to introduce a strict policy of risk-assessed strip searches only

Use of restraint

- The United Kingdom authorities to discontinue the use in juvenile establishments of manual restraint based upon pain compliant methods
- The United Kingdom authorities to ensure that all custodial officers abide by the precept that any force used to bring juveniles under control should be the minimum required in the circumstances and should in no way be an occasion for deliberately inflicting pain
- Use of the nose grip to be discontinued

Complaints procedures

- The United Kingdom authorities are invited to examine different ways for young persons to express any grievance they might have other than through the formal complaints system. At the same time, efforts should be made to encourage young persons to take advantage of the complaints system

Transport of juvenile offenders

- Concerted action to be taken to remedy the unacceptable situation of juveniles spending long hours travelling in transport vehicles between the prison and court

Report to the government of the United Kingdom on the visit to the United Kingdom by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 4 to 16 February 2001⁶

Ill-treatment

- The authorities at both central and local level to reiterate at the earliest opportunity, vis-à-vis staff at Pentonville Prison and Feltham Young Offender Institution and Remand Centre, the message that abuses of authority by prison officers are not acceptable and will, if discovered, be dealt with severely
- current strategies to combat inter-prisoner violence to be pursued vigorously and means of rendering them more effective to be explored

⁶ http://www.cpt.coe.int/documents/gbr/2002-06-inf-eng.htm#_Toc524235148

What are the main aspects covered by the recommendations?

There are three overarching areas covered by the recommendations of international human rights mechanisms:

1. Torture or other cruel, inhuman or degrading treatment - Penal institutions in England and Wales are consistently criticised for their use of force on children, including the use of pain to secure compliance; the use of segregation and solitary confinement; and restrictive regimes, which include, but are not limited to, lack of regime activities, lack of access to the open air/exercise and overuse of confinement in cells.
2. Custody not being used as a last resort or for the shortest amount of time possible - At 10, the age of criminal responsibility in England and Wales is consistently criticised for unnecessarily bringing children into contact with the criminal justice system. Both the sentencing and remand threshold are consistently criticised by international recommendations for leading to children being unnecessarily deprived of their liberty.
3. Lack of mechanisms and accountability for upholding children's rights behind bars – Despite initiatives the United Kingdom has taken for the protection and promotion of children's rights, it is consistently and repeatedly criticised for their independence and powers being limited and, in particular, not incorporating international treaties into UK law.

Has there been an evolution throughout the years? What is the trend?

In relation to the three overarching areas outlined above:

1. Torture or other cruel, inhuman or degrading treatment – status quo.
Systems of restraint, including pain compliance, are still used on children as are the overuse of segregation and solitary confinement. Although there are variances in regime conditions across the secure estate for children, the majority of children are held in young offender institutions (YOIs) where they spend the majority of their time locked in their cells, with little to occupy them in terms of education and purposeful activity and a lack of access to basic provisions, such as phone calls, visits and the open air.
2. Custody not being used as a last resort or for the shortest amount of time possible – some improvement
The number of children in custody has fallen substantially in recent years. However, the age of criminal responsibility in England and Wales is still extremely low, at 10 years of age. There have been some changes to raise the remand threshold to ensure that children are not unnecessarily deprived of their liberty, which were introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO 2012). However, 60 per cent of children held on remand still go on to be convicted or to receive a non-custodial sentence.
3. Lack of mechanisms and accountability for upholding children's rights behind bars – some improvement.
Although there has been an increase in the number and role of independent human rights institutions, most notably the Office of the Children's Commissioner, the independence and powers of such institutions have been criticised and claims of under-resourcing to fulfil their role have been repeated. Further, even when mechanisms, such as HM Inspectorate of Prisons, part of the NPM make recommendations, it is down to the government to ensure that such changes are implemented and there are few, if any, mechanisms to hold them to account.

What follow-up is given to the recommendations/reports made by the monitoring bodies?

The latest government responses to, respectively, the recommendations of UN Committee on the Rights of the Child, UN Committee Against Torture and the European Committee for the Prevention of

Torture and Inhuman or Degrading Treatment or Punishment are outlined below. It should be clear that these are the views and wording of the government reports rather than that of the researchers'.

***The Fifth Periodic Report to the UN Committee on the Rights of the Child (May 2014)*⁷**

"In 2009, the then Government's *Priorities for Action*, set out proposals to address the UN Committee's recommendations following the last periodic review. The Coalition Government has taken a less centralised approach and given local decision-makers greater discretion to plan and deliver children's services. It has, however, underlined its commitment to UNCRC implementation through: introducing reforms through the Children and Families Act 2014; and issuing statutory guidance to all local Directors of Children's Services which requires them to have regard to the general principles of the UNCRC and to ensure that children and young people are involved in the development and delivery of local services.

"In England, following an independent review and extensive consultation with NGOs and children, the UK Government has legislated to change the primary role of the Commissioner to one of promoting and protecting children's rights. The Children and Families Act 2014 also extended the Commissioner's remit and powers and reinforced the Commissioner's independence from Government.

"The position of the UK Government in relation to the age of criminal responsibility in England and Wales has not changed since the last periodic review. The UK Government believes that children aged 10 are able to differentiate between bad behaviour and serious wrongdoing and it is right that they should be held to account for their actions.

"The number of first time entrants to the criminal justice system in England and Wales fell by 63 per cent between 2008 and 2012.

"The average number of children in custody fell by 33 per cent in England and Wales.

"Provisions in the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 give the police greater discretion in using out-of-court disposals to deal with offences appropriately and proportionately, using their professional judgment.

"In England, the vast majority of cases involving young offenders are tried and sentenced in the youth court. Provisions in the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 ensure that 17-year-olds are dealt with as children rather than adults in court in remand proceedings.

"A new system of "Managing and Minimising Physical Restraint" which has been independently assessed by child medical and behavioural experts is currently being rolled out in under-18 Young Offender Institutions and Secure Training Centres across England and Wales."

***United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: consideration of reports submitted by States parties under article 19 of the Convention. Fifth periodic report of States parties due in 2008. United Kingdom of Great Britain and Northern Ireland (May 2012)*⁸**

⁷ <https://www.gov.uk/government/policies/creating-a-fairer-and-more-equal-society/supporting-pages/the-united-nations-convention-on-the-rights-of-the-child-uncrc>

⁸ <http://www.justice.gov.uk/downloads/human-rights/cat-fifth-periodic-report.pdf>

In terms of specifics regarding children in the criminal justice system, the government included:

“Increasing the percentage of young people held on sites that are separate from the adult estate (in 2000 only 20 per cent of young people were held in dedicated facilities within the secure estate but by 2011 this has increased to 80 per cent)

Over £10m in YOIs to improve safeguarding, providing reduced risk rooms, CCTV and data storage protocols, and cubicle showers

Safeguarding managers within YOIs to co-ordinate and champion safeguarding practice and strategy

Funding of an independent advocacy service to provide children and young people with assistance if they wish to make complaints or need advice

Developing policies and guidance in partnership with secure providers that specifically address the needs of young people, such as anti-bullying and violence reduction

Working with YOIs to introduce new staff posts including child protection co-ordinators, anti-bullying coordinators, and suicide and self-harm co-ordinators who act to help safeguard managers to raise the profile of safeguarding work.”

Safeguarding and behaviour management

“Work is in progress to implement the recommendations arising from the Independent Review of Restraint in Juvenile Secure Settings from 2008. The co-chairs also concluded that a degree of pain compliance may be necessary in exceptional circumstances. This approach has been accepted by the Government, where the use of pain must only take place in exceptional circumstances, when all other approaches have been exhausted or would not work. In their March 2011 progress report, the co-chairs reiterated this conclusion on pain compliance stating that, “in effect, restraint techniques that incorporate pain compliance holds are a way of quickly and safely ending the need for a prolonged use of restraint techniques”. The use of pain-inducing techniques, as with the use of any restraint technique, must always be necessary, reasonable and proportionate.”

What are the measures that should be implemented to ensure that an effect follow-up is actually given to these recommendations?

As highlighted above, a key issue is that the government does not address specific recommendations made by international committees in its periodic reports. Therefore, it is difficult to ascertain what progress has actually been made against the recommendations.

Further, the reports prepared by the UK government only depict a positive picture of their progress rather than a narrative or considering any failings of the state to meet its obligations to children behind bars.

In addition, despite numerous recommendations in support of international recommendations, such as from parliamentary committees, independent experts and inspection bodies, there is no mechanism to ensure that any such recommendations are implemented. The politicisation of justice over decades in England and Wales, and the intense media interest, create barriers to improving the rights of children deprived of their liberty.

4. Jurisprudence of the ECHR in the framework of decisions relating to children's deprivation of liberty

There are very few cases where the deprivation of children's liberty in the penal system in the UK has been considered by the European Court of Human Rights (ECtHR), especially since the Human Rights Act 1998 (HRA) incorporated the European Convention on Human Rights (the Convention) into domestic law. Woolf (2003) notes just three explicit references to the child in the whole of the Convention.

However, in recent years UK courts have declared that fundamental Convention rights should be read in light of the UN Convention on the Rights of the Child (UNCRC). For instance:

- In *R (Howard League for Penal Reform) v Secretary of State for the Home Department*⁹ the Court noted that the UNCRC, as well as other equivalent, non-binding international law, can be relevant to 'proclaim, reaffirm or elucidate' the scope of other fundamental rights;
- In another case brought by the Howard League, *R (K) v Parole Board*¹⁰, the Court noted that the common law obligations of fairness towards young people may also be informed by reference to the UNCRC;
- In the case of *R (on the application of C) v Secretary of State for Justice*¹¹, the Court of Appeal noted that Article 3 ECHR, as it relates to young people, should be interpreted 'in the light of' international conventions, and also of the views of the UN Committee on the Rights of the Child, and the Joint Committee on Human Rights.

There is no doubt that this approach to Convention rights affecting children has created a sea change in the approach to children in conflict with the law in the higher courts, as noted in *R(F and Thompson) v Secretary of State for the Home Department*¹²:

"[t]he courts have consistently approached consideration of measures which are to be applied to children on the basis that the immaturity of a child offender must be taken into consideration as being of prime importance. This recognises the fact that a child well may change as he or she matures so that any problems or dangers which may have been apparent at the time of the commission of the offence may ultimately no longer be present..."

This analysis outlines some of the relevant ECHR jurisprudence relating children deprived of their liberty in the UK, both in Strasbourg and in the domestic courts. Taken together, the cases illustrate the extent to which the rights in the Convention have been read with the UNCRC and common law rights to establish, clarify and affirm the following principles relating to children deprived of liberty.

⁹ [2003] 1 FLR 484; [2002] EWHC 2497 (Admin)

¹⁰ [2006] EWHC 2413 (Admin)

¹¹ [2008] EWCA Civ 882 (28th July 2008)

¹² [2008] EWHC 3170 at para 19

T and V v United Kingdom

Case reference: T and V v United Kingdom [1999] ECHR 171

Key word/provision targeted: Inhuman and degrading treatment (Article 3); Liberty (Article 5); Fair trial (Article 6); Discrimination (Article 14)

Summary of facts: The applicants V and T were convicted of the murder of toddler, James Bulger, when they were aged ten which is the age criminal responsibility in England and Wales.

They were tried in the Crown Court and the trial was open to the public and the media, subject to some modifications of trial procedure (such as reporting restrictions and a shortened trial day).

Having been found guilty, the judge sentenced them to be detained at Her Majesty's Pleasure, with a recommended tariff of 8 years. The actual tariff was subsequently set by the Secretary of State at 15 years.

They complained about various aspects of the trial process and their sentence. The matter was eventually considered by the ECtHR.

Summary of the law: T and V complained that their trial in public in an adult Crown Court and the punitive nature of their sentences violated their right not to be subjected to inhuman or degrading treatment or punishment as guaranteed under Article 3 of the Convention. They further complained that they were denied a fair trial in breach of Article 6, that they had suffered discrimination in breach of Article 14 in that a child aged younger than 10 at the time of the offence would not have been held criminally responsible, that the sentence of detention during Her Majesty's pleasure violated their right to liberty under Article 5, and that the fact that the Home Secretary, rather than a judge, was responsible for setting the tariff violated their rights under Article 6. Finally, they complained under Article 5(4) that they had not had the opportunity to have the continuing lawfulness of his detention examined by a judicial body, such as the Parole Board.

Conclusion: The Court dismissed the complaints concerning discrimination, inhuman and degrading treatment and the legality of the sentence per se.

However, the Court upheld the complaints that T and V's fair trial rights had been violated, ruling that Article 6 required special adaptations to the Court process to ensure 'effective participation' for children. It found that in respect of a young child charged with a grave offence attracting high levels of media and public interest, it is necessary to conduct the hearing in such a way as to reduce as far as possible his or her feelings of intimidation and inhibition. As a result of this ruling the Lord Chief Justice of England and Wales produced a direction requiring the adult courts to adapt their procedures for children.

In relation to the sentence, the Court found that as the tariff was set by a politician, who was a member of the governing Executive, the process violated the independence guaranteed by Article 6 ECHR. This practice has now changed and all prisoners have their tariff set by a judge.

The Court also held that there had been a breach of the right to a speedy review of the continuing need for detention as T and V had been denied reviews of their suitability for release since conviction.

R(on the application of the Howard League for Penal Reform) v Secretary of State for the Home Department (No. 2)

Case reference: R(on the application of the Howard League for Penal Reform) v Secretary of State for the Home Department (No. 2) [2003] 1 FLR 484

Key word/provision targeted: Inhuman and degrading treatment (Article 3) and Private and Family life (Article 8)

Summary of facts: The Secretary of State, in prison guidance (Prison Service Order 4950) had stated that the Children Act 1989, which sets out the State's duties to care for and support children, did not apply to children detained in Young Offenders' Institutions.

Summary of the law: The Howard League for Penal Reform sought a declaration by way of judicial review that the Act did apply to children in custody and that the guidance was incorrect and unlawful.

Conclusion: The court held that the Act does apply to children in custody and therefore, the duties of a local authority towards children did not cease just because a child was in custody. This was an important decision that resulted in a raft of child protection policies and procedures being introduced to prisons detaining children.

R (on the application of K) v Parole Board

Case reference: R (on the application of K) v Parole Board [2006] EWHC 2413 (Admin)

Key word/provision targeted: Liberty (Article 5) and Right to a private and family life (Article 8)

Summary of facts: K, aged 14, was eligible for parole. During his time in custody, he had made significant personal and academic progress, but was at risk of reoffending due to peer pressure and a lack of family support.

K submitted written representations in support of his parole without any assistance and without having received a personal visit from a member of the board as was promised.

Summary of the law: The issue in this case was whether fairness required adult assistance and an oral hearing before the Parole Board.

Conclusion:

The Court held that the Parole Board had failed to ensure K had been given proper adult assistance in preparing his representations. In light of K's young age, the Board should have been particularly scrupulous in observing the requirements of fairness especially in respect of liberty. In reaching this conclusion the Court drew on Article 12 of the UNCRC.

R (on the application of C) v Secretary of State for Justice

Case reference: R (on the application of C) v Secretary of State for Justice [2009] QB 657

Key word/provision targeted: Inhuman and degrading treatment (Article 3); private and family life (Article 8)

Summary of facts: C was a child at risk of being subjected to physical restraint for good order and discipline in a secure training centre as a result of a new set of regulations explicitly allowing the use

of force on children for not doing as they are told, as opposed to only when it is necessary to prevent serious harm.

Summary of the law: The issue in the case was whether the rules allowing the use of force for good order and discipline amounted to inhumane and degrading treatment and an interference with the right to private life and could not be justified.

Conclusion: The Court held that the rules violated Article 3 and Article 8. The system of control itself engaged Article 3 and the Secretary of State was unable to show that system was necessary for good order and discipline. Article 8 was also engaged and the rules could not be shown as being necessary in a democratic society.

5. Legal and regulatory framework for the deprivation of children at the national level

What are the laws governing juvenile justice? What are the authorities who are responsible?

The Crime and Disorder Act 1998 defined the principal aim of the youth justice system as 'to prevent offending by children and young persons'. It placed a duty on every local authority to establish and fund a multi-agency youth offending team (YOT), to coordinate youth justice provision. At a national level, a Youth Justice Board (YJB) was established to monitor and advise the Secretary of State in relation to the youth justice system; monitor steps taken to prevent offending by young people; identify, spread, and make grants to develop good practice; and enter into agreements for the provision of secure accommodation for the detention of under-18s in custody.

The YJB is an executive non-departmental public body of the Ministry of Justice. Other government departments, including the Department of Health, Department for Education and, at local level, local authorities, have duties and responsibilities regarding children in the youth justice system.

Prior to 2010, the YJB was co-sponsored by the Ministry of Justice and the, now defunct, Department for Children Schools and Families (DCSF).

There is a plethora of Acts and regulations that concern children in the youth justice system, including:

- Children and Young Person's Act 1933
- Children Act 1989
- Police and Criminal Evidence Act 1984
- Secure Training Centre Rule 1998
- Care Standards Act 2000
- Young Offender Institution Rules 2000
- Power of Criminal Courts (Sentencing) Act 2000
- Children (Leaving Care) Act 2000
- Criminal Justice Act 2003
- Children Act 2004
- Sentencing Guidelines Council: overarching principles-sentencing youths 2009
- Legal Aid, Sentencing and Punishment of Offenders Act 2012

There are a number of rules, regulations and guidelines that govern prisons, including YOIs. These are outlined in Prison Service Instructions (PSIs) and Prison Service Orders (PSOs). PSOs are long-term mandatory instructions which were issued up to issued until 31 July 2009. They are intended to

last for an indefinite period. PSIs are mandatory instructions which have a definite expiry date. They are also used to introduce amendments to PSOs. The main PSI for children in YOIs is '*PSI 08/2012: Care and Management of Young People*'¹³.

In 2004 the YJB published the first National Standards for Youth Justice Services, which set out the minimum level of service expected in the youth justice system. The latest version was published in 2014¹⁴.

What is the age of criminal responsibility?

The minimum age of criminal responsibility in England and Wales was set at ten from medieval times, although it was lowered to seven in the fifteenth century. It was raised from eight to 10 years old in 1963. Until 1998 the doctrine of *doli incapax* created a rebuttable presumption that a child aged between 10 and 14 years was incapable of committing an offence.

Under which circumstances can a child be deprived of liberty?

In England and Wales children can be detained in the secure estate for children under the following circumstances:

Remand: the new remand framework in the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 came into force on 3 December 2012. This replaced the framework for remand of children in the Children and Young Persons Act 1969 and removed the provision under which 17 year olds were treated as adults for remand purposes, which meant they could only be detained in YOIs.

Children aged 10 and 11 may only be remanded on bail or to a secure children's home. Other children may only be remanded a child to youth detention accommodation in accordance with section 102 of LASPO if a set of conditions set out in section 98 or 99 are met.

Under section 98:

- The child must be at least 12;
- At least one offence must be a violent or sexual offence or be punishable in the case of an adult with imprisonment for a term of 14 years or more;
- The court must consider that only such a remand would be adequate to protect the public from death or serious personal injury occasioned by further offences or to prevent the commission by the child of imprisonable offences ("the necessity condition");
- And the child must either be legally represented before the court or unrepresented for one of the specified reasons ("the first or second legal representation condition")

Section 99 of the act applies if the child faces a realistic prospect of receiving a custodial sentence. In these circumstances, if they have or are alleged to have committed an offence while on remand in custody and have a recent history of absconding while on remand, or, alternatively, the offence forms part of a recent history of committing imprisonable offences while on remand (on bail or in custody) then they may be remanded securely pursuant to this section. The child must be at least 12 and the "necessity" and "legal representation" conditions must be satisfied. Since implementation of the Criminal Justice and Immigration Act 2008, certain children may be subject to electronic monitoring in the community as part of their bail conditions. Tagging is recognised as a deprivation of liberty and should count towards time in prison.

¹³ <https://www.justice.gov.uk/offenders/psis>

¹⁴ <https://www.justice.gov.uk/youth-justice/monitoring-performance/national-standards>

Sentences: Children can be sentenced to a community sentence with an electronic tagging requirement or a range of custodial sentences depending on the seriousness of the offence.

Detention and Training Order (DTO): the DTO is the standard custodial sentence available for children which was introduced by section 73 of the Crime and Disorder Act 1998 and came into force on 1 April 2000. The DTO is a determinate custodial sentence which must be made for a specified period of four, six, eight, ten, twelve, eighteen or twenty-four months. The DTO is currently available, in the youth court or crown court, for children aged 12 to 17 years of age. Half of the order is spent in custody and the other half under supervision. Since 2002, there has been a presumption of early release subject to an electronically monitored curfew, at the earliest point allowed by the legislation:

- Four or six months: early release not available
- Eight, 10 or 12 months: early release available at month before the halfway point
- Eighteen or twenty-four months: early release available one or two months before the half way point.

Children who have committed certain violent or sexual offences are, however, not subject to the presumption and will only be released if they have made 'exceptional progress' in custody.

A determinate sentence under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (PCC(S)A). This provision, sometimes known as the 'grave crimes' provision essentially allows a child to be sentenced as an adult might be. The child must have been convicted of a serious offence that in the case of a person aged 21 or over could attract a sentence of 14 years or more, various sexual offences (even where the maximum sentence is less than 14 years or more) or certain offences relating to firearms. Release is automatic at the half way point. Most children serving this sentence may apply for early release on electronic tag under the Home Detention Curfew (HDC) scheme provided the sentence is less than 4 years. Certain groups of offences are excluded from the scheme altogether. Once released on HDC or at the half way point the child is subject to licence conditions. If these conditions are breached they can be automatically recalled.

Life detention under section 91 PCC(S)A 2000: Otherwise known as a discretionary life sentence, this sentence is rarely used. Between April 2005 and December 2012, this sentence was not used in respect of children due to the availability of indeterminate sentences for public protection. After a specified minimum term, the child will be eligible for a review by the parole board, who consider release or a transfer to open conditions - despite the fact that no open conditions exist for children. The licence period is indeterminate. There is no option to apply to cancel the licence altogether, although there is provision for the conditions to be reduced significantly. The child will be subject to administrative recall for the rest of his or her life.

Detention during Her Majesty's Pleasure under section 90 of the PCC(S)A 2000. This is a mandatory life sentence and will be imposed when a child is convicted or pleads guilty to murder. Schedule 21 of the Criminal Justice Act 2003 states that the starting point for determining the minimum term where the person is under 18 years of age, is 12 years as opposed to 15 years for those over the age of 18. The release and recall provisions are the same as for a discretionary life sentence.

Sentences for public protection under section 226B of the Criminal Justice Act 2003. Extended sentences introduced by LASPO 2012 are available to protect the public where the seriousness of the offence is considered to warrant an extended licence period. The release provisions for extended sentences are complex and may attract release at the discretion of the parole board prior to automatic release in certain circumstances.

6. Mapping of children deprivation of liberty facilities

The secure estate for children

The secure estate for children in England and Wales is comprised of three distinct types of custodial institution:

1. Secure children's homes

Secure children's homes are small local authority run units with high ratios of well-trained staff, with education, therapeutic and behavioural provision tailored to children's needs. Children are held in small units within each home, where relationships built with staff and high levels of interventions enable children to make positive changes to overcome the barriers to leading positive lives when they are released. The homes range in size from four to 30 beds.

Secure children's homes provide the highest standards of care and rehabilitation for the few children in trouble with the law who have to be detained in custody. Yet they have been the victim of a decade of closures: in 2003 the YJB contracted with 22 secure children's homes to provide 297 places in England and Wales. There are now just 138 places in nine secure children's homes.

Both boys and girls, aged between 10 and 17, can be placed into a secure children's home.

The Howard League published a research briefing, 'Future Insecure'¹⁵, which details the impact on children of the decommissioning of the secure children's home sector. Key findings of the research included:

- The recent reduction in the number of children in custody has not been used as an opportunity to invest into the best option in the most challenging circumstances for the very few children who do require a period in a secure environment. Decisions have been taken to cut effective provision to save money in the short term.
- However, this will incur long term costs of unacceptably high reconviction rates, more crimes, more damage to children and higher long term financial costs to the public purse: an investment in little other than creating the adult criminals of tomorrow.

It costs £209,000 p/a to detain a child in a secure children's home.¹⁶

Secure children's homes are governed by the Care Standards Act 2000 and the Children Act 1989.

2. Secure training centres

Secure training centres (STCs) are purpose built child prisons run by private companies for profit. They have a more punitive ethos than secure children's homes and from the outset have been characterised by being staffed by proportionately fewer, less well-trained staff, which has resulted in an over reliance on restraint.

The four STCs, which are all in England, provide 301 places for boys and girls aged 12-17.

It costs £187,000 p/a to detain a children in a STC.

¹⁵ The Howard League for Penal Reform (2012) *Future insecure: secure children's homes in England and Wales*, The Howard League for Penal Reform, London http://d19ylpo4aovc7m.cloudfront.net/fileadmin/howard_league/user/pdf/Publications/Future_Insecure.pdf

¹⁶ All secure estate prices are taken from the Ministry of Justice annual report and accounts 2013/14 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/323308/moj-annual-report-2013-14.pdf

STCs are governed by the Secure Training Centres Rules 1998.

3. Young offender institutions

Young offender institutions (YOIs) are part of the main prison system and are large with the lowest staff ratios: there are as few as four prison officers on a wing of 60 young teenage boys. Children spend the majority of their days locked in their cells and are under the control of staff who have not chosen, and have little training, to work with children.

YOIs are wholly unsuitable for children. Although the welcome drop in the number of children in custody in recent years has meant that a number of YOIs for children have been closed, the same ratio of children are still held in YOIs, rather than more suitable, child-centred, therapeutic environments, such as secure children's homes. Four out of five children who are in custody are imprisoned in them.

There are currently six YOIs in England and Wales, one of which is run by a private company for profit. Between them they provide 1,184 places for boys aged 15-17.

It costs £60,000 p/a to detain a child in a YOI.

LASPO removed an anomaly in law which meant that 17 year olds could only be remanded into YOIs. This allowed the YJB to decommission three YOI units for 17 year old girls, which were on the sites of prisons for adult females. All girls are now detained in secure children's homes and STCs.

YOIs are governed by the Young Offender Institution Rules 2000.

Who are the children in custody?

Table 1: Number of children in custody¹⁷

Secure Estate Custody Population (under 18's)	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
2000/01	2,610	2,804	2,825	2,929	2,968	2,868	2,815	2,812	2,704	2,741	2,789	2,821
2001/02	2,661	2,698	2,805	2,968	2,928	2,832	2,878	2,947	2,735	2,788	2,931	2,996
2002/03	3,094	3,124	3,087	3,195	3,104	3,145	3,200	3,137	2,919	2,862	2,872	2,882
2003/04	2,798	2,810	2,805	2,839	2,833	2,795	2,799	2,748	2,587	2,663	2,727	2,850
2004/05	2,775	2,809	2,763	2,768	2,785	2,792	2,828	2,803	2,617	2,646	2,692	2,677
2005/06	2,693	2,768	2,827	2,892	2,930	3,031	2,962	2,893	2,644	2,761	2,763	2,815
2006/07	2,785	2,868	2,922	2,963	3,067	3,052	2,999	3,000	2,796	2,832	2,851	2,839
2007/08	2,840	2,898	2,909	2,964	2,991	3,010	2,999	2,980	2,795	2,846	2,953	3,004
2008/09	3,012	3,006	3,072	3,006	3,019	2,934	2,905	2,905	2,715	2,726	2,648	2,625
2009/10	2,595	2,541	2,596	2,546	2,504	2,536	2,528	2,432	2,178	2,196	2,187	2,180
2010/11	2,149	2,136	2,113	2,083	2,099	2,086	2,046	1,986	1,862	1,892	1,996	2,027
2011/12	1,955	2,014	2,041	1,959	2,066	2,044	1,991	2,022	1,871	1,919	1,873	1,803
2012/13	1,829	1,741	1,707	1,678	1,622	1,578	1,575	1,529	1,349	1,349	1,291	1,279
2013/14*	1,292	1,290	1,237	1,278	1,239	1,249	1,250	1,229	1,168	1,200	1,183	1,177
2014/15*	1,105	1,091	1,104	1,122	1,068							

Table 2: Number of 10-14 year olds in custody

Age 10-14	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
2005/06	188	197	204	236	231	231	229	203	175	208	196	199
2006/07	203	211	209	200	220	217	194	196	175	196	172	162
2007/08	189	202	194	200	185	192	183	199	177	184	187	191
2008/09	201	183	187	175	171	156	173	170	143	156	147	170
2009/10	168	156	153	154	131	137	128	134	107	107	108	109
2010/11	107	112	111	113	107	100	95	89	80	90	85	92
2011/12	87	97	93	87	91	95	86	87	81	91	86	78
2012/13	85	77	62	71	64	68	72	66	62	62	54	51
2013/14*	45	48	47	51	44	54	58	51	53	60	54	49
2014/15*	50	52	53	48	38							

Table 3: Number of 15-17 year olds in custody

Age 15-17	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
2005/06	2,505	2,571	2,623	2,656	2,699	2,800	2,733	2,690	2,469	2,553	2,567	2,616
2006/07	2,582	2,657	2,713	2,763	2,847	2,835	2,805	2,804	2,621	2,636	2,679	2,677
2007/08	2,651	2,696	2,715	2,764	2,806	2,818	2,816	2,781	2,618	2,662	2,766	2,813
2008/09	2,811	2,823	2,885	2,831	2,848	2,778	2,732	2,735	2,572	2,570	2,501	2,455

¹⁷ All tables are taken from the Ministry of Justice monthly youth custody report. This is a live document available at <https://www.gov.uk/government/publications/youth-custody-data>

2009/10	2,427	2,385	2,443	2,392	2,373	2,399	2,400	2,298	2,071	2,089	2,079	2,071
2010/11	2,042	2,024	2,002	1,970	1,992	1,986	1,951	1,897	1,782	1,802	1,911	1,935
2011/12	1,868	1,917	1,948	1,872	1,975	1,949	1,905	1,935	1,790	1,828	1,787	1,725
2012/13	1,744	1,664	1,645	1,607	1,558	1,510	1,503	1,463	1,287	1,287	1,237	1,228
2013/14*	1,247	1,242	1,190	1,227	1,195	1,195	1,192	1,178	1,115	1,140	1,129	1,128
2014/15*	1,055	1,039	1,051	1,074	1,030							

Tale 4: Number of boys in custody

Male	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
2005/06	2,512	2,576	2,613	2,648	2,690	2,790	2,730	2,668	2,444	2,549	2,559	2,615
2006/07	2,583	2,661	2,711	2,768	2,842	2,830	2,783	2,774	2,593	2,627	2,640	2,634
2007/08	2,643	2,696	2,693	2,728	2,750	2,776	2,767	2,758	2,580	2,656	2,748	2,798
2008/09	2,791	2,793	2,848	2,799	2,818	2,745	2,704	2,707	2,557	2,552	2,491	2,459
2009/10	2,437	2,378	2,424	2,378	2,338	2,385	2,371	2,286	2,044	2,084	2,069	2,059
2010/11	2,041	2,027	2,009	1,977	1,993	1,975	1,944	1,877	1,755	1,799	1,886	1,915
2011/12	1,850	1,905	1,940	1,862	1,957	1,928	1,880	1,915	1,766	1,802	1,754	1,689
2012/13	1,714	1,647	1,625	1,598	1,544	1,502	1,506	1,469	1,291	1,299	1,239	1,225
2013/14*	1,242	1,240	1,186	1,225	1,189	1,190	1,182	1,164	1,109	1,141	1,119	1,123
2014/15*	1,055	1,042	1,051	1,077	1,024							

Table 5: Number of girls in custody

Female	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
2005/06	181	192	214	244	240	241	232	225	200	212	204	200
2006/07	202	207	211	195	225	222	216	226	203	205	211	205
2007/08	197	202	216	236	241	234	232	222	215	190	205	206
2008/09	221	213	224	207	201	189	201	198	158	174	157	166
2009/10	158	163	172	168	166	151	157	146	134	112	118	121
2010/11	108	109	104	106	106	111	102	109	107	93	110	112
2011/12	105	109	101	97	109	116	111	107	105	117	119	114
2012/13	115	94	82	80	78	76	69	60	58	50	52	54
2013/14*	50	50	51	53	50	59	68	65	59	59	64	54
2014/15*	50	49	53	45	44							

The evidence shows that children who end up in the justice system come in the main from the most disadvantaged families and communities, whose lives are frequently characterised by social deprivation, neglect and abuse:

- 71 per cent of children in custody have been involved with, or in the care of, social services¹⁸ compared to three per cent of the general population¹⁹

¹⁸ Youth Justice Board (2007) *Accommodation needs and experiences*, Youth Justice Board, London

<http://yjbpublications.justice.gov.uk/en-gb/Scripts/fileDownload.asp?file=Accommodation+Needs+and+Experiences+--+Summary.pdf>

¹⁹ National Census (2011) http://www.ons.gov.uk/ons/guide-method/census/2011/index.html?utm_source=twitterfeed&utm_medium=twitter

- One in four boys report suffering violence at home, and one in 20 report having been sexually abused²⁰
- 31 per cent have recognised mental health disorder²¹ compared to 10 per cent of the general population²²
- 19 per cent suffer from depression, 11 per cent anxiety, 11 per cent post-traumatic stress disorder and five per cent psychotic symptoms²³

Children exposed to the most acute combination of risk factors are up to 20 times more likely to offend than those who are not.²⁴

Deaths in child custody

Since 2000, 16 children have died in penal custody. All of the deaths occurred in YOIs and STCs.

In 2004, 15 year old Gareth Myatt, who was detained in a G4S run STC, refused to clean a sandwich toaster that other children. Gareth was ordered to his room and locked in. Two officers then entered and began removing his possessions. When they tried to take a piece of paper, which it later transpired had his Mum's new mobile phone number on, Gareth was said to have raised his fist. Another officer came into his room. All three members of staff forced Gareth into a sitting position and bent his upper body towards his thighs and knees. They ignored his cries that he could not breathe and was going to defecate, which he did before vomiting. He choked to death on his own vomit whilst they were restraining him.

The death of any child is an indication that children's rights are not being respected. However, the deaths of children such as Gareth, who was restrained to death in the care of the state, is an extreme warning of the extent such rights are systemically infringed.

Policing

The Police and Criminal Evidence Act 1984 (PACE) instituted the legislative framework for the powers of police officers in England and Wales, and underpins a set of codes of practice for the exercise of those powers.

Under section 11 of the Children Act 2004, police forces are under general duties to cooperate with local partners to promote the well-being of children and to discharge their functions having regard to the need to safeguard and promote the welfare of children.

Custody suites

The number of custody facilities for children and young people is not held centrally by any government department. However, a parliamentary inquiry into children and the police released

²⁰ Youth Justice Board (2007) *Accommodation needs and experiences*, Youth Justice Board, London

<http://yjbpublications.justice.gov.uk/en-gb/Scripts/fileDownload.asp?file=Accommodation+Needs+and+Experiences+--+Summary.pdf>

²¹ Youth Justice Board (2005) *Mental health needs and effectiveness of provision for young offenders in custody and in the community*, Youth Justice Board, London <http://yjbpublications.justice.gov.uk/Resources/Downloads/MentalHealthNeedsfull.pdf>

²² Office for National Statistics (2005) *Mental health of children and young people in Great Britain*, Department of Health, London <http://www.hscic.gov.uk/catalogue/PUB06116/ment-heal-chil-young-peop-gb-2004-rep2.pdf>

²³ Chitsabesan et al (2006) 'Mental health needs of young offender in custody and the community', *British Journal of Psychiatry*, vol 188, 534-540 <http://bjp.rcpsych.org/content/188/6/534>

²⁴ Home Affairs Committee (2010) *Home Affairs Committee – tenth report: the government's approach to crime prevention*, House of Commons, London <http://www.publications.parliament.uk/pa/cm/cmhaff.htm>

figures that they obtained under the Freedom of Information Act. Of the 44 police forces in England and Wales, 43 provided figures.

The data shows that of the 292 custody suites in England and Wales, only 118 provided separate facilities for children.²⁵

PACE Code c sets out the guidelines which police officers and custody sergeants must follow with regard to the detention in police custody of children and adults. Code C states that “a juvenile must not be placed in custody unless no other secure accommodation is available and the custody officer considers it not practical to supervise them...A juvenile must not be placed in a cell with a detained adult”.²⁶ However, there is no legal requirement for custody suites to have dedicated facilities for children. In practice, even if they are ‘separate’, it is a designated separate cell, rather than specialist provision.

Howard League work

One of the Howard League’s key strategic aims is to reduce the number of children that are still being brought into conflict with the criminal justice system, and the problematic implications this has for their future lives.

As the primary gatekeepers to the criminal justice system, the police determine who enters. The Howard League has commissioned and conducted its own research on the treatment of children by the police. Our research in this area includes: ‘Out of place: the policing and criminalisation of sexually exploited girls and young women’²⁷; ‘On our side: young people and the police’²⁸. Some of the key points made by children were:

- “[Police] need to work for the community. Not all young people are criminals, not all black people are drug dealers, not all Muslims are terrorists; if you don’t know the community then you can’t work with them.”
- “They should have more understanding of the issues that young people face and should be more supportive and not just trying to punish us all the time, as people just keep getting into trouble so what they do can’t be working.”
- “It all needs changing, not just the officers but all of it and the ones at the top need to know what the officers on road are doing and how they are acting.”

The Howard League also provides support to the All Party Parliamentary Group on Women in the Penal System that conducted an inquiry in 2012 into girls in the penal system and included written and oral evidence from chief constables about the policing of young women. Two briefing papers

²⁵ All Party Parliamentary Group for Children (2014) *Inquiry into ‘children and the police’: initial analysis of information requests to police forces* http://www.ncb.org.uk/media/1150494/appgc_police_data_report_july_2014_final.pdf

²⁶ Home Office (2014) *PACE Code C: Code of Practice for the detention, treatment and questioning of persons by police officers* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/364680/2013_PACE_Code_C.pdf

²⁷ The Howard League for Penal Reform (2012) *Out of place: the policing and criminalisation of sexually exploited girls and young women*, The Howard League for Penal Reform, London
https://d19ylpo4aovc7m.cloudfront.net/fileadmin/howard_league/user/pdf/Publications/Out_of_place.pdf

²⁸ The Howard League for Penal Reform (2012) *On our side? Young people and the police*, The Howard League for Penal Reform, London
https://d19ylpo4aovc7m.cloudfront.net/fileadmin/howard_league/user/online_publications/On_our_Side_FULL_document.pdf

were published as a result of this inquiry: 'Keeping girls out of the penal system'²⁹ and 'From courts to custody'³⁰.

Child arrests

In 2013, the Howard League published a research briefing on 'Child arrests in England and Wales 2008-2011'³¹. This report analysed data from a Freedom of Information (FOI) request to all 43 police services in England and Wales, looking at the numbers of children aged 10-17 who had been arrested in the years 2008, 2009 and 2010. The briefing presented figures broken down by age, gender and ethnicity. A second request replicated the data for 2011. In the four years 2008-2011 there were over a million (1,041,067) child arrests in England and Wales. Yet, over the course of the study period, the number of child arrests had fallen by a third.

The Howard League made further FOI requests seeking the same information for 2012 and 2013. The research briefing 'Child arrests in England and Wales 2013'³², shows that every police service in England and Wales made fewer child arrests in 2013 than it did in 2008. Further, the number of children arrested by children have fallen by 59 per cent in five years.

However, despite this positive trend, child arrests remain all too common – a child was arrested every four minutes in England and Wales in 2013. In 2013, police in England and Wales made 129,274 arrests of children. These included 1,107 arrests of children who were aged 10 or 11, meaning that on average three primary school-age children were arrested every day.

Overnight detention of children in police custody

In 2011, the Howard League published 'Overnight detention of children in police custody', following analysis of data from a FOI request to all 43 police services in England and Wales. The request asked for information about the numbers of children under the age of 16 detained in police cells in 2008 and 2009. Twenty-four police service areas provided data which showed that there had been approximately 53,000 overnight detentions of children.

The Howard League made a second FOI request seeking the same information for 2010 and 2011 and published a further briefing. This time, data was also requested for 16 and 17 year olds. Thirty-four police areas responded. The research found that there were at least 86,034 overnight detentions of children in police custody in 2010 and 2011. Further, the number of overnight detentions decreased from 45,318 in 2010 to 40,716 in 2011, a decrease of 10 per cent. However, there are variations across England and Wales and in three police service areas the number rose.

Of concern is that the number of child arrest fell by 15 per cent between 2010 and 2011, yet the number of overnight detentions only fell by 10 per cent.

²⁹ All Party Parliamentary Group of Women in the Penal System (2012) *Keeping girls out of the penal system*, The Howard League for Penal Reform, London

³⁰ All Party Parliamentary Group of Women in the Penal System (2012) *Inquiry of girls: from courts to custody*, The Howard League for Penal Reform, London
https://d19ylpo4aovc7m.cloudfront.net/fileadmin/howard_league/user/pdf/Publications/Keeping_girls_out_of_the_penal_system.pdf
https://d19ylpo4aovc7m.cloudfront.net/fileadmin/howard_league/user/pdf/Publications/From_Courts_to_Custody_APPG_Girls_Inquiry_briefing_paper_2.pdf

³¹ The Howard League for Penal Reform (2013) *Child arrests in England and Wales 2008-11*, The Howard League for Penal Reform, London
https://d19ylpo4aovc7m.cloudfront.net/fileadmin/howard_league/user/pdf/Publications/child_arrests.pdf

³² The Howard League for Penal Reform (2014) *Child arrests in England and Wales 2013*, The Howard League for Penal Reform, London
https://d19ylpo4aovc7m.cloudfront.net/fileadmin/howard_league/user/pdf/Publications/Child_Arrests_2013_2_.pdf

Immigration removal centres

Immigration Removal Centres are holding centres for foreign nationals awaiting decisions on their failed asylum application claims or awaiting deportation following a failed application. The power to detain immigrants was first provided by the Immigration Act 1971, which allowed the detention of asylum seekers in detention centres and prisons. Previously known as 'detention centres', the name was formally changed to 'removal centres' under the Nationality, Immigration and Asylum Act 2002 to "reflect the part played by detention in the removal of failed asylum-seekers and others".

There are currently 12 Immigration Removal Centres in England and Wales.³³

A particularly controversial aspect is the detention of children in immigration removal centres. In response to criticism, the government created "Cedars", a pre-departure accommodation centre for nine families who can be held for 72 hours or up to a week in 'exceptional circumstances'. The government claims that with Cedars they have put an end to child detention. This claim is widely disputed.

Secure psychiatric hospitals

Children cannot be detained in secure psychiatric hospitals.

However, there are a network of seven forensic adolescent units in the UK. Children in the criminal justice system can be detained in these units either by the court as an alternative to sentencing or through the Ministry of Justice directing their transfer from prison to hospital.

Children are detained on these units under either Part 2 or Part 3 of the Mental Health Act 1983.

³³ <https://www.gov.uk/immigration-removal-centre/overview>

7. National preventative mechanism

The United Kingdom ratified the Optional Protocol to the UN Convention against Torture (OPCAT) in December 2003.

The UK's National Preventive Mechanism (NPM) was established on 31 March 2009. The UK's NPM is currently made up of 20 visiting or inspecting bodies who have unrestricted visits to places of detention without prior notice, such as prisons, police custody, immigration detention centres, children's secure accommodation and mental health institutions.

Members of the UK NPM

England and Wales:

- HM Inspectorate of Prisons (HMIP)
- Independent Monitoring Boards (IMB)
- Independent Custody Visiting Association
- HM Inspectorate of Constabulary (HMIC)
- Care Quality Commission (CQC)
- Healthcare Inspectorate Wales
- Children's Commissioner for England (OCC)
- Care and Social Services Inspectorate Wales
- Office for Standards in Education
- Lay Observers

Scotland

- HM Inspectorate of Prisons for Scotland
- HM Inspectorate of Constabulary for Scotland
- Scottish Human Rights Commission
- Mental Welfare Commission for Scotland
- Care Inspectorate
- Independent Custody Visitors Scotland

Northern Ireland

- Independent Monitoring Boards (Northern Ireland)
- Criminal Justice Inspection Northern Ireland
- Regulation and Quality Improvement Authority
- Northern Ireland Policing Board Independent Custody Visiting Scheme

Each organisation within the NPM has its own legal basis and remit, separate from OPCAT, as the bodies pre-date the NPM. For example, HM Inspectorate of Prisons' responsibilities are set out in section 5A of the Prison Act 1952, as amended by section 57 of the Criminal Justice Act 1982. They are to:

- Inspect or arrange for the inspection of prisons and young offender institutions in England and Wales and report to the Secretary of State on the results
- In particular, report to the Secretary of State on the treatment of prisoners and conditions in prisons
- Report on matters connected with prisons in England and Wales and prisoners in them referred to him by the Secretary of State
- Submit an annual report to be laid before parliament.

The Chief Inspector's responsibilities have also been extended to include other forms of detention. The statutory responsibility for these inspections is established in the following legislation:

- Section 46(1) of The Immigration, Asylum and Nationality Act 2006 to cover immigration detention centres, short-term immigration holding facilities and escort arrangements throughout the UK
- The Police and Justice Act section 28 added to the 1952 Act by setting out the Chief Inspector's further powers and duties to cooperate and consult with other criminal justice inspectorates and other bodies
- By the order of The Public Bodies (Abolition of Courts Boards, Her Majesty's Inspectorate of Court Administration and Public Guardian Board) Order 2012, HMI Prisons was given powers to inspect court custody.

There are other organisations and NGOs, such as the Howard League, who visit and have an interest in issues of child detention. However, such organisations do not have any statutory role.

Children and young people

In acknowledgement of the specific challenges faced by children and young people in detention in the UK, and the need to share expertise and good practice among the NPM, a subgroup on children and young people was established in early 2013, chaired by the OCC.

Oversight for children in secure settings is led by a number of different NPM members responsible for their inspection: in England alone, this includes HMIP and IMBs for young offender institutions, immigration detention and court custody; HMIC and HMIP jointly for police custody; Ofsted and HMIP jointly for secure training centres; Ofsted for secure children's homes; the CQC for secure forensic mental health facilities and other child and adolescent mental health services. The different lay visiting organisations again have responsibility for different institutions. Other NPM members, including the OCC, have a function that includes visits to different settings – but may not replicate the inspectorates' functions.

All NPM members can make unannounced visits to places of detention but the OCC is unique because it has the power to visit any place where a child is cared for or accommodated away from home. During these visits they can interview children privately, observe standards of care and speak to anyone working on the premises. The OCC speaks to the governor, director or manager of the secure setting on the day about any relevant findings, but also write to them afterwards copying in the relevant inspectorates, the YJB and where appropriate, the local Director of Children's Services.

Reporting

OPCAT section 23 implies that, once a year, the NPM should produce a report on its activities. Most, if not all, inspection bodies already produce annual reports. Due to the diversity of the monitoring procedures in the UK, the collation of those reports into a national report, even in a digest form, requires some kind of collating mechanism. The NPM bodies also need to communicate effectively and efficiently with one another and the Subcommittee on Prevention, and to set up meetings of the NPM.

It was agreed by members of the NPM that HMIP for England and Wales would carry out this secretarial function, and it has been funded by government to do so. The NPM's first annual report was published on 8 February 2011³⁴.

³⁴ <http://www.justiceinspectorates.gov.uk/hmiprison/national-preventative-mechanism/annual-reports-of-the-uk-npm/#.U9pTouNdWz4>

Individual inspection bodies that make up the NPM provide follow up to inspections, through different mechanisms. For example, the Office of the Children's Commissioner follow up with individual institutions after visits and contact relevant government agencies. However, these are not matters of public record.

Benefits of the UK NPM

- The establishment of a sub-group focusing on the specific needs of children in detention may help the NPM to fulfil its preventative role through sharing good practice on visits and inspections, a holistic and system-wide analysis of the situations where children are at risk of ill-treatment, and making recommendations designed to improve policy and practice for children in detention
- The NPM is made up of individual institutions, many of whom have a strong reputation. These existing institutions have attributes, expertise, methodologies and infrastructure, which are beneficial in fulfilling the NPM mandate.

Challenges of the UK NPM

- All the places of detention within the NPM's remit are under financial pressure, as are the NPM members themselves
- Issues of jurisdiction – the NPM covers four countries with different youth justice systems in each
- As many of the individual members of the NPM are established, they are often more well known and given more credibility than the NPM itself
- The torture prevention work of the NPM extends beyond conducting visits to places of detention to analysing the root causes of torture and other ill-treatment and seeking to bring about systemic change. However, the UK NPM has thus far been primarily focussed on their work to monitor places of detention and making recommendations relating to these visits. A challenge is therefore how they can broaden their work in the future to encompass a more holistic view of torture prevention.

It is arguably the case that the NPM in the UK does not have a strong corporate identity. Much of the detailed work that might be expected of the NPM e.g. reports and follow-up, are undertaken by individual members, whose powers and remit pre-date the NPM.

The unique set-up in the UK is not necessarily a model useful for countries looking to set up an NPM. The UK NPM is a pragmatic response to a historic strength in areas of monitoring, rather than a body which was designed from scratch.

Broadly speaking, individual members perform monitoring functions well, but the NPM needs to strengthen its identity.

8. Complaints mechanisms

The current prison complaints system was amended in April 2012 and is set out in PSI 02/2012³⁵. Further, the YOI Rules³⁶ set out the requirements for a complaints process and governors in YOIs have additional duties when addressing complaints from children (as oppose to adult prisoners) which are outlined in PSI 08/2012³⁷. These additional duties include verbal explanations of the result of a complaint, forms specifically designed to be used by children and quality assurance processes by the safeguarding children manager.

There is a separate complaints system for those detained in secure training centres and secure children's homes.

Complaints procedures in secure training centres are governed by Rule 8 of the Secure Training Centre Rules 1998³⁸, which provides for a 'comprehensive grievance procedure'. Each privately run STC has a local policy which must be approved by the Secretary of State.

Secure children's homes are governed by the Care Standards Act 2000 and the Children Act 1989. Each secure children's home is required to develop complaints procedures that are accessible to children, including the provision of an advocacy service assisting children to make representations and complaints.

Process

In YOIs there are two stages to the complaints process:

1. The initial complaint stage
2. The appeal stage

The prison is to respond to any complaint made by a child within 5 or ten working days. If the child is not satisfied with the outcome, the child may appeal to a more senior person within the prison's management structure. All children should be provided with a written response to their complaint.

If the child is dissatisfied with the response, he may appeal to the Prisons and Probation Ombudsman within three months. The child may also contact other external bodies, including members of Parliament, the Independent Monitoring Board and the Queen.

In STCs the Rules provide that a child may appeal to a 'monitor' who must consider the complaint. Monitors are employed by the YJB and generally are based within the STCs. A letter from the YJB to the Howard League dated 17 May 2013 stated that out of 2,5000 complaints made by children in STCs to the YJB's monitor, only one appeal was heard.

In 2013 the government extended the remit of the PPO to children detained in STCs, which means that children can now appeal to the PPO is they are dissatisfied with the outcome of their complaint.

This followed a letter before action by the Howard League which challenged the failure of the Secretary of State for Justice to implement an effective and independent complaints procedure for children in STCs. The Howard League successfully argued that despite the legal requirement for a 'comprehensive grievance procedure' in Rule 8 of the STC Rules, as well as the general principle that

³⁵ <https://www.justice.gov.uk/offenders/psis>

³⁶ <https://www.justice.gov.uk/offenders/psos>

³⁷ Ibid

³⁸ <http://www.legislation.gov.uk/ukxi/1998/472/contents/made>

those detained should have an effective and independent means of airing grievances in relation to serious matters, the system remained wholly inadequate and without an option to appeal to an independent body. As a consequence the procedure was unfair, discriminatory and contrary to the protections afforded by the European Convention on Human Rights.

Issues

Process

PSI 02/2012 replaced PS0 2510 which had a three stage process:

1. A response from the child's wing officer
2. A response to someone at management level
3. The final appeal stage – this is a response from the governing governor.

Thereafter, it could be appealed to the Prisons and Probation Ombudsman.

There was a target of three days for an initial reply which was abolished by the new complaints system. Instead, the new policy is that, if a reply is going to be longer than five days, an interim reply should be issued. The Prison Service anticipated this would result in better quality replies, which would increase satisfaction. However, the Howard League has concerns that the quality of complaints has actually decreased radically since the three-stage process was abolished and is aware of cases where the Prison and Probation Ombudsman has found itself having to send complaints back to the prison or a proper consideration before they review the case.

Legal aid

The Ministry of Justice has cut criminal legal aid available to all prisoners, including children, on the basis that those who used to get legal aid will instead have recourse to the prisoner complaints system. The Joint Committee on Human Rights concluded at paragraph 181 of its Seventh Report of the 2013-14 Session, *The implications of access to justice of the Government's proposals to reform legal aid*³⁹, that there were some cases where only the retention of public funding 'will be sufficient to prevent infringement of a prisoner's right access to the court in practice'

The complaints system is inadequate as a substitution for legal representation. It is lengthy, under-resourced, bureaucratic and only used by adult male prisoners who have years of experience.⁴⁰

Further, the Prisons and Probation Ombudsman, to whom children may appeal, is not a statutory post and lacks the powers to enforce his decisions. In many cases which were funded by legal aid, the issue is simply not suitable for resolution through the complaints system.

Inadequacy of and lack of confidence in the internal complaints system

Since 2008, HMIP has produced an annual survey of children and young people in custody, regarding their perceptions and experiences in young offender institutions.

The latest survey in 2013⁴¹ found that:

³⁹ <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/>

⁴⁰ This view is also shared by the Children's Commissioner who said in their submission to the JCHR on legal aid (September 2013) "We note the comments of the Ministry of Justice at paragraph 2.6 of Transforming Legal Aid: Next Steps regarding the role of advocacy services, complaints procedures and the Prisons and Probation Ombudsman/statutory monitor/local authorities. However, complaints mechanisms cannot provide a substitute for the independent judicial scrutiny and binding legal remedies available in court proceedings and we believe that, alone, they cannot effectively protect important rights of children in custody, including the rights to freedom from maltreatment and inhuman and degrading treatment or punishment (under Articles 19 and 37 UNCRC and Article 3 European Convention on Human Rights)."

- Only 55 per cent of children said it was easy to make a complaint. This had reduced from 63 per cent in 2012 and 65 per cent in 2011.
- Of those who had made a complaint, only 39 per cent said they felt it was dealt with fairly and 41 per cent reported that they felt it was sorted out quickly
- Children on remand were less likely to say that it was easy to make a complaint (45 per cent compared with 58 per cent of those who were sentenced), or that complaints were dealt with fairly (20 per cent compared with 42 per cent) or quickly (21 per cent compared with 45 per cent).
- 9 per cent of children said they had felt too scared or intimidated to make a complaint at some point.

The Office of the Children's Commissioner for England published a report entitled "Why are they going to listen to me?" Young people's perspectives on the complaints system in the youth justice system and secure estate⁴² in 2012. This was based on 721 responses by children to a questionnaire and 34 focus groups.

They found that the main barriers to making a formal complaint were:

- Lack of confidence in the formal complaints system – many children said that they had a low expectation that a satisfactory outcome would be achieved if they made a formal complaint
- Complaints system seen as unjust and unfair – some children indicated that they believed the complaints system was biased in favour of staff and that it lacked independent oversight. This was particularly the case in YOIs where children often described how they felt their complaints had not been taken seriously by staff and where complaints were largely responded to internally.
- Complaints about reprisals and lack of confidentiality – some children within YOIs indicated that they would be reluctant to use the formal complaints procedure as they were concerned that their complaint would not be treated confidentially and may result in less favourable treatment by staff.
- Concerns about breaching the cultural code of 'snitching' – a small number of children indicated they would not consider making a formal complaint as they considered this to have negative association with being seen as a 'snitch' by other children or staff.
- Complaints process seen as too long and slow – by far the most common reason children gave for being reluctant to use the complaint system related to their experience or perception that the process was unduly long and that response rates were too slow.

Inadequacy of and lack of confidence in the Prison and Probation Ombudsman

The Prisons and Probation Ombudsman (PPO), to whom children may appeal, is not a statutory post and lacks the powers to enforce his decisions. According to the PPO's annual report (2012- 2013)⁴³, a disproportionately small number of the investigations (only 1.8 per cent of cases) were from young people (under 21) who make up 9 per cent of the prison population (page 46).

Further, the PPO is ineffective as a complaints handler. The Prisoners' Advice Service has found that⁴⁴:

- The PPO is subject to systemic delays. Non urgent case are not allocated for 10-12 weeks and often a decision will not be made until many months after that;

⁴¹ <http://www.justiceinspectorates.gov.uk/hmiprison/inspections/children-and-young-people-in-custody-2012-13/#.U9pVDONdWz4>

⁴² <http://www.childrenscommissioner.gov.uk/content/publications>

⁴³ <http://www.ppo.gov.uk/annual-reports.html>

⁴⁴ <http://prisonersadvice.org.uk/news/?p=344>

- There is no specialism within the PPO in terms of dealing with children, women, race or disability complaints;
- PPO investigators are not qualified lawyers and there is no legal training given for the role;
- The PPO only accepts 50 per cent of complaints. The rest are returned to the prison to sort out and resolve again, often because they have not been adequately responded to by the prison's internal complaints process.

Further, the PPO cannot deal with complaints by children in custody arising from their youth offending team or social workers.

Advocacy- right to be assisted

The Youth Justice Board has contracted independent advocacy services to all secure training centres since 2000 and YOIs since 2003. The purpose of the advocacy service is “to offer an independent voice to children and young people in custody to enable them to resolve issues relating to their welfare, care and treatment whilst detained in custody”⁴⁵. This includes complaints.

In March 2013 the charity Barnados won contracts for the advocacy services for all secure training centres and young offender institutions in England and Wales. The contracts were awarded for three years.

⁴⁵ <https://www.justice.gov.uk/news/press-releases/yjb/new-advocacy-service-contracts-awarded-to-barnados>